



# Police shooting of David Taite

INDEPENDENT POLICE CONDUCT AUTHORITY

## INTRODUCTION

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1. At 12:32am on Thursday 20 October 2011 just outside of Otane in Central Hawke's Bay, a Police officer acting in the execution of his duty shot and wounded David Taite. Mr Taite suffered spinal injuries and is now a paraplegic.
2. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

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### **Events preceding the night of the 19<sup>th</sup> and 20<sup>th</sup> of October 2011**

3. Mr Taite was known to Police before the events of October 2011. He has a significant and serious criminal history, which includes a conviction for the attempted murder of a Police officer and multiple family violence offences. Mr Taite has also suffered from periods of mental illness.
4. In August 2011 Mr Taite was served with a trespass notice by the landlord of the Dannevirke property where he lived with his then partner. The trespass notice was served in response to threats Mr Taite had made against his landlord. Upon being served the trespass notice, Mr Taite threatened to burn down the house.
5. On 10 September 2011, Mr Taite's partner informed Police that he had breached the trespass order and had threatened to kill her and shoot other people. On 15 September Mr Taite visited another Dannevirke address and threatened the occupants. When he was asked to leave, he told the occupants he was going to get a firearm. Upon reporting the matter to the Police, one of the occupants said she believed Mr Taite was capable of obtaining a firearm.

6. On 5 October 2011 Mr Taite again breached the trespass order and threatened to pour boiling water on his partner and anyone else who came to the house. He also spoke of other people he intended to kill and those whose houses he would burn down. Mr Taite spoke of killing himself and the fact that he had access to weapons. He told his partner to watch the news that night as 'he would be on it'.
7. Police had been searching for Mr Taite since the 10 September incident. Since that time, the supervisor of the Dannevirke Police station had authorised his staff to carry weapons when searching for Mr Taite. The Palmerston North Armed Offenders Squad (AOS) was also advised of Mr Taite's activities. Following the 5 October incident, the supervisor of the Dannevirke station authorised his staff to carry weapons until Mr Taite was located.
8. Eastern and Central Districts Police responded to a number of sightings of Mr Taite in the weeks preceding the shooting.
9. At about 3am on Tuesday 18 October 2011 Police were advised that Mr Taite was in Otane. Officer C from the Waipukurau station and Officer D from the Waipawa station were called to attend. Both officers were aware of the firearm alert, but did not arm themselves. In consultation with the dispatcher, Officer D decided to use the local hotel as a safe arrival point (SAP) from where Police would set up cordons prior to the arrival of the AOS.
10. Because Officer D was not told that Officer C had later been instructed not to go to the SAP, he believed that Officer C would be at the SAP when he arrived. This assumption was false. While Officer D was waiting near the hotel, he saw someone driving a dark coloured station wagon, and decided to follow the car.
11. A confrontation took place between Officer D and the driver of the car while they were in their vehicles. During the verbal exchange, Officer D realised that the driver was Mr Taite. Officer D could see Mr Taite's right hand on the steering wheel, and his left hand reaching towards the front passenger seat. Mindful that Mr Taite might have a firearm, Officer D drove slowly away from Mr Taite's vehicle. Mr Taite followed Officer D's car for a short distance before driving off at speed.
12. As Officer D was driving back to the SAP, Mr Taite drove up behind Officer D, overtook him and then attempted to ram the Police car. Following another confrontation with Police, Mr Taite drove off and disappeared.
13. By the end of the day on 18 October all Central Hawke's Bay Police staff had been briefed about Mr Taite's activities, and advised that he may be armed. Staff were authorised to carry firearms in response to the threat posed by Mr Taite. The Eastern District's AOS had also been alerted.

14. At 5:50pm on 19 October Mr Taite was seen by an off-duty Police officer in the Porangahau township. A subsequent search by the AOS failed to locate him.

#### **Events on the night of the 19<sup>th</sup> and 20<sup>th</sup> of October 2011**

15. At about 11:30pm on 19 October, Mr Taite abandoned the Falcon station wagon between Waipukurau and Otane after it ran out of petrol. After stealing a dark coloured Audi, Mr Taite went to an associate's house in Otane and asked to be driven back to Waipawa. His associate, Mr X, agreed to drive him there in his white Nissan station wagon.
16. At about 11:50pm several Otane residents telephoned Police to report that they had seen Mr Taite driving a dark coloured car. Officers A and B were travelling from Hastings when they heard the Police Central Communications Centre (CentComms) dispatcher's call to Waipukurau Police about a sighting of Mr Taite.
17. Officer A asked the dispatcher to call him directly on his mobile phone to receive further details about the sightings. Aware that Mr Taite might be carrying a firearm, Officers A and B then stopped their patrol car on the outskirts of Hastings and donned ballistic body armour. Officer A was already armed with a Glock semi-automatic pistol, and he removed an M4 rifle from the firearm safe in the patrol car, loaded it, and put it on 'safe' for Officer B.
18. As they drove towards Otane, Officer A briefed Officer B about the threat posed by Mr Taite, including intelligence suggesting Mr Taite might attempt to provoke an armed response from Police in order to end his own life.
19. As the patrol car was turning off State Highway 2 into Higginson Street in Otane, it passed the white Nissan station wagon driven by Mr X and carrying Mr Taite in the front passenger seat. While the officers did not identify Mr Taite in the car, they suspected that the car might contain Mr Taite. Officer A did a U-turn and followed Mr X on to State Highway Two. Officer A put on his red and blue lights and Mr X stopped his car about 100 meters south of Higginson Street.
20. After advising CentComms of the registration number of the Nissan and confirming that the car was registered to an Otane address, both officers got out of the patrol car and walked towards the car. Officer A went to speak to the driver, while Officer B stood at the back left side of the Nissan.
21. Officer A asked for both Mr X's and Mr Taite's details. Mr Taite gave Officer A false details. Officer A suspected that the passenger was Mr Taite, and motioned to Officer B to observe him. After further discussion with Officer A, Mr Taite became agitated.

22. Both officers returned to the patrol car. Officer A told Officer B of his suspicions and instructed Officer B to stand behind the patrol car with a rifle and watch the passenger side of the Nissan. Officer A then sat in the driver's seat of the patrol car and used the radio to check the car occupants' details and confirm Mr Taite's description.
23. While Officer A was seated in the patrol car, Mr Taite got out of the Nissan with his right hand inside his sweatshirt pocket and started walking towards the patrol car. Immediately, Officer A heard Mr Taite call out *"I've got a gun and I'm gonna kill you!"*
24. Officer B called out *"David just stay there"* to Mr Taite. However, Mr Taite was focussed on Officer A and started to move towards him. Officer A got out of the patrol car and drew his Glock pistol, informing Mr Taite that he was armed and that Mr Taite should get on the ground and display his hands.
25. Mr Taite ignored Officer A's instructions and continued to advance towards him. Officer A could see a cylindrical object pointing towards him, concealed under Mr Taite's sweatshirt. Officer A repeated his instructions to Mr Taite to stop and lie down; however Mr Taite continued to advance towards Officer A, threatening to kill him.
26. Officer A moved towards the back of the patrol car, as Mr Taite advanced towards him. When Mr Taite passed the front corner of the patrol car, Officer A fired a single shot at Mr Taite's chest. Mr Taite fell down onto the road. Officer A took a step backwards onto the grass verge and continued to point his Glock at Mr Taite.
27. Officer A used his mobile phone to call emergency services to request urgent assistance and an ambulance. Officer A advised emergency services that he was a Police officer and that he had shot someone.
28. Mr Taite continued to yell abuse at both officers. He removed a glass Jack Daniels bottle from his pocket and threw it towards Officer A. He then started crawling towards the open driver's side door of the patrol car. The keys were in the car and the motor was running.
29. Officer A was concerned that Mr Taite might attempt to escape using the patrol car, so he moved back towards him. He ordered Mr Taite to roll over and show him his hands. Mr Taite put his right hand inside his trousers and said *"I've got a grenade, and I'm going to blow you all up."*
30. Officer A could not clearly see what Mr Taite was holding. Concerned about this new threat and the safety of those around him, Officer A walked up to Mr Taite and kicked him in the face with his boot heel. While Mr Taite was stunned, both officers handcuffed him. Mr Taite then started struggling and resumed his verbal threats.

31. Once Mr Taite was secured, Officer A searched him for weapons, but only found a set of keys in his pocket.
32. Officer A assessed Mr Taite's injuries and administered first aid until the ambulance arrived.

#### **David Taite**

33. Mr Taite suffered injury to his spine as a result of the gunshot, and is permanently paralysed from his waist down.
34. With respect to the events of 20 October 2011, Mr Taite was charged and convicted on two counts of threatening to kill Officers A and B. Charges relating to presenting a whisky bottle as a weapon were dismissed. He was sentenced to 8 months home detention.

#### **Police involved**

35. At the time of the shooting incident, Officer A had 13 years' experience in the New Zealand Police.
36. At the time of the incident, Officer B had three years' experience in the New Zealand Police.
37. Both Officers A and B were certified to carry and use firearms.

#### **Police investigation**

38. Police commenced a criminal investigation into the shooting and kicking of Mr Taite. Officer A was not found to be criminally liable for either action.

## LAWS AND POLICIES

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### Police power to stop a vehicle

39. Under section 317A<sup>1</sup> of the Crimes Act 1961, the Police were, at the time of this incident, empowered to stop vehicles in order to conduct a statutory search or when there were reasonable grounds to believe that an occupant of the vehicle was unlawfully at large or had committed an offence punishable by imprisonment.

### Use of force by Police

40. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. 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.”*

### Use of force for self-defence or defence of others

41. Section 48 of the Crimes Act states: *“Everyone is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.”*

### General guidance on use of force

42. The Police have a range of tactical options available to them to help restrain a person, make an arrest or otherwise carry out lawful duties. These options are set out in the Tactical Options Framework. They range from communication or ‘empty hand’ tactics, such as distracting or punching an offender, to the use of lethal force which includes the use of firearms or strikes to the head or neck.
43. Which option is appropriate in a set of circumstances depends on whether the offender:
- is cooperative;
  - is resisting, either passively or actively;
  - is actively hostile and intending to cause physical harm; or
  - presents a threat of death or grievous bodily harm.

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<sup>1</sup> The power to stop a vehicle to find people who are unlawfully at large or who have committed serious offences is now in section 9 of the Search and Surveillance Act 2012.

### *Use of Firearms*

44. Police General Instruction F061 (Fire Orders) provides for the use of firearms by Police officers to defend themselves or others if they fear death or grievous bodily harm and cannot reasonably protect themselves in a less violent manner.
45. The Crimes Act provisions are mirrored in General Instruction F061 in the 'Police Firearms' chapter of the Police Manual. General Instruction F061 instructs members of the Police to always be aware of their personal responsibilities in the use of firearms, reminds them of the relevant sections of the Crimes Act and also sets out the circumstances in which the use of lethal force is justified.
46. In operational situations where firearms are issued, General Instruction F061 also requires that an officer's attention is drawn to the fire orders printed in their notebook "*if time and circumstances permit.*"
47. Police policy also requires officers to notify their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms.

THE AUTHORITY'S FINDINGS

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**Were Officers A and B justified in arming themselves?**

48. On 19 October 2011, Police in the Central and Eastern districts were aware of clear and specific evidence that Mr Taite might be armed.
49. Threats made by Mr Taite reported to Police in the preceding weeks, in conjunction with his recent behaviour and violent history, indicated that Mr Taite had access to firearms and would act violently towards Police.
50. At 11:50pm on 19 October 2011 Officers A and B became aware that Mr Taite had been seen in Otane. They had been instructed to respond to these sightings.
51. Based on their perception of the threat which Mr Taite was likely to present, Officers A and B were justified and authorised to arm themselves in accordance with the relevant Police policies.
52. Officer A complied with policy by reading F061 (Fire Orders) to all staff, including Officer B, at the beginning of the night shift on 19 October 2011. Both Officers had donned approved ballistic body armour before travelling to Otane to intercept Mr Taite. Officer A also ensured that his junior colleague was properly armed and mentally prepared for a possible meeting with Mr Taite.

## FINDINGS

Officers A and B were justified in arming themselves in accordance with relevant Police policies.

Officer A read fire orders to Officer B at the beginning of their shift in compliance with General Instruction F061.

### Was Officer A justified in stopping Mr X's car?

53. Police had received reports from several Otane residents that Mr Taite was in the area. However, the descriptions given of the car that Mr Taite was driving did not match the white coloured station wagon which Officer A came across in Higginson Street.
54. In his statement to Police, Officer A said that he could not identify the occupants of the white station wagon when it passed him in Higginson Street. However, he felt that it was unusual for local residents to be out driving at midnight and that this warranted him taking further action to ascertain who was in the car. He turned to follow Mr X's car, and by activating his red and blue lights signalled for Mr X to pull over and stop.
55. Officer A was legally justified in stopping Mr X's car and requesting his details under section 317A of the Crimes Act 1961 because he believed on reasonable grounds that it could contain Mr Taite, a person who was both unlawfully at large and had committed an offence punishable by imprisonment.
56. Officer A followed appropriate Police policies when stopping Mr X's car.

#### FINDING

Officer A was justified in stopping Mr X's car.

### Was Officer A justified in shooting Mr Taite?

57. Sections 39 and 48 of the Crimes Act 1961 provide legal justification for Police to use reasonable force to arrest an offender and in defence of themselves or another. However, any force used must be the minimum necessary to achieve the objective, and reasonable under the circumstances. The Police Tactical Options Framework guides Police in determining the appropriate level of force to use in certain situations.
58. Police policy provides that potentially lethal force may be used when an offender presents a threat of death or grievous bodily harm. Officers must give an offender the opportunity to surrender if practicable, and employ less lethal tactical options to effect an arrest or disarm an offender if they are available. However, if further delay in apprehending the offender would be dangerous or impractical, officers are justified in firing at an offender.
59. The Authority is satisfied that Officer A believed that Mr Taite posed an immediate threat of death or grievous bodily harm to himself and Officer B when he was advancing towards the patrol car and threatening to kill them. Mr Taite appeared to be concealing a weapon under his sweatshirt. Officer A knew that Mr Taite had a violent history and had previously shot at the Police.

60. Officer A urgently challenged Mr Taite several times, informing him that he was armed and that Mr Taite should stop advancing, and lie on the ground and display his hands. Instead, Mr Taite continued to make threats, and advance towards Officer A so that Officer A was forced to move into a position where he no longer had any cover.
61. Officer A judged that the situation had reached a point where discharging his firearm was the only way to protect himself and Officer B, and disarm Mr Taite. Officer A had attempted to avoid a lethal outcome by giving Mr Taite the opportunity to surrender, but instead Mr Taite continued to act in a way that was intended to make Officer A believe that he was armed.
62. Based on his belief in the circumstances, Officer A was lawfully justified in using a firearm to prevent Mr Taite from carrying out his threats. This was the only tactical option available to Officer A to neutralise the threat in the circumstances.
63. At his defended hearing, Mr Taite gave evidence that he had not heard either officer say anything to him. He denied that he had threatened Officer A with a gun, and said that he had his hands up in the surrender position when he was shot. However, Officer B and Mr X gave clear evidence which supported Officer A's recollection of events. The court preferred the evidence of Officer B and Mr X.

#### FINDING

Officer A was justified under sections 39 and 48 of the Crimes Act 1961 and Police policy in shooting Mr Taite.

#### **Was Officer A justified in kicking Mr Taite?**

64. After Mr Taite had been shot, he continued to yell abuse at Officer A and ignored Officer A's instructions to roll onto his stomach and display his hands. Officer A still believed that Mr Taite might be armed.
65. As Mr Taite started to crawl towards the open door of the patrol car, he threatened to set off a grenade. Mr Taite put his right hand inside his trousers as if to reach for a grenade.
66. Officer A judged that he needed to neutralise this new and significant threat, and end the confrontation. If Mr Taite was able to explode a grenade, both Officers A and B as well as Mr X and any nearby motorists on State Highway 2 would be at risk of death or serious injury.
67. Based on his belief that Mr Taite could be intending to explode a grenade, Officer A was lawfully justified in kicking Mr Taite in the head to prevent him from doing so. The imminence and seriousness of the threat was sufficient to justify swift and decisive force.

FINDING

Officer A was justified under sections 39 and 48 of the Crimes Act 1961 and Police policy in kicking Mr Taite.

**Were Officer A's actions appropriate following the use of force?**

68. Officer A called for an ambulance at the earliest opportunity after shooting Mr Taite.
69. Once Mr Taite had been searched for weapons and secured, Officer A administered first aid and put Mr Taite in the recovery position. Officer A waited with Mr Taite until the ambulance arrived.

FINDING

Officer A ensured that appropriate medical assistance was provided to Mr Taite in a timely manner.

## CONCLUSIONS

70. The Authority has concluded on the balance of probabilities that:
- 1) Officers A and B were justified in arming themselves when responding to a sighting of Mr Taite. The officers were aware that Mr Taite posed a significant threat and might himself be armed.
  - 2) Officer A was justified in stopping Mr X's car to ascertain if Mr Taite was inside.
  - 3) Officer A was justified in shooting Mr Taite in response to Mr Taite's aggressive behaviour and insistence that he had a weapon and intended to shoot Officer A.
  - 4) Officer A was also justified in kicking Mr Taite in the head to incapacitate him after Mr Taite's threat and apparent attempts to explode a grenade.
  - 5) Mr Taite was given appropriate care and medical assistance by Officer A once he had been searched and secured.
  - 6) Officer A acted with a high degree of professionalism when planning for possible contact with Mr Taite, and when confronted with what he believed to be a very dangerous situation.
71. There were a number of limitations with communications at the time of this incident which caused difficulties for officers. Since this incident, there have been major changes to Police communications with the advancement of the mobility project. The Authority is in discussions with Police to ensure that the changes address these limitations to the extent practicable.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

5 June 2014





# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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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 Sir David J. Carruthers.

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?

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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 on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



**IPCA**

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