

# Police use of force during an arrest in Kāwhia

## INTRODUCTION

1. On 13 July 2017, the Waikato Armed Offenders Squad went to two adjacent houses in Kāwhia to locate Mr W and Ms Y who were believed to have manufactured methamphetamine at an address in Te Poi.
2. Police surrounded the two houses, and called on any occupants to come out. Mr X, who lived in one of the houses, eventually came outside but did not follow Police instructions. Police used two AOS Police dogs and a Taser to arrest him, causing Mr X to be injured.
3. The Police notified the Independent Police Conduct Authority of the incident in September 2017, after TaserCam footage was reviewed.<sup>1</sup> The Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

4. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
5. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence are reserved for the 'Authority's Findings' section.

### Summary of events

6. On 4 July 2017, Police went to a rural address in Te Poi where three people had set up a clandestine laboratory to manufacture methamphetamine. One person was arrested, but a man and a woman evaded Police.

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<sup>1</sup> A Taser has an inbuilt video camera (TaserCam) which activates automatically when the Taser is turned on.

7. Police started to search for these people, thought to be Ms Y and Mr W. Police had gathered sufficient evidence to arrest Ms Y, and wanted to speak Mr W about his involvement. Mr W was known to Police as a violent gang associate who manufactured drugs and carried firearms.
8. Police enquiries indicated that Ms Y and Mr W were probably in Kāwhia, and possibly in touch with an associate, Mr X.<sup>2</sup> Mr X was a known methamphetamine user who Police suspected of dealing drugs from his rented house. Mr W was known to visit Mr X regularly.
9. Mr X's house was situated in a small fenced section of land, closely adjacent to a second house that was owned and used by a local family as a weekend bach. Both houses shared a driveway and were surrounded by farmland.
10. On 12 July 2017, Police were informed that one of the bach's windows had been found open, and it was possible that it had been broken into. Police also received information that a car registered to Mr W's father had been parked outside Mr X's house. Together, this information indicated to Police that Ms Y and Mr W could be hiding at Mr X's house or the bach, and using either property to manufacture methamphetamine.
11. Police decided to search both houses for Ms Y and Mr W, pursuant to section 8 of the Search and Surveillance Act 2012.<sup>3</sup> Due to the risk posed by Mr W and suspected drug manufacturing activities, the Waikato Armed Offenders Squad (AOS) would approach and check both houses, and deal with any occupants before handing them over to the investigating officers, who would be waiting a short distance away.
12. At 3pm on 13 July 2017, the Waikato AOS held an operation briefing in Te Awamutu. The AOS Tactical Commander advised that their primary mission was to arrest Ms Y, and provided details and photographs of Ms Y, Mr W, Mr X, and Mr X's partner.<sup>4</sup> The AOS Tactical Commander outlined the plan for approaching and surrounding both houses to sixteen AOS officers, and read them Police fire orders.<sup>5</sup>
13. At approximately 5pm, two advance teams of AOS officers, including AOS Dog Handlers (Officers A and B) and their Police dogs, entered farmland surrounding the two adjacent houses from different points along the boundary and made their way to conduct observations on the houses. The remaining AOS officers then drove two marked Police cars and a marked Police SUV up the shared driveway with emergency lights and sirens activated. The officers parked the Police cars one behind the other on the driveway outside Mr X's house, and parked the Police SUV behind the bach.

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<sup>2</sup> Mr X had several convictions for possession of drugs and drug equipment, and a more recent conviction for threatening behaviour at the time of this incident.

<sup>3</sup> This section is set out in paragraph 111.

<sup>4</sup> The AOS Tactical Commander is the officer responsible for overseeing the AOS tactical response during an operation or incident

<sup>5</sup> An explanation of the circumstances under which Police may use firearms.

14. As the AOS officers moved to surround both houses, one officer saw a curtain move in a window of Mr X's house. This information was reported to all AOS officers, including the AOS Tactical Commander, who was directing the operation from the Safe Forward Point.<sup>6</sup> The officers started to appeal to any occupants of either house to come out, using a loud hailer system.
15. Unbeknownst to Police, Mr X was at home and had seen Police arrive. He told the Authority that he thought that Police were focussing their attention on the bach next door. However, he did not want Police to enter his house and find his drugs, so he hid in his bathroom. He also admitted that he was using methamphetamine when the Police arrived, but denied that this had a significant detrimental effect on him.
16. At approximately 6:15pm, having received no response to their appeals, the AOS Tactical Commander directed a team of AOS officers to check whether anyone was inside the bach. Having previously obtained the owner's permission to enter the bach, a small remote control camera and a Police dog were used to search it. AOS officers then entered and found no one inside, but did find evidence indicating that someone had been staying there without permission.
17. The AOS officers then moved position so that the cordon now excluded the bach, and focused on Mr X's house and resumed voice appealing. The AOS officers positioned in front of Mr X's house could see through the front glass ranch slider door into his living room, where the lights were on and a fire was burning in the hearth. Two of Mr X's dogs could be seen moving around the living room. Security cameras were mounted on the outside of the house, facing towards the officers.
18. At approximately 6:30pm, the AOS Tactical Commander authorised a team of officers to use a ballistic shield to approach and open the unlocked ranch slider door, and place one of the speakers linked to the loud hailer system inside the living room. At the same time, an officer was able to remove one of the two dogs from inside, and secure it in an outside shed away from the house. The AOS officers left the ranch slider door partially open, returned to their positions and the continued to voice appeal.
19. Mr X told the Authority that, at this point, he had heard the officers announce that they had placed a loud speaker in his house, and deduced that it would not be long before they came into his house and searched it. He said he was scared, agitated and angry, but desperately wanted a cigarette, so he left the bathroom and walked into the living room. He started to roll a cigarette and yell abuse at the officers outside, who could now see him through the ranch slider window.

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<sup>6</sup> The Safe Forward Point is a designated safe location near an incident, from which the forward operations can be supported.

## Mr X confronts Police

20. When Mr X entered the living room:
- Officer A and his Police dog (Police dog 1) were positioned behind the second Police car parked on the driveway;<sup>7</sup>
  - Officer B and his Police dog (Police dog 2) were positioned behind Mr X's house;<sup>8</sup> and
  - Officer C was positioned behind the second Police vehicle parked on the driveway, and was armed with a Bushmaster M4 rifle and a Taser.<sup>9</sup>
21. Officers A, B and C all said that the man who entered the living room was unsteady on his feet and behaving in an irrational manner. They could not identify him as Mr X, although Officer A knew that he was not Mr W. The man's movements were "jerky" and he yelled abuse at Police. He moved about inside the living room, picking up items and occasionally moving out of view. He would not follow instructions to come outside to Police.
22. Officer A said he believed that the man now known to be Mr X was "heavily affected by drugs" or experiencing a psychotic episode. He was "going a hundred miles an hour" pacing in circles, waving his arms in the air and yelling: "Fuckin' what do you want? Fuck off!"
23. He could see Mr X putting his hands in his pockets, rifling through the cushions of the couch and flicking a cigarette lighter on and off. Officer A said he was concerned that Mr X:
- could be looking for a weapon to arm himself with; or
  - might accidentally or intentionally ignite volatile chemicals in the house created by the possible manufacture of methamphetamine.
24. Officer A stated that Mr X opened the ranch slider several times and called out to Police to "come and get me", before slamming the door shut again. Mr X then came further out of the house with his small dog at his feet, waved his arms and pretended to surrender while Officer A yelled: "Just stop or you're going to get bitten!" Mr X challenged Police to shoot him, then turned around and went back into the house. In total, he did this approximately seven times in a five minute period.
25. After Mr X had followed this pattern of behaviour several times, Officer A decided that it was highly unlikely that Mr X was going to surrender, and moved with Police dog 1 into position near the boot of the front parked Police car. He judged that he would be able to use his Police dog most effectively from this position.
26. Meanwhile, Officer B was instructed by another AOS officer by radio to come around to the front of the house to assist. Officer B positioned himself and Police dog 2 near the front of the second parked Police car.

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<sup>7</sup> At the time of the incident Officer A and Police dog 1 were up to date on all relevant training and certifications.

<sup>8</sup> At the time of the incident Officer B and Police dog 2 were up to date on all relevant training and certifications.

<sup>9</sup> At the time of the incident Officer C was up to date on his relevant training, including Taser X2 operator and Police Integrated Tactical Training (PITT).

27. Officer B also told the Authority that he saw Mr X come out of the ranch slider as far as the front porch, challenge Police to shoot him, pretend to surrender, then say *“nah, get fucked”* and then go back inside and slam the door shut. Officer B said that Mr X was clearly *“high on meth”* and his erratic and irrational behaviour in what could be a drug manufacturing environment presented a serious risk to the officers present.
28. Officer B yelled a warning: *“Police dog handler, follow instructions!”* while both Police dogs were barking at Mr X.
29. Officer C was also observing Mr X’s erratic behaviour and had also concluded he was under the influence of methamphetamine. He described Mr X’s behaviour as *“zombie-like”* but also *“aggressive and angry.”* He shared the concerns expressed to the Authority by Officers A and B, with respect to Mr X’s potential access to weapons.
30. Mr X again came out of his house, still smoking a cigarette, but on this occasion walked beyond the porch area towards the officers.
31. Officer C saw this as an opportunity to apprehend Mr X. He turned his Taser on, which activated the TaserCam and the laser sighting system. He aimed the Taser towards Mr X and yelled: *“Taser, 50,000 volts!”* Officer C then started to move towards Mr X from his position behind the second Police car, with another AOS officer armed with a rifle in support.
32. Officer C was unaware that the Police dogs were about to be released.

#### *Use of Police dogs*

33. Officer A had been watching Mr X and waiting for an appropriate time to send his Police dog to apprehend Mr X. Mr X’s own dog had been circling Mr X’s feet up until this point, making it unsafe to use the Police dog.<sup>10</sup>
34. Finally, with Mr X’s dog distracted elsewhere, and with Mr X walking towards him, Officer A released Police dog 1 with the command to bite Mr X, from a distance of approximately ten metres. He said that Mr X did not have his hands up in a surrender gesture (which he had on several previous occasions) when he released the Police dog. He said the decision to release his Police dog was an independent one and he was unaware of any action Officer C might be intending to take to arrest Mr X.
35. As Police dog 1 approached, Officer A heard Mr X state: *“I give up.”* Mr X then knelt down, facing towards the house.
36. Police dog 1 bit Mr X on his upper right arm, but Mr X managed to shrug the Police dog off, and started to stand up and turn to face the officers. Police dog 1 bit Mr X again mid-torso. Officer A said that Mr X started to *“fight”* the Police dog.

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<sup>10</sup> An untethered dog could attack and injure a Police dog, compromising its ability to incapacitate its target.

37. Meanwhile, Officer B, positioned approximately five metres away from Mr X, also said he saw Mr X “fighting” Police dog 1, which was struggling to control Mr X. Officer B was concerned that Mr X would be able to free himself from Police dog 1’s bite and independently decided to release Police dog 2 with the command to bite Mr X. He saw Police dog 2 bite Mr X on the upper right thigh, and drag him to the ground.
38. As with Officer A, he told the Authority he was unaware that Officer C was approaching Mr X to arrest him.
39. When spoken to by the Authority, Mr X was adamant that he only came out of his house on one occasion and genuinely intended to surrender. He admitted yelling at Police to shoot him and stated that it was “a really stupid thing to do” because he didn’t actually want Police to shoot him.

#### *Use of the Taser against Mr X*

40. Officer C said he saw Mr X push Police dog 1 away, stand and turn towards him. He told the Authority that Mr X was within one to two metres of him, and he believed he was about to be assaulted, so he fired the first cartridge of his Taser towards Mr X. Simultaneously, Officer C saw Police dog 2 arrive and bite Mr X (see paragraph 37).
41. Officer C told the Authority that the Taser discharge didn’t seem to affect Mr X, who was now on his back on the ground.<sup>11</sup> He said he saw Mr X start to punch one of the Police dogs in the head. Officer C then fired the second cartridge of his Taser to try to incapacitate Mr X, who he believed was still assaultive and close enough to harm him:

*“I just recall [Mr X] punching one of the dogs in the head or appeared to be punching one of the dogs in the head which, yeah, I believed was partly an attempt to avoid arrest and I think illustrated his aggressive and assaultive intent ... due to the proximity of [Mr X] and his ability to carry out any assault [I] deemed it pertinent to fire the second cartridge.”*

42. The second discharge seemed to incapacitate Mr X briefly, however once the electrical charge ceased, Officer C said Mr X continued to “fight and show aggression.”<sup>12</sup>
43. Meanwhile, Police dog 1 had disengaged from Mr X, without having been commanded to by Officer A. Officer A said that that this had never happened before, and he deduced that his Police dog might have received an electric shock from the Taser discharge.
44. Officer A went forward and held Police dog 1’s tactical vest. He judged that there were sufficient Police officers available to help secure Mr X and it was not necessary to command his dog to re-engage.

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<sup>11</sup> The firing record, which records the electrical current during the Taser discharge, confirms that neuromuscular incapacitation (NMI) was not achieved.

<sup>12</sup> The firing record showed that NMI was briefly achieved.

45. Officer B saw that Police dog 1 had stopped biting Mr X and moved forward to remove Police dog 2 from Mr X's groin. As Officer B grabbed his dog to remove him, he felt an electric shock. At the same time, his dog released Mr X and it "spun" towards him in apparent pain and confusion.
46. Officer C told the Authority that when both Police dogs had disengaged, Mr X rolled onto his front and pushed up, which he interpreted as an attempt to stand. Due to Mr X's continued physical aggression and close proximity, Officer C decided it was necessary to pull the trigger of the Taser again.
47. At this point, Officer C said that Mr X became less aggressive. Officer C kept his Taser drawn and presented at Mr X while he was handcuffed on the ground. Officer C believed that he discharged his Taser a total of three times during the arrest.<sup>13</sup>
48. Mr X could not clearly recall the order of events when he was physically apprehended, but remembered being attacked by one Police dog (which he didn't see approaching). He tried to get up "two or three times" but was "zapped" each time. He felt that the force used against him was excessive.

#### *TaserCam footage*

49. The Authority analysed the TaserCam footage of the arrest, which shows the following:
  - 1) Mr X, dressed in long shorts and a t-shirt, paces up and down his small porch area, swinging his arms and smoking a cigarette. Laser dots from a Taser's infrared sighting system are trained on his torso and lower legs.<sup>14</sup> A Police dog can be heard barking in the background, and an officer shouts that if Mr X doesn't follow instructions, he will be tasered.
  - 2) At 12 seconds into the footage, Mr X starts strutting to his left, taking long steps and swinging his arms. Police continue to challenge him to follow instructions and to "get on the ground." The TaserCam follows his progress and zooms in, indicating that the Taser operator (Officer C) is moving towards Mr X.
  - 3) At 15 seconds, Mr X raises both arms and turns to face Police. The TaserCam continues to move towards him. Three seconds later, Mr X drops his arms and turns to his left. He appears to have noticed Officer A's incoming Police dog. He completes his turn so he is now facing the house, and starts to kneel down. At 21 seconds, Police dog 1 arrives from Mr X's right side and bites Mr X's upper right arm.
  - 4) At 22 seconds, Mr X pushes Police dog 1 off and starts to stand up.

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<sup>13</sup> In fact, the firing record showed that the Taser discharged four times, and NMI was only achieved on the second discharge (see footnote 12).

<sup>14</sup> Shining the infrared laser sighting system of the Taser on someone is referred to as 'laser painting'. This is usually done as a warning.

- 5) At 23 seconds Mr X spins around, so he is facing Officer C. Police dog 1 re-engages and is biting Mr X low on the left side of his torso. Police dog 2 arrives and bites Mr X on his right upper thigh, dragging him to the ground. Simultaneously, Officer C fires his Taser at Mr X. The wires attached to the Taser probes can be seen dangling in front of the Taser.
- 6) At 26 seconds, a beeping is heard indicating the end of the first Taser cycle.<sup>15</sup> Mr X is rolling on his back with Police dog 2 biting him in the groin. Mr X curls into a ball as if to protect himself. Police dog 1 can no longer be seen biting Mr X.
- 7) At 30 seconds, Officer C discharges the second Taser cartridge, releasing two more sets of probes and Taser wires. Mr X continues to roll around on the ground, and appears to be trying to protect his body with his arms. Police dog 2 is still biting his groin area.
- 8) At 32 seconds, Police dog 2 appears to have disengaged and Mr X is rolling on his back in a defensive manner. At 36 seconds, Mr X rolls towards Officer C, kicking his legs out before rolling back the other way.
- 9) At approximately 37 seconds, Officer C has discharged his Taser a third time, and Mr X has rolled onto his front and is shielding his head with his arms, then continues to roll on the ground. The Taser cycle ends at approximately 42 seconds.
- 10) At approximately 44 seconds, Officer C discharges the Taser for a fourth time while Mr X is lying on this left side. The cycle ends at about 47 seconds, when Mr X is lying on his stomach and has put his hands behind his back.

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<sup>15</sup> A 'cycle' is any activation of a Taser that creates a firing record, which can be subsequently analysed.



### After the arrest

50. Mr X was arrested for obstructing Police at approximately 6:40pm, and was taken to sit behind one of the Police cars while his house was searched.<sup>16</sup> He was read his rights under the New Zealand Bill of Rights, and given a blanket while his injuries were assessed by an AOS medic. Officer C stayed with Mr X and reassured him that he would shortly receive medical treatment. He said that Mr X was “jovial” and “apologetic” for his actions. Mr X told the Authority that he was “in shock” at this point, but that he didn’t feel any pain.
51. At approximately 8pm, Mr X was taken to a local medical centre. Two Taser probes were removed from Mr X’s left upper arm and left flank, and he received three stitches for a laceration on his groin. The doctor’s notes also record that Mr X had abrasions on his left hip. Mr X was then taken home.
52. Meanwhile, the used Taser equipment was collected at the scene and secured by Police for evidential purposes, including empty cartridges, wires, a single probe and cartridge identification tags.
53. On 16 July 2017, Officer C completed a Tactical Options Report (TOR) about discharging his Taser at Mr X.<sup>17</sup> Police requires the TOR and TaserCam footage to be reviewed by a supervisor and an officer holding the rank of Inspector or above.
54. The AOS Tactical Commander viewed the TaserCam footage and reviewed the TOR, and agreed with Officer C’s actions. Officer D, an acting Inspector, also reviewed the TOR, but could not view the footage due to technical issues. He consequently relied on the fact that the AOS Tactical Commander had viewed the footage when concluding that Officer C acted appropriately.
55. The TOR and TaserCam footage was subsequently reviewed by the Taser Assurance Forum, who raised concerns about the use of the Taser.<sup>18</sup> The matter was notified to the Authority under the Memorandum of Understanding between Police and the Authority.

### THE AUTHORITY’S INVESTIGATION

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56. The Authority viewed the TaserCam footage, reviewed all relevant documents and interviewed several Police officers, including: Officers A, B, C, and D, the AOS Tactical Commander, and members of the investigation team. The Authority also spoke to Mr X about what happened.

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<sup>16</sup> Small quantities of drugs (including methamphetamine) and drug utensils were found. Mr X was charged in relation to these items, and pleaded guilty.

<sup>17</sup> An officer is required to complete a Tactical Options Report (TOR) when he or she has used force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it. Both Officers A and B completed TORs for the use of their Police dogs during this incident. The Authority has reviewed these as part of its investigation.

<sup>18</sup> The Taser Assurance Forum is a panel at Police National Headquarters that reviews all Taser discharges.

## THE AUTHORITY'S FINDINGS

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57. The Authority identified and considered the following issues:

- 1) Were Police justified in searching the two adjacent houses?
- 2) Were Police justified in arresting Mr X?
- 3) Were Officers A and B justified in using their Police dogs?
- 4) Was Officer C justified in presenting and firing his Taser at Mr X?
- 5) Did Police provide Mr X with timely and appropriate medical assistance?

### **Issue 1: Were Police justified in searching the two adjacent houses?**

58. Police were looking for both Ms Y and Mr W in relation to a recently discovered clandestine methamphetamine laboratory. Police had sufficient evidence to arrest Ms Y, and wished to speak to Mr W about his suspected involvement. Both were actively avoiding Police, and Mr W was considered dangerous (see paragraphs 6-7).
59. Police had already established that both Ms Y and Mr W were probably in the Kāwhia area, and were possibly staying with Mr X. On the day before this incident, Police received information that the bach adjacent to Mr X's house was insecure, and a vehicle belonging to Mr W's relative had been seen on the property (see paragraphs 10 and 12). The totality of this information gave Police reasonable grounds to believe that Ms Y and Mr W were staying in either house.
60. Police obtained permission from the owner to search the bach, consequently the entry and search of that property was lawful.
61. Section 8 of the Search and Surveillance Act 2012 provides that an officer may enter a place without a warrant to search for and arrest a person that the officer suspects has committed an offence which is punishable by imprisonment. The officer must also have good cause to believe that the person is there; and that delay in carrying out the search could mean that the person flees.<sup>19</sup>

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<sup>19</sup> See paragraph 111.

62. The Authority is satisfied that Police had reasonable grounds to suspect that Ms Y was in Mr X's house, and therefore had lawful justification to go to his house to search it. There was a reasonable possibility that, if present, Ms Y (and Mr W) would not stay at this location long in order to avoid detection. It was also reasonable for the AOS to carry out the search, due to the risks posed by Mr W.

## FINDING

Police had lawful justification to search both houses.

### Issue 2: Were Police justified in arresting Mr X?

63. Mr X was arrested for obstructing Police from executing their duties,<sup>20</sup> in this case from searching Mr X's house for Ms Y.<sup>21</sup> Police have the power to arrest a person if they have "*good cause to suspect*" that they have committed an offence punishable by imprisonment.<sup>22</sup> The offence of obstruction is punishable by a term of imprisonment of up to three months.
64. Police have a lawful power to enter and search a house pursuant to section 8 of the Search and Surveillance Act 2012. However, Police do not have a lawful power to require a person to come out of their home when requested. While Mr X refused to come out of his house and surrender to Police when called to do so, he did not physically prevent the officers from entering and searching his house. The officers themselves chose not to approach him, as AOS standard operating procedures direct officers to cordon, contain and negotiate with offenders where possible, in the first instance.
65. The Authority accepts that Mr X's actions made it difficult for the officers to enter the house, search for Ms Y, and arrest her if she was there. It may be open to doubt whether this was Mr X's intention, but his actions gave the officers sufficient cause to suspect that he was obstructing them. Consequently, the Authority finds that the arrest of Mr X by Police was lawful and reasonable.

## FINDING

Police were justified in arresting Mr X.

<sup>20</sup> Pursuant to section 23, Summary Offences Act 1981.

<sup>21</sup> Pursuant to section 8, Search and Surveillance Act 2012.

<sup>22</sup> Pursuant to section 315, Crimes Act 1961.

### Issue 3: Were Officers A and B justified in using their Police dogs?

#### Officer A

66. Section 39 of the Crimes Act 1961 provides for Police officers to use reasonable force in the execution of their duties such as arrests.<sup>23</sup>
67. Police dogs may be used to apprehend offenders who cannot themselves be apprehended by a less violent means. If practicable, the offender should be warned and permitted to comply with Police instructions before the dog is released.<sup>24</sup>
68. Officer A said that he was extremely wary of the overall situation, even before Mr X appeared and started yelling at the officers. He was aware that the house was possibly connected with drug manufacture, meaning that volatile chemicals, weapons or other dangerous offenders (including Mr W) could be present, creating a substantial risk for Police (see paragraph 10).
69. Officer A recorded in his Tactical Options Report (TOR) that Mr X appeared, through his words and actions, to be in “*an extremely dangerous state of mind,*” meaning he was capable of making irrational and unpredictable decisions and putting Police at risk. The Authority accepts the officers’ evidence that Mr X came in and out of his house on multiple occasions (which Mr X disputes, see paragraph 30), was abusive and challenged them to shoot him (which Mr X admitted).
70. Officer A said that he was concerned about Mr X’s increasingly erratic behaviour. After approximately five minutes of this behaviour, Officer A did not believe that Mr X was going to surrender and the high-risk situation was going to persist or escalate. The presence of Mr X’s own dog limited the number of opportunities in which the Police dog could be effectively used.
71. Officer A explained that he considered withdrawing, but felt that this was unsafe and impracticable because Mr X needed to be apprehended as soon as possible. He judged that other tactical options, such as pepper spray may not be effective on a drug-affected person as Mr X appeared to be. He was unaware that Officer C was planning to use a Taser to arrest Mr X. A Police dog was the only remaining less-than-lethal option available.
72. When an opportunity presented, and after several verbal warnings, Officer A sent Police dog 1 to apprehend Mr X, as Mr X was walking towards him.
73. The TaserCam footage and audio described in paragraph 49 verifies that Mr X received at least one warning about the presence of a Police dog. The footage shows Mr X bring his hands down and kneel a few seconds before Police dog 1 arrives and bites him.
74. The Authority finds that it was appropriate for Officer A to use the Police dog to apprehend Mr X because he posed a threat to officers and needed to be brought under control as soon as possible. The use of the Police dog complied with law and Police policy.

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<sup>23</sup> The legislation relevant to use of force is set out in paragraphs 112-114.

<sup>24</sup> The relevant policy is set out in paragraphs 120-122.

## Officer B

75. Officer B's assessment of the threat posed by Mr X was similar to that made by Officer A (see paragraph 27). After positioning himself behind the second Police car and observing Mr X for a short period, he assessed that Mr X presented a threat to Police due to his:
- *"agitated and angry"* demeanour;
  - drug-affected and highly-motivated state;
  - indifference to the obvious presence of barking Police dogs and the warnings issued by himself and Officer A; and
  - escalating, erratic behaviour which alternated between apparent surrender and angry defiance, including demands to be shot by Police.
76. Officer B heard Officer A command Police dog 1 to bite Mr X, and saw it attempt to bite Mr X's right arm, before being shaken off. He judged that Police dog 1 could not fully control Mr X alone, and decided to send his Police dog 2 to ensure that Mr X was completely incapacitated. He was also unaware that Officer C was approaching with a Taser.
77. The TaserCam footage clearly shows Mr X pushing Police dog 1 away, and Police dog 2 arriving approximately two seconds later (having been sent from a distance of approximately five metres).
78. The Authority finds that it was reasonable for Officer B to use Police dog 2 to assist Police dog 1 to gain control over Mr X. Officer B did not have any other practical, less-forceful ways to intervene himself. He gave appropriate warnings before sending his dog (see paragraph 28).

## FINDING

Officers A and B were both justified in using their Police dogs, and appropriately warned Mr X before doing so.

## Issue 4: Was Officer C justified in presenting and firing his Taser at Mr X?

79. Officer C also told the Authority that he had formed the view that Mr X posed a risk to Police, for the same reasons expressed by Officers A and B. Officer C said that he did not know who Mr X was, and it was *"quite possibly"* Mr W, who was very dangerous.
80. Officer C assessed that Mr X's behaviour was becoming more erratic and dangerous, and it was necessary to arrest Mr X as quickly as possible. He was aware that other tactical options were potentially available, such as two Police dogs, but these options were not under his control and could not be used at his discretion.

81. When Mr X came further out of the house, Officer C decided that this was an appropriate moment to move towards Mr X with his Taser drawn (with the support of an armed officer) to arrest Mr X. He issued the required warning and laser painted Mr X to encourage compliance (see paragraphs 31 and 49). He was unaware that Police dog 1 was about to be sent by Officer A.
82. Police policy on the use of a Taser at that time stated that a Taser may only be used where *“the subject’s behaviour is in or beyond the assaultive range or has the potential to escalate to within or beyond the assaultive range.”*<sup>25</sup> The Authority accepts that, when Officer C presented his Taser and started to advance, Mr X was displaying behaviour that indicated that he could be assaultive towards Police.<sup>26</sup> A Taser was therefore an appropriate tactical choice in the circumstances.
83. Officer C told the Authority that as he approached, Mr X appeared to comply with his instructions (the instruction to get on the ground can be heard on the TaserCam audio, and Mr X is seen in the footage to kneel). However, unexpectedly, Police dog 1 arrived and attempted to bite Mr X.
84. Mr X then fought the Police dog off, stood and turned towards Officer C. Officer C said he feared imminent assault and discharged his Taser to protect himself (see paragraph 40).<sup>27</sup>
85. The Authority has viewed the relevant TaserCam footage. When the frame rate is slowed down, it is possible to see that Police dog 1 has in fact bitten Mr X again at the moment that Officer C fired his Taser. Police dog 2 has also just arrived and is biting Mr X’s right upper thigh, and is starting to drag Mr X to the ground (see paragraph 49, specifically bullet points 3 to 5).
86. However, this sequence of events happened within an extremely short period of time. The Authority accepts that Officer C did not have time to observe Police dog 1’s re-engagement or Police dog 2’s arrival before he made the decision to fire his Taser in defence of himself. From Officer C’s point of view, Mr X was moving towards him and was not under the control of a Police dog. The use of a Taser in such circumstances was reasonable.
87. Consequently, the Authority finds that Officer C was justified in firing his Taser at Mr X on the first occasion.

### *Subsequent use of Taser*

88. Police policy states that officers should avoid subjecting an individual to multiple Taser cycles. Each cycle must be reasonable, proportionate and necessary.

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<sup>25</sup> Police policy on the use of a Taser now states: *“An operator may show a TASER as a deterrent in situations below the assaultive range on occasions where their perceived cumulative assessment (PCA) is that it is necessary because **the situation** has the potential to escalate to within or beyond the assaultive range”* (emphasis added by the Authority). The focus has changed from the subject’s behaviour to *“the situation”* overall.

<sup>26</sup> See paragraph 118 for further explanation.

<sup>27</sup> Section 48 of the Crimes Act 1961 provides that Police officers may use reasonable force to protect another person (see paragraph 113).

89. Officer C told the Authority that he believed that the first Taser cycle was ineffective possibly because one of the two Taser probes missed.<sup>28</sup> By this time Police dog 2 had arrived, however Mr X was punching one of the Police dogs in the head (Officer C did not specify which dog).
90. Believing Mr X was still assaultive and was trying to avoid being arrested, Officer C decided to fire the Taser again (see paragraph 41).
91. Officer C discharged the Taser a third time when a short period of neuromuscular incapacitation (NMI) ended, and he perceived that Mr X was still acting aggressively, and was attempting to get up.
92. The Authority has viewed the TaserCam footage and does not agree that Mr X was assaultive or aggressive at this point, or required force (additional to the Police dogs) to bring him under control.
93. Mr X is on the ground throughout this phase, and appears to be behaving in an entirely defensive manner. The TaserCam footage does not support the assertion that Mr X was punching a Police dog. Mr X's body position and movements can reasonably be explained as an attempt to protect himself from the Police dogs, who have engaged him from opposite sides.
94. At the point that both Police dogs have disengaged from Mr X and he has rolled onto his front (at 37 seconds into the footage), Officer C said he reacted to what he considered to be an attempt by Mr X to stand (see paragraph 46). Again, the Authority does not agree that the footage supports this interpretation. Mr X has been subjected to several seconds of significant force at this stage and appears to be attempting to comply, while also trying to protect himself from the ongoing force.
95. The Authority finds that the repeated use of a Taser during this period was excessive and unjustified.

#### *Post Incident Procedures*

96. Police policy requires officers and supervisors to collect relevant evidence from the scene after discharging a Taser, and to complete post-incident reporting.
97. Taser evidence was collected and exhibited as required, and Officer C completed a detailed TOR (see paragraphs 52-53). This was reviewed by a supervisor, the AOS Tactical Commander, who also viewed the TaserCam footage as policy specifies (see paragraphs 53-54).
98. For the reasons outlined in paragraph 54, Officer D reviewed the TOR but was unable to view the footage. He should not have formed an opinion on whether the Taser discharge was justified without having viewed the footage himself. This is an essential part of the review process.

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<sup>28</sup> See footnote 11.

## FINDINGS

Officer C appropriately issued a warning, and was justified in firing his Taser at Mr X on the first occasion.

Officer C was not justified in firing his Taser at Mr X on any of the three subsequent occasions.

Most post-incident procedures were correctly followed, with the exception that Officer D should have viewed TaserCam before forming a view about the appropriateness of Officer C's use of the Taser.

### **Issue 5: Did Police provide Mr X with timely and appropriate medical assistance?**

99. Mr X was arrested at 6:40pm and provided with reassurance and first aid (see paragraph 50). His injuries were assessed as not requiring an emergency response, but did require medical attention. Taser probes were embedded in this body, requiring removal.
100. The Police policy on Taser aftercare states that a registered medical doctor must examine anyone who is exposed to the application of a Taser as soon as is practicable. A person with dog bite injuries must be also be seen by a doctor, paramedic or health professional within the same timeframe.
101. The Authority finds that Mr X's condition was not serious, and that he was seen by a doctor at a local medical centre within an hour and twenty minutes of this incident, which was reasonable in the circumstances.

## FINDING

Mr X was provided with timely and appropriate medical assistance.



## CONCLUSIONS

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102. The Authority concluded that Police were justified in using Police dogs to apprehend Mr X, who was clearly drug-affected, and presented a threat to the officers. Officer C was justified in using a Taser to defend himself initially, but was not justified in subsequently firing his Taser multiple times in the circumstances.
103. The Authority notes that the officers seemed to have little awareness about the tactics contemplated by their colleagues to apprehend Mr X, despite the fact that all three officers shouted warnings at Mr X about their intentions.
104. This incident therefore raises broader issues about the co-ordination of tactical options, especially where both Police dogs and Tasers are available.<sup>29</sup>
105. Firstly, Police could cause unintended and unjustifiable harm to a person who is inadvertently subjected to multiple tactical options.
106. Secondly, it can be undesirable for tactical options to be used together, as they can adversely impact on the effectiveness of the other. In this case, both Police dogs' performance appears to have been compromised by the effect of the electrical current generated by Officer C's Taser.<sup>30</sup> This puts officers at risk, as the Police dog might not be able to effectively control the offender.
107. The Authority recommends that Police review and develop protocols and training to ensure effective co-ordination of tactical options.
108. The Authority has also determined that:
  - 1) Police had lawful justification to search both houses.
  - 2) Police were justified in arresting Mr X.
  - 3) Most post-incident procedures were correctly followed, with the exception that Officer D should have viewed TaserCam before forming a view about the appropriateness of Officer C's use of the Taser.
  - 4) Mr X was provided with timely and appropriate medical assistance.

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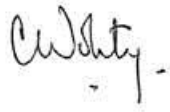
<sup>29</sup> Earlier this year, the Authority reported on a similar incident involving the concurrent use of tactical options: *Police use of force during arrest in Christchurch*, IPCA Report published 25 January 2018.

<sup>30</sup> See paragraphs 43 and 45.

## RECOMMENDATION

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109. This incident involved officers using Police dogs and a Taser concurrently to apprehend an offender. Police have told the Authority that further work is required around the coordination and use of multiple tactical options, particularly when a Police dog is involved.
110. The Authority recommends that Police review and develop appropriate protocols and training to ensure that the tactical options used when apprehending an offender are, where practical, effectively coordinated and communicated before they are used.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

29 November 2018

**IPCA: 17-0647**

### Search and Surveillance Act 2012

111. Section 8 of the Search and Surveillance Act 2012 permits officers to enter a place without a warrant, search for and arrest a person they believe to be in that place, if:
- they suspect that the person has committed an offence punishable by imprisonment for which he or she may be arrested without warrant; and
  - they believe that if they do not enter immediately, the person will leave to avoid arrest, or he or she will conceal, alter, damage or destroy evidence relating to that offence.

### Use of force

#### *Law on use of force*

112. Section 39 of the Crimes Act 1961 provides for Police officers to use reasonable force in the execution of their duties such as arrests. Specifically, it provides that officers may use “*such force as may be necessary*” to overcome any force used in resisting the law enforcement process unless the process “*can be carried out by reasonable means in a less violent manner.*”
113. Section 48 of the Crimes Act states: “*Everyone is justified in using, in defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.*”
114. Section 62 of the Crimes Act makes a Police officer criminally responsible for any excessive use of force.

#### *Police policy on use of force*

115. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
116. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
117. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the influence of drugs

and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA)).

118. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
119. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

#### *Use of a Police dog*

120. Police dog handlers must consider all tactical options in situations that require use of force. They must consider whether a lesser, more appropriate use of force is available before using a Police dog. The law sees little difference between dogs, when used as a means of force, and other methods and implements used by Police, such as firearms, Taser and batons.
121. Police officers operating a Police dog are personally responsible for the use of force by the dog. They must be satisfied, before releasing the dog, that the use of force is justified in the circumstances. They must call on the person to desist unless impracticable to do so and ensure that the extent of the force used by the dog is kept to a minimum possible in the circumstances.
122. Police dog handlers must have control of their dog at all times during deployment. Control means that the dog is under immediate physical or voice control and the dog responds to that control.

#### *Use of a Taser*

123. Police policy states that a Taser may only be used to arrest an offender if the officer believes the offender poses a risk of physical injury and the arrest cannot be effected less forcefully. A Taser must only be used on a person who is assaultive (defined as *"actively hostile behaviour accompanied by physical actions or intent, expressed either verbally and/or through body language, to cause physical harm"*) and cannot be used on a person who uses passive resistance in relation to Police.
124. To encourage de-escalation and to warn others nearby, officers must give a verbal warning in conjunction with the use of a Taser unless it is impractical or unsafe to do so. The warning relevant to the presentation of a Taser is *"Taser 50,000 volts"*. The warning relevant to a discharge or contact stun is *"Taser, Taser, Taser"*.

125. A 'discharge' is an *"application by firing two probes over a distance from an air cartridge attached to the Taser, or subsequent applications of electrical current via the probes, which are in contact with the subject after firing, in conjunction with a verbal warning"*.

## ABOUT THE AUTHORITY

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### Who is the Independent Police Conduct Authority?

The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

### What are the Authority's functions?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

### This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.







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