

# Use of force during fatal shooting in Tauranga justified

## Summary of the Incident

1. On 11 February 2020, Mr Anthony Fane and his brother allegedly committed a double homicide at Omanawa Falls, Tauranga. They were later identified as suspects. At the time, Police believed the murders were motivated by escalating gang tensions in the area.
2. On 13 February 2020, a decision was made that the Tauranga Armed Offenders Squad (AOS) would be deployed on 'reassurance patrols', starting that evening.
3. Four AOS officers were deployed on a patrol that evening in two separate vehicles. At approximately 7.45pm they came across a Ford Falcon ('the Falcon') registered to Mr Fane, which they believed he was driving at the time. The Falcon was not amongst the vehicles the officers had been briefed on as vehicles of interest connected to the homicides. The officers had received email alerts that the Falcon was in the Bay of Plenty area, and wanted in relation to the double homicide, although there was no indication why.
4. The officers signalled Mr Fane to stop by activating their red and blue lights and sirens, but he continued. A pursuit was initiated and continued for four minutes and 47 seconds, during which Mr Fane fired shots at them on numerous occasions while driving. At one point he stopped directly opposite a retirement home, got out of the Falcon, and fired directly at the officers (who were still in their cars). They did not return fire at this point due to a number of risk factors related to the location, including the number of members of the public in the vicinity. The Authority was unable to determine how many shots Mr Fane fired at Police.
5. The pursuit continued onto SH2, where Mr Fane came to a stop of his own volition. At this point two of the officers fired a total of 49 rounds at Mr Fane while he was sitting in the driver's seat. Mr Fane slumped over in his seat, and they stopped shooting. The Falcon rolled forward and came to a stop in some bushes on the side of the road. The officers followed on foot and determined that Mr Fane was deceased. He was formally identified the next day.

## Issues examined by the Authority

- Issue 1:** Were the officers justified in shooting Mr Fane?
- Issue 2:** Did Police Intelligence provide sufficient information to AOS, and wider area staff regarding Mr Fane's vehicle?
- Issue 3:** Was the crime scene adequately managed?

## The Authority's Findings

6. The Authority found that the officers were justified in shooting Mr Fane.
7. We also concluded that:
  - 1) overall, the information provided by Police Intelligence to AOS, and general staff, was inadequate. This put Police staff at risk; and
  - 2) The presence of Mr Fane's dog for an unknown period of time risked contamination of the scene where Mr Fane's body had been left overnight. However, Police followed best practice by tenting and guarding the scene which was large and difficult to make secure.

## Analysis of the Issues

### BACKGROUND

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#### Double homicide

8. On 11 February 2020, Mr Fane and his brother, allegedly committed a double homicide at Omanawa Falls, Tauranga. One of the victims had known gang affiliations which led Police to believe the motive for the murders was linked to escalating gang tensions and methamphetamine trade in Tauranga.
9. Tauranga Police released Frontline Intelligence (FLINT) reports to staff providing information on a large number of suspects relating to the homicides, and vehicles linked to those suspects, including Mr Fane and his brother.
10. On 13 February 2020, in order to show an increased Police presence on the streets, a decision was made that the Tauranga AOS would be deployed on reassurance patrols within the Tauranga area, starting that evening. AOS staff were to patrol in marked Police cars, in their black uniform, but with caps instead of helmets and balaclavas.
11. On 14 February 2020, after the pursuit between Mr Fane and Police, Mr Fane's partner was discovered deceased in the couple's home. It has since been established that Mr Fane had told people that he had discovered evidence on her cell phone that led him to believe she was having an affair with one of the victims of the double homicide. Police believe the other victim was in

the wrong place at the wrong time. Police also believe Mr Fane killed his partner on the evening of 9 February 2020, before driving with his two young children to his mother's house in South Auckland. He stayed there until 11 February 2020, when he and his brother drove back to Tauranga and committed the double homicide. They then travelled back to Auckland and spent some time with family before Mr Fane returned to Tauranga alone on 13 February 2020.

### The day of the incident

12. At approximately 3.30am on 13 February 2020, the Tauranga AOS conducted a pre-planned search at an address in Whakatane, which they completed at 11am. Three members of the team, Officers A, C and D, returned to their home addresses and got some sleep. They were called back to AOS duty at 5pm for a pre-planned operation at Tauranga airport, which had been planned by Officer B, the AOS commander at the time.
13. Officer B was advised that following the operation at the airport, they would be required to undertake AOS reassurance patrols from 7pm to midnight that evening. He advised Officers A, C and D. Officer B had worked a day shift but had not attended the earlier search.
14. All four officers had dinner at about 7pm, during which Officer B briefed the others from briefing documentation provided by Police intelligence. They then left the station in two marked Police patrol vehicles. Officer B drove the first Police car with Officer C as his passenger, Officer A drove the second car with Officer D as his passenger.

## ISSUE 1: WERE THE OFFICERS JUSTIFIED IN SHOOTING MR FANE?

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### The pursuit

15. At approximately 7.45pm, as the AOS officers were driving through Tauranga, the Falcon drove in front of them at an intersection. Both Police cars followed it for a short distance into a less built up area. They signalled the driver (later determined to be Mr Fane) to stop by activating their red and blue lights and sirens.<sup>1</sup> Mr Fane failed to stop, and the officers initiated a pursuit.
16. The officers were each equipped with an M4 rifle and a Glock pistol. Officer D had read out fire orders to Officers A, B and C prior to the operation at the airport.<sup>2</sup>
17. The pursuit went through the townships of Judea and Bethlehem, where there were a number of cars driving, and pedestrians on both sides of the road. Mr Fane fired at the AOS officers at five different locations throughout the pursuit, over approximately three to four minutes. The officers did not return fire at the time due to the presence of, and risk to, members of the public.

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<sup>1</sup> Police believed it was Mr Fane at the time of the pursuit as the car was registered to him, however, this was not confirmed until he was formally identified the following day. For the sake of clarity, the driver is referred to as Mr Fane throughout this report.

<sup>2</sup> Fire orders are operationally specific instructions on the circumstances in which Police employees may use firearms. They must be given when firearms are issued before the start of authorised routine carriage and pre-planned operations. Fire orders must be given by operation or unit commanders as part of the operation briefing.

During the pursuit, Officer C leaned out of the window of the Police car and yelled at members of the public to get out of the way.

18. Mr Fane stopped outside a retirement village, opened his door, and fired a number of shots at the Police cars. Officers B and C said they had nowhere to get cover, and genuinely believed Mr Fane was trying to kill them. There were a number of people walking close by. Mr Fane then got back in the Falcon and drove off towards SH2.
19. The officers all say Mr Fane was not driving erratically. He drove at road speed and kept in his lane. Officer B says: “[Mr Fane] was well aware we were following him”. The officers believed Mr Fane did not try and evade them and wanted to engage with them so as to cause them grievous bodily injury or death. They were concerned because they believed that if Mr Fane came across other members of Police, there was no doubt he would have shot at them if he had the opportunity. Officer B made it clear to staff over the radio that they were not to get into a position where Mr Fane could see them.
20. Officer F, the Shift Commander for the Western Bay of Plenty at the time, became aware of the situation over the radio and drove towards the pursuit. It went past him under the Cambridge Road overbridge, and he pulled onto SH2 behind it. He believed the cars involved were travelling below the speed limit.
21. At approximately 7.49pm, Mr Fane slowed to a stop at a junction where a lane veers off back towards the Tauranga CBD. He remained sitting in the Falcon.
22. Officer B stopped the lead Police car approximately ten metres behind the Falcon, and slightly to the right. The second Police car stopped directly behind the Falcon, five to ten metres to its rear. Officer F stopped a distance back from the AOS officers’ Police cars and parked across the lanes to block the road from incoming traffic.
23. Officer C, the passenger of the lead car, fired one round at Mr Fane (who was in the driver’s seat) through the windscreen of the Police car with his rifle, then leaned out of his window and fired more rounds in Mr Fane’s direction. Officer D, the passenger in the second Police car, got out of the car. He positioned himself between the tow ball and left edge of the Falcon, and fired rounds with his rifle, at Mr Fane, through the back windscreen. When Officer C saw Officer D shooting, he stopped, as he considered Officer D had a better angle to shoot at Mr Fane.
24. Officer D stopped firing when he saw Mr Fane slump to the side, which signalled to him that Mr Fane was incapacitated. Officer C also saw this. Neither of them were aware of how many rounds they had fired, or how long they were firing for. An examination of Officers C and D’s magazines after the fact showed that Officer C discharged 27 rounds and Officer D discharged 22.
25. The Falcon began to roll away and veered off to the left-hand side of the road. Officers B, C and D followed on foot. Officer A followed in the second Police car in case Mr Fane was not incapacitated and attempted to drive away again.

26. The Falcon came to a stop in some bushes. Officer B opened the driver's door and determined that Mr Fane was deceased. He called Officer F forward, who checked the AOS officers were uninjured and took over the management of the scene.
27. The pursuit was four minutes and 47 seconds in duration from the time the officers signalled Mr Fane to stop, to when the Falcon rolled into the bushes.

### Use of force

28. Section 39 of the Crimes Act 1961 provides that when *"executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest"*, Police may use *"such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner."*
29. The discharging of firearms constitutes a use of force.
30. The 'Police firearms' policy states that officers are required to consider the following before shooting at an offender:
  - Communication – they must first have been asked to surrender (unless it is impractical or unsafe to do so);
  - Less violent alternatives (proportionality) – It must be clear they cannot be disarmed or arrested without first being shot; and
  - Delay (necessity) - it must be clear that further delay in apprehending the offender would be dangerous or impractical.

### Was the force used justified?

31. Mr Fane was suspected of committing a double homicide. In addition, from the outset of the pursuit and throughout, the officers believed that Mr Fane posed a significant risk of grievous bodily harm or death to themselves, members of the public in the immediate vicinity, and other officers. This was due to Mr Fane shooting at the officers on five different occasions during the pursuit, in locations where members of the public were present and put at substantial risk. This is confirmed on CCTV footage, where Mr Fane can be seen shooting at the officers. The rounds found on the road by Police during the scene examination corroborate their accounts. The gravity of Mr Fane's offending both prior to, and during the pursuit, was extreme.
32. The officers knew Mr Fane had a firearm. They had not seen him throw it away during the pursuit, therefore believed it was still in his possession. The officers were aware that both possible routes off the junction where Mr Fane came to a stop headed back into heavily populated areas. They were concerned if Mr Fane were able to continue, he would cause injury or death to a member of the public or Police staff.

33. The Authority accepts that no rounds were discharged by the officers until there were no members of the public present, and they deemed it safe to do so. The officers considered other tactical options and stated that if Mr Fane had not stopped where he had, they would have had to conduct a non-compliant vehicle stop. This would have put them at great risk of grievous bodily harm or death.
34. A non-compliant vehicle stop is generally taught using three Police vehicles, however, the officers involved were prepared to take this action regardless. They believed this would have placed them at extreme risk as it would have required them to be in very close proximity to Mr Fane who had already demonstrated his intention to shoot directly at them.
35. The officers considered pulling back and letting Mr Fane continue. However, this was discounted as an option due to the extreme ongoing risk to the public, and other Police. The necessity to arrest Mr Fane was immediate.
36. When they reached SH2, shooting at Mr Fane was the only tactical option available to them to overcome Mr Fane and arrest him. Mr Fane had stopped of his own accord. Officers C and D believed Mr Fane moved, and he was getting out of the vehicle. They were concerned that he would shoot at them, as he had done on five previous occasions. It was reasonable for them to assume he would do so again. That is when Officer C began to shoot. He stopped when he saw Officer D, who he thought had a better angle of fire. Officer C stopped shooting before his magazine was empty, showing a conscious decision to stop shooting. We accept that it would have been impractical and unsafe for the officers to call on Mr Fane or provide a warning prior to their use of firearms.
37. Officer D saw Officer C fire his weapon. He decided he needed to incapacitate Mr Fane to prevent harm to himself, other staff present, and the ongoing risk to the public if Mr Fane was able to avoid arrest and continue.<sup>3</sup> Officer D fired until he saw Mr Fane slump down in his seat towards the right pillar. Officer D also stopped shooting prior to his magazine being empty. He acknowledged he did not know how many rounds he fired.
38. Both officers told the Authority they were shooting at Mr Fane to incapacitate him. The only part of his body they were able to aim at was his head as he was in the driver's seat. They acted quickly to prevent him being able to shoot at them again.
39. We consider that shooting Mr Fane was reasonable in the circumstances as no less violent alternative was reasonably available in the circumstances the officers faced. Their actions were therefore justified under section 39.
40. The officers also raised section 48 of the Crimes Act as justification for shooting Mr Fane, as they did so in order to protect themselves, their colleagues, and members of the public. 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."*

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<sup>3</sup> Incapacitate means to prevent from functioning in a normal way, but not necessarily cause death.

41. Given we consider that shooting Mr Fane was justified under section 39, which has a higher threshold than section 48, we have not analysed section 48 in detail. However, our preliminary view is that based on the officers' genuine belief of the risk posed by Mr Fane in the circumstances, as outlined above, they would have had a defence under section 48.

### Was it appropriate for Officer C to shoot through the windscreen of the Police car?

42. When Mr Fane stopped, Officer C had the 'red dot' of his sight on Mr Fane and fired one shot through the front windscreen of the Police car. He says he had a direct line of sight; however, the shot cracked the windscreen and obscured his view. He then switched his gun from his right to his left hand and took multiple shots out of the window. He did not have the 'red dot' of his sight on the Falcon at this point but was aiming directly at it.
43. Firing shots through glass poses challenges in that it increases the likelihood of variables in the shots and affects accuracy. It should only be done in exceptional circumstances. There is no policy in relation to this, and it is not a trained technique.
44. However, we believe that in the circumstances of this case Officer C was justified in shooting through the window. There were no other motorists present, and both cars were stationary at the time. Officer C had told Officer B that he intended on shooting through the window, who had not advised him against it. Officer C placed the end of the barrel up against the glass, mitigating the risk of fragmentation of the round. We believe that these were exceptional circumstances and reiterate that this should not be done in the normal course of events.

### FINDING ON ISSUE 1

The officers were justified in shooting at Mr Fane.

### ISSUE 2: DID POLICE INTELLIGENCE PROVIDE SUFFICIENT INFORMATION TO AOS, AND WIDER AREA STAFF REGARDING MR FANE'S VEHICLE?

45. All four AOS officers received updated FLINTs from Police Intelligence throughout the week, and on the morning of 13 February 2020. The FLINT was originally created by Officer B in relation to gang tensions in the area generally and was updated by Officer E, an Intelligence officer, in relation to the double homicide. It contained information regarding the suspects for the homicide, related persons, and the addresses and vehicles linked to them. There were three vehicles of interest in the document, two of these were linked to Mr Fane and his brother. The Falcon was not included.
46. The wider area staff received a different FLINT for the double homicide. Officer F, the Shift Commander for the Western Bay of Plenty at the time, told the Authority this only contained one vehicle of interest, a Ford Territory, which was the vehicle used by Mr Fane and his brother on the day of the double homicide.
47. In updating the FLINT, Officer E looked at vehicles linked and registered to Mr Fane and his brother. The Falcon was registered to Mr Fane but was not included in the briefing document as Officer E had discounted the possibility that Mr Fane was still using it. There had been no recent

infringement notices or alerts,<sup>4</sup> and Mr Fane was known to have been using a different vehicle, a van. An alert was put into the Automatic Number Plate Recognition (ANPR) Tauranga Transport Operations Centre system for all vehicles registered to the suspects.<sup>5</sup> The alert said the Falcon was wanted in relation to the double homicide, but no further information was included. There was no alert in the National Intelligence Application (NIA) linking it to the double homicide, or a staff safety alert.

48. Officer B, the AOS commander, was told by the Officer in Charge, Criminal Investigations Branch (CIB), that both suspects were believed to be out of the area. He was advised that Mr Fane was thought to be in Auckland, and his brother in the South Island. This led Officer B to believe they were both under surveillance and neither of them were in Tauranga.
49. As the AOS team were leaving the station on 13 February 2020, they received two emailed ANPR alerts about the Falcon indicating that it was in the Tauranga area. The alerts stated that the Falcon was wanted in relation to the double homicide but did not say why. Although Mr Fane was included in the FLINT provided to AOS, there was no stated connection between him and the Falcon.
50. Officer B checked the Falcon's details on his mobility device. He found that it was registered to Mr Fane, and took note of his home address. He also received a telephone call from Officer E, who had also received the ANPR alerts, advising him of the link between Mr Fane and the Falcon. As they were unsure of where the Falcon might be, the officers decided to drive past a location with known gang affiliations before heading in the direction of Mr Fane's home address.
51. Purely by chance, as the officers were travelling through Tauranga, towards Mr Fane's address, the Falcon drove in front of them at an intersection.

### **Was the information provided by Police Intelligence sufficient?**

52. There was a lack of detail given to the AOS patrols, and general staff in the district about locations, vehicles, and weapons used by the suspects in the homicide.
53. The Authority acknowledges that Bay of Plenty staff were very busy at the time, and the situation was evolving quickly. However, providing staff with the information needed to help ensure their safety needed to be a paramount consideration.
54. It is evident from the CCTV footage, and officers' statements, that Mr Fane was not attempting to flee Police, but instead appeared to be trying to engage them in a 'shootout'. There was no

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<sup>4</sup> NIA is a Police database which holds information about individuals who have come into contact with Police. A safety alert in NIA flags important information about the potential risks that an offender may pose to the Police officers he or she has contact with.

<sup>5</sup> Automatic Number Plate Recognition (ANPR) is technology used to automatically identify vehicles of interest (VOI), as flagged in the National Intelligence Application (NIA), Motor Vehicle register (MVR), and Driver Licence Register (DLR), from their number plates. The ANPR system uses optical character recognition (OCR) to scan vehicle number plates and check them against VOI alerts. It assists officers by negating the need to refer to lists of VOIs by informing them when such a vehicle is detected by the system. When a VOI is recognised, the system alerts the operator who can take appropriate action. Tauranga Transport Operations Centre (TTOC) has a number of traffic and crime prevention cameras at key points around the city.



general arming of staff in the Bay of Plenty at the time. It is simply fortuitous that the officers he came upon were experienced AOS officers who were armed and conducting reassurance patrols. If, for example, Mr Fane had instead been signalled to stop by a Public Safety Team or Road Policing member between Pukekohe and Tauranga, there would have been significant risk to their safety. They would not have been aware of the threat he posed to Police and would not have been prepared for an encounter with a dangerous armed offender.

## FINDING ON ISSUE 2

Overall, the information provided by Police Intelligence to AOS, and general staff, was inadequate. This put Police staff at risk.

## ISSUE 3: WAS THE CRIME SCENE ADEQUATELY MANAGED?

55. On 13 February 2020, following the conclusion of the pursuit the scene was cordoned off until an examination could start the following day.
56. Police placed a crime scene tent over the vehicles involved and the wider area perimeter was guarded overnight by Police staff. This is standard operating procedure and in line with Police best practice.
57. On 14 February 2020, officers began the scene examination. They recorded finding a dog (which was later found to belong to Mr Fane) in the front passenger footwell of the Falcon, and it would not let them near Mr Fane's body. As a result, the SPCA were called. The dog can be seen in photographs taken of the scene that day.
58. If the dog remained in the car after Mr Fane was shot, then Police did not notice it when they secured the scene. Although it is possible the dog was in the car with Mr Fane all along, it is reasonably sized and if it had remained, Police would have likely seen it. Given the position where the Falcon ultimately stopped, it is possible the dog left the vehicle (windows were open) immediately after it came to rest in the bushes and then later returned sometime in the night, unseen by Police. Whatever the position, the presence of the dog risked contamination of the scene where Mr Fane's body had been left overnight.
59. However, the Authority acknowledges that the scene covered a large area and was geographically difficult to make completely secure; particularly to prevent what happened here. We accept that this event was a rarity and although unfortunate, we do not criticise Police.

### FINDING ON ISSUE 3

The presence of Mr Fane's dog for an unknown period of time risked contamination of the scene where Mr Fane's body had been left overnight. However, Police followed best practice by tenting and guarding the scene which was large and difficult to make secure.

A handwritten signature in black ink, appearing to read 'C. Doherty'.

**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

23 March 2021

**IPCA: 20-2313**

## Appendix – Laws and Policies

### LAW

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60. 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.”*
61. Section 48 of the Act states: *“Everyone is justified in using, in the 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.”*
62. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

### POLICY

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#### Use of force

63. 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 or arrest a person, 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.
64. 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 assessment:
  - Threat: Any individuals or any actions or anything likely to cause harm.
  - Exposure: Potential for harm to people.
  - Necessity: Whether to respond to a given situation.
  - Response: An officer must consider all the circumstances and must be timely, appropriate and proportionate.
65. The overriding principle when applying TENR is ‘safety is success’. Public and employee safety are paramount, and every effort must be made to minimise harm and maximise safety.
66. 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 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).

67. 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.
68. The policy states 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.

## Firearms

### *Authorisation to carry firearms*

69. Officers who hold the position of sergeant or above, and officers who are authorised by a district or communications centre supervisor, may carry firearms when there is *"clear and specific evidence"* they may encounter circumstances in which they may be required to use a firearm.

### *Responsibilities when firearms are carried*

70. Police policy on firearms requires that when an officer carries a firearm because they have assessed a situation as being within, or likely to escalate to be within, the death/grievous bodily harm range, they must advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms as soon as practicable, and also deploy with a Taser where one is available.
71. When deploying to an incident where firearms are or may be present, officers must wear approved ballistic body armour.

### *Use of firearms*

72. The 'Police firearms' chapter of the Police Manual 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 sets out the circumstances in which the use of lethal force is justified.
73. The Police 'fire orders' state that *"Every Police employee issued with a firearm is personally responsible for ensuring they are thoroughly conversant with relevant law, particularly sections 39, 40, 41, 48, and 62 of the Crimes Act 1961 ..."*.

74. They outline that the circumstances justifying Police firing at an offender can change very rapidly. Any officer who fires a shot *“must be personally satisfied through their perceived cumulative assessment that there exists justification for doing so”*
75. Officers are required to consider the following before shooting:
- Communication – they must first have been asked to surrender (unless it is impractical or unsafe to do so), and
  - Less violent alternatives (proportionality) – It must be clear they cannot be disarmed or arrested without first being shot, and
  - Delay (necessity) - it must be clearly that further delay in apprehending the offender would be dangerous or impractical.
76. Police must only use a firearm for the following lawful purposes:
- Section 48 - to defend themselves or others if:
    - They fear death or grievous bodily harm to themselves or others, and
    - Cannot reasonably protect themselves or others in a less violent manner.
  - Section 39 – to arrest and offender if they:
    - Believe on reasonable grounds that the offender poses a threat of death or grievous bodily harm in resisting their arrest, and
    - The arrest cannot be reasonably effected in a less violent manner, and
    - The arrest cannot be delayed without danger to other people.
  - Section 40 – to prevent an offender escaping if:
    - Police believe on reasonable grounds that the offender poses a threat of death or grievous bodily to any persons (whether an identifiable individual or members of the public at large), and
    - The offender flees to avoid arrest or escapes after arrest, and
    - The flight or escape cannot be reasonably prevented in a less violent manner.
  - To destroy animals in circumstances set out in the Animals chapter of the Police Manual.
77. There is no justification for firing at a suspect when they are no longer a threat to life. This applies regardless of the suspect’s previous actions.
78. As a general rule, warning shots should not be fired. However, there may be circumstances where a warning shot may be appropriate, e.g.: the suspect has been asked to surrender (if practical) and has not done so, and it can be clearly aimed as a warning shot. Take extreme caution to safeguard the safety of others.

79. Shots may only be fired at moving vehicles in exceptional circumstances. It is extremely difficult to disable a vehicle by discharging a firearm at tyres or other parts. The small target area and the margin for error impose a high probability of misdirection or ricochet increasing the risk of causing death, injury or damage.

*Principles applying when offenders are armed*

80. Police policy states that, when dealing with an armed offender or an offender believed to be armed, Police should observe these basic principles:

- *“Conduct an ongoing TENR assessment during the course of an incident.*
- *It is better to take the matter too seriously than too lightly.*
- *Caution is not cowardice.*
- *When the offender's actions permit, focus on de-escalation, communication, and prevention, cordon the area, and adopt the wait and appeal role in order to negotiate a surrender.*
- *Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, police must act immediately to prevent this.*
- *Treat all armed offenders or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.*
- *Where practical, police should not use a firearm unless it can be done without endangering other persons.”*

# 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.

We are not part of the Police – the law requires us 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. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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 and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

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

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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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