



IPCA

Independent Police
Conduct Authority

Whaia te pono, kia puawai ko te tika

Fatal Police shooting of Pera Smiler in Upper Hutt

September 2016

Contents

Introduction 3

Background 6

The Authority’s Investigation 24

The Authority’s Findings..... 26

Conclusions 36

Applicable Laws and Policies 38

Appendix 42

About the Authority..... 43



Introduction

1. At about 12:57pm on Tuesday 8 September 2015, Police shot Pera Smiler following an armed confrontation in Wakefield Street, Upper Hutt. Mr Smiler died of his gunshot wounds at the scene.
2. The incident lasted approximately 18 minutes, from the time Police were first notified that a man was firing a rifle inside Upper Hutt Mc Donald's, until the time that Mr Smiler was shot. The officers involved were unaware of Mr Smiler's identity until after the shooting.
3. Police immediately 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.
4. The Authority has examined issues relating to the search for Mr Smiler, the initial Police response, command and control of the incident, the tactical decisions made by the officers, the Police's use of force, whether all reasonable assistance was given to Mr Smiler after he was shot, and whether Police appropriately followed post-shooting procedures.

Glossary of terms

| Abbreviation/term | Explanation |
|----------------------------------|---|
| Active shooter | An armed offender who is either discharging shots with reckless disregard or purposeful intent, or poses an immediate and serious threat to life within a defined area. |
| AOS | Armed Offenders Squad. |
| CentComms | Central Communications Centre. |
| District Command Centre (DCC) | Each Police District has a DCC which has access to all communications information, and maintains an overall view of policing. The DCC focuses on crime prevention, but may also act in an incident response capacity. It is able to deploy a wide range of staff and resources, including staff that would not normally be deployed in response to an incident. |
| Fire Orders (General Order FO61) | Details the circumstances in which Police may use firearms. |
| Incident Controller | The officer responsible for managing the Police response to an incident. |
| Safe Forward Point | A gathering point for briefings, and the allocation of roles and equipment. |

Index of officers

| Communications Centre Staff | Roles/Comment |
|---|---|
| Central Communications Centre shift commander | Inspector, Incident Controller ¹ until Officer G arrived at the scene. |
| Dispatcher | Dispatcher on the Hutt radio channel. |
| Field Staff | |
| Watch-house officer | Arms and Property Officer, Upper Hutt Police station |
| Officer A | Acting Senior Sergeant and Prevention Co-ordinator, Hutt Valley. Reported directly to Officer G. |
| Officer B | Acting sergeant, Upper Hutt Police station. Eleven years' Police service. Armed with a Bushmaster M4 rifle. Shot Mr Smiler. Current in all relevant certifications. |
| Officer C | Constable, Upper Hutt Police station. Two years' Police service. Armed with a Bushmaster M4 rifle and a Glock pistol. Current in all relevant certifications. |
| Officer D | Constable, Upper Hutt Police station. One year's Police service. Armed with a Glock pistol. Current in all relevant certifications. |
| Officer E | Constable, armed with a Glock pistol. Current in all relevant certifications. |
| Officer F | Senior Sergeant; Response Manager, Hutt Valley. Reported directly to the Area Commander. |

¹ The Incident Controller is the officer responsible for managing the Police response to an incident. Under Police radio protocols, the communications centre shift commander is the Incident Controller until that role is formally handed to a field commander.

| | |
|-----------------|--|
| Area Commander | Area Commander, Hutt Valley. |
| Officer G | Inspector; Prevention Manager, Hutt Valley. Became Incident Controller at the scene. Reported directly to the Area Commander. |
| Officer H | Senior Constable, Lower Hutt Police station. Nineteen years' Police service. Armed with a Glock pistol. Current in all relevant certifications. |
| Officer I | Constable, Lower Hutt Police station. Armed with a Bushmaster M4 rifle. Current in all relevant certifications. |
| AOS Dog Handler | Deployed Police dog towards Mr Smiler. Also armed with a Glock pistol. Off-duty when the incident commenced. Seventeen years' Police service, 12 years' experience as a dog handler. Current in all relevant certifications. |
| AOS Officer 1 | Armed with a Bushmaster M4 rifle and a Glock pistol. Shot Mr Smiler. Off-duty when the incident commenced. Seven years' Police service. Current in all relevant certifications. |

Index of civilians

| Reference | Roles/Comment |
|---------------------------|--|
| Mr Smiler's mother | Reported Mr Smiler missing to Police. |
| Mr Smiler's sister | Searched for Mr Smiler on the morning of 8 September 2015. |
| Mr Smiler's brother | Contacted his family about a message posted by Mr Smiler on Facebook. |
| Mr Smiler's ex-girlfriend | Searched for Mr Smiler on the morning of 8 September 2015 |
| Mr A | Owner of the .303 rifle used by Mr Smiler. |
| Ms A | Sister of Mr A, gave the rifle to Mr Smiler on Mr A's direction. |
| Mrs Y | Spoke to Mr Smiler outside CityStop convenience shop and witnessed Mr Smiler being shot. |

Background

EVENTS LEADING UP TO 8 SEPTEMBER 2015

5. Pera Airiki Smiler was a 25-year-old man who lived with his parents in Upper Hutt.
6. Mr Smiler had a history of drug use and ongoing mental health issues. In the weeks before this incident, Mr Smiler's family became concerned that his mental health was deteriorating. They also noticed signs that he was using "serious drugs."
7. On the evening of Monday 7 September 2015, Mr Smiler was at home with his mother. She noticed that he was making "uncontrollable movements", causing her to believe he was drug-affected. Mr Smiler went out several times that evening, and on the last occasion, when he did not return, his mother became concerned for his safety. Several family members went out to look for him in nearby California Park.
8. Mr Smiler's family located him in the park. He told them that he had tried to hang himself several times, and that he "should be dead." Eventually his family calmed him and persuaded him to come home with them.
9. When Mr Smiler got home, he locked himself in his bedroom with a knife, and threatened "if you phone the psych people to come and get me, then I will kill whoever walks in the room."
10. At 11:50pm Mr Smiler's mother rang Te Haika², an emergency mental health assessment service. She informed them that her son had attempted suicide that evening, but that he was now locked in his bedroom and had threatened to kill whoever walked into the room.
11. The call taker at Te Haika advised Mr Smiler's mother to call Police immediately, and told her that, if necessary, he would be taken to a safe place, such as the Police station, for a mental health assessment.
12. Mr Smiler's family decided not to call the Police that night due to the risk that Mr Smiler might hurt the attending officers. Instead, Mr Smiler's family decided that they would monitor Mr Smiler throughout the night, and re-assess the situation in the morning.
13. Te Haika did not contact Police about Mr Smiler.

EVENTS DURING THE MORNING AND EARLY AFTERNOON OF 8 SEPTEMBER 2015

14. At 6:40am, Mr Smiler was picked up for work in the company van.

² Te Haika provides an emergency assessment and short-term treatment service for people experiencing a serious mental health crisis, and for whom there are urgent safety issues.

15. His family decided that they would follow up with Police and mental health services right away, as it was clear to them that Mr Smiler needed help. Mr Smiler's mother then rang his workplace in Ava, Lower Hutt, in order to check on him, but discovered that he had not arrived at work.
16. At 9:30am, Mr Smiler's ex-girlfriend received text messages from Mr Smiler, saying that he was "down by the river," and he was going to throw his phone into the river, so "this is the last time you're talking to me." Concerned for his safety, Mr Smiler's ex-girlfriend and his sister immediately drove to the river near his work place to look for him.
17. At about the same time, Mr Smiler's brother rang their mother about a concerning message that Mr Smiler had put on his Facebook page.
18. At about 10:15am, Mr Smiler's mother arrived at Upper Hutt Police station and reported her son missing. She informed the watch-house officer that Mr Smiler had attempted suicide during the previous evening and she was concerned for his safety. She told Police that she thought he might be close to his work place.
19. The watch-house officer recorded information about Mr Smiler's physical description, contact details, suspected movements, and emotional state and made sure Police had an up-to-date photo of Mr Smiler. He then ensured this information was entered into the Police database so that Police could commence a search, and he completed a Missing Person Report.
20. After receiving a briefing from the watch-house officer, Officer A, an Acting Senior Sergeant, became concerned for Mr Smiler's welfare, and reviewed and updated the information that had been entered into the Police database. Officer A then asked the Central Communications Centre (CentComms) to dispatch officers to search for Mr Smiler.
21. After speaking to CentComms, Officer B (the acting sergeant at Upper Hutt Police station) directed two constables, Officers C and D, to search for Mr Smiler near the Hutt River at California Park, and in nearby park land. They did so and could not locate him.
22. Officer B also asked for the signal from Mr Smiler's cell phone signal to be checked to see which cell phone tower the cell phone had recently been close to. This indicated that Mr Smiler might be near his workplace. Officer B rang the sergeant at the Lower Hutt Police station and asked for officers to be sent to look for him.

Pera Smiler's movements before the incident

23. As noted in paragraph 15, Mr Smiler did not attend work on 8 September 2015. At about 11am, Mr Smiler arrived at his friend Mr A's house in Mangaroa, Upper Hutt and spoke to Ms A, his friend's sister. Mr A was overseas, but Mr Smiler asked Ms A if he could borrow Mr A's .303 rifle and ammunition.
24. Ms A was reluctant to lend the rifle to Mr Smiler, but Mr Smiler was persistent and asked her to call Mr A using Facebook. Mr Smiler and Mr A spoke for some time. At the end of the call, Mr A told his sister to give Mr Smiler the rifle case containing the rifle and ammunition. Mr Smiler then left the house with the rifle case.

25. At about 12:20pm, carrying the rifle case, Mr Smiler boarded a bus at the intersection of Mangaroa Hill Road and Fergusson Drive. He got off the bus at a bus stop in Wakefield Street, Upper Hutt at 12:24pm (see the map in Appendix A).

Pera Smiler's actions in McDonald's restaurant

26. Much of the rest of this incident, from the time that Mr Smiler entered the Upper Hutt McDonald's restaurant ('McDonald's'), until the time he was shot by Police, was captured on CCTV or was filmed by bystanders on their cell phones. The Authority has viewed this footage.
27. McDonald's CCTV footage shows that at 12:24:47pm Mr Smiler entered the restaurant through the south entrance³. He then spoke to staff at the counter, and went to sit at a table. While at the restaurant, he fired his rifle three times:
- 27.1 At 12:36:07pm, Mr Smiler got up from the table where he was sitting, approached the service counter, pulled the rifle out of the rifle case and pointed the rifle towards the counter staff. He then pointed the rifle at the ceiling and fired a shot, prompting customers and staff to flee the restaurant.
- 27.2 At 12:43:40pm, Mr Smiler left the restaurant via the south entrance, stood in front of the doorway leading to the carpark and shot at an unmarked patrol car that was being driven along Fergusson Drive with lights and sirens activated. The bullet punctured the rear left passenger's side door, passed through the front passenger seat and lodged in the dashboard (the only occupant of the patrol car, the driver, was unhurt). Mr Smiler went back inside the restaurant.
- 27.3 At 12:44:17pm, Mr Smiler again briefly left through the doorway leading to carpark, and fired at Police officers who were running across a supermarket carpark towards McDonald's.
28. At 12:46:02pm Mr Smiler left McDonald's through the north entrance into Main Street (see the map in Appendix A).
29. Cell phone footage shows that Mr Smiler walked directly across Main Street and into 'The Mall' shopping centre. Approximately 30 seconds later, Mr Smiler left 'The Mall' and walked back into Main Street.

EMERGENCY CALLS AND INITIAL POLICE RESPONSE

30. Police received a total of 42 emergency calls about Mr Smiler's actions in McDonald's. Seven callers advised Police that the offender was "*shooting at people*".

³ The south entrance opens onto the carpark, which is accessed from Fergusson Drive. See the map in Appendix A.

31. The first call was received at 12:39:19pm. This caller told the Police communicator⁴:

"There's a man with a rifle and he's shooting people... he has already shot someone."

32. At 12:39:41pm, the dispatcher⁵ at the CentComms radioed Officer B at Upper Hutt Police station⁶, and told him Police had been called about a person acting suspiciously at Upper Hutt McDonald's. The dispatcher said that the person had a gun and was still there. Officer B acknowledged the radio call and confirmed that he would go to McDonald's to investigate.

33. At 12:39:50pm, a second caller rang 111 and reported: *"He's aiming at people...coming across the road into the Mall. He's shooting at people." "...He shot three shots, you need to get away. He is shooting at people."*

34. At 12:40:08pm the dispatcher radioed Officer B again:

"There's a male, getting multiple calls. A male has a firearm and he is shooting at people. Still there. At least one person has been shot. Can we set up a SFP⁷?"

35. At this point, all officers listening to the Hutt Valley radio channel started to arm themselves, and prepared to go to the incident.

36. The CentComms shift commander⁸ ('shift commander'), who had been alerted to the possibility of an 'active shooter' incident, immediately went to stand beside the dispatcher so he could be briefed, and listen to radio transmissions. An 'active shooter' is an armed offender who is either discharging shots with reckless disregard, or purposeful intent, and poses an immediate and serious threat to life within a defined area (see paragraphs 272-274).

37. The shift commander directed that the AOS should be called out. He then studied the map of Upper Hutt on the dispatcher's computer screen. After consulting with other staff (because he was unfamiliar with Upper Hutt), he decided to set the Safe Forward Point (SFP) at the corner of Exchange Street and Fergusson Drive. At 12:41:41pm, the dispatcher transmitted this location over the radio.

38. At 12:43:16pm, on the shift commander's direction, the dispatcher radioed:

⁴ A communicator is based at the Communications Centre and is responsible for answering and prioritising calls.

⁵ A dispatcher is based at the Communications Centre. He or she reads the information entered into the Police computer system and allocates jobs to officers in the area according to availability and priority.

⁶ Upper Hutt Police station was 600 metres from Upper Hutt McDonald's.

⁷ Safe Forward Point is a gathering point for briefings, and the allocation of roles and equipment.

⁸ An officer holding the rank of 'Inspector' who is in charge of the Central Communications Centre during a shift.

“All attending units – please ensure that you are armed – F61⁹ acknowledged – all other units SFP Exchange Street and Fergusson Drive”

39. Meanwhile, the Wellington District Command Centre¹⁰ started to assess what Police resources would be needed for the developing incident. They commenced a log of critical actions and decisions, used a separate radio channel to alert senior staff, and called the next shift of Police officers into work to cover business-as-usual tasks.

POLICE MAKE CONTACT WITH PERA SMILER

Officers B, C and D go towards McDonald’s

40. When Officer B was notified by the dispatcher that a man in McDonald’s was “*shooting at people*,” he ran through the Police station to his patrol car. En route, Officer B passed Officers C and D who had also heard the radio transmissions, and called to them to get to their patrol car.
41. All three officers were already equipped with Tasers, pepper spray¹¹ and batons. When Officer B reached the sergeant’s station wagon, he opened the boot and the boot gun safe, and armed himself with a Bushmaster M4 rifle (‘M4 rifle’). He checked that the safety catch was on, and ensured that a round was in the chamber so that the M4 rifle was ready to be fired.
42. When Officers C and D arrived at the boot of their patrol car, Officer B told them to arm themselves and that “*F61¹² applied*.” They acknowledged that they understood this.
43. Officer C opened the boot gun safe of their patrol car, which contained two M4 rifles, two Glock pistols (‘pistol’) and two sets of ballistic body armour. Officer C put on a set of ballistic body armour, and armed himself with an M4 rifle. He put one of the pistols in the holster on his hip.
44. While Officer D was opening the gun safe in the front passenger foot well to get a pistol, another officer, also heading to the scene, ran up to Officer C’s and D’s patrol car, and removed the second M4 rifle and set of ballistic body armour from the boot gun safe. Consequently, Officer D could only arm himself with a pistol, and had no ballistic body armour.
45. Officer B got into the sergeant’s station wagon and told Officers C and D to follow him in their patrol car. Officer B put his M4 rifle in the front passenger seat foot well, activated the emergency flashing lights and siren on his station wagon, and started driving towards the SFP.

⁹ ‘F61’ refers to Police ‘Fire Orders,’ the circumstances in which Police may use firearms. This is described in more detail in paragraphs 266-269).

¹⁰ The District Command Centre (DCC) has access to all communications information, and maintains an overall view of policing within a Police District with a focus on crime prevention. The DCC may also act in an incident response capacity, and is able to deploy a wide range of staff and resources, including staff that would not normally be deployed in response to an incident.

¹¹ Oleoresin Capsicum spray.

¹² ‘F61’ refers to Police ‘Fire Orders,’ see paragraphs 266-269.

46. As Officer B turned right on to Fergusson Drive, he realised that he would have to drive past McDonald's to get to the SFP. He decided that this would be too dangerous because he could be shot at by the offender. He later told the Authority that he tried to radio CentComms about his concern about the location of the SFP, but the radio channel was too busy and he could not transmit.
47. Officer B drove eastwards along Fergusson Drive, then pulled over and parked approximately 100 metres from the intersection of Fergusson Drive and Wakefield Street, in front of a supermarket carpark (see the map in Appendix A). At 12:42:45pm Officer B radioed that he was "*just on Fergusson near Countdown.*" Officers C and D parked their patrol car behind him, and got out with their firearms.
48. Officer B said he was at the rear of his station wagon, putting on his ballistic body armour, when he heard the sound of a shot being fired from the direction of McDonald's. It has been established that this was the shot that Mr Smiler fired at a passing patrol car – see paragraph 27.2.
49. At 12:43:40pm, Officer B radioed: "*Shots fired!*" Officer B could see people running away from McDonald's, and hiding in the McDonald's carpark. A short time later, a Police officer radioed that his patrol car had been shot at by a "*large calibre firearm,*" which "*came from the direction of McDonald's.*"
50. At 12:43:57pm Officer B radioed that he was going to move towards McDonald's with Officers C and D.
51. Officers B, C and D were joined by Officer E, who had run over from the Upper Hutt Police station and was armed with a pistol. Officer B decided that the four officers would separate into two teams to approach McDonald's. He directed Officers C and E to cross the supermarket carpark towards Mumby Lane, and then move along the line of shops in Mumby Lane towards Wakefield Street.
52. Officer B formed a team with Officer D. He told Officer D to stay behind him since Officer D was not wearing ballistic body armour. They stepped over a low hedge into the supermarket carpark, and ran in a low crouch, eastwards, along the hedge-line.
53. Officers B and D had gone approximately 25 metres when they both saw Mr Smiler come out of the south entrance of McDonald's, holding a rifle in both hands. They said that Mr Smiler looked directly at them, and raised the barrel of the rifle in their direction. The officers flung themselves to the ground, and within a "*millisecond*" the sound of a shot rang out. Officer B said that the hedge about one metre away from him "*sort of exploded.*" McDonald's CCTV footage captured Mr Smiler taking this shot at Police (see paragraph 27.3)
54. Officers B and D got up and ran along the hedge line of the supermarket carpark, before taking cover behind a parked roadworks truck. Officer B looked towards the south entrance of McDonald's, but could no longer see anyone there.

55. Officers B and D continued to observe McDonald's from this position. Officer B said that he tried to advise CentComms that he had been shot at, but radio traffic was too busy and he could not transmit this information.

Incident command and control is clarified

56. Meanwhile, Officer A was in her office at Upper Hutt Police station when she saw officers running out of the station, and heard the radio transmissions about shots fired. She realised that the Upper Hutt Acting Sergeant (Officer B) was already engaged in approaching the offender, and that a senior officer would be required at the SFP to command the incident. She knew she was the only other senior officer in Upper Hutt at that time.
57. She checked the station's firearms cabinet, but there were no firearms or sets of ballistic body armour left. She and a detective sergeant attached portable radios to their uniform, got into Officer A's patrol car and started driving, with emergency lights and sirens activated, towards the SFP.
58. On the way, Officer A realised that the most direct route from the Upper Hutt Police station to the SFP would take her directly past McDonald's. She thought this would be unsafe, and so turned around on Fergusson Drive and drove towards Queens Street and the SFP.
59. At 12:45:36pm, Officer A radioed CentComms and asked them to appoint an Incident Controller¹³. The dispatcher immediately responded that the shift commander was in command, but said that if anyone was in a position to assume command at the scene, they should advise.
60. Officer B heard Officer A's radio transmission while he was still crouched behind the roadworks truck. At 12:45:58pm, he radioed that he was observing McDonald's, and it was *"a bit hard for [him] to be Incident Controller right now."* He then radioed that he could now see an unidentified male walking around inside McDonald's.
61. Officer F, the Hutt Valley Response Manager, was in Wellington city when he heard about the incident over the radio. It was his role to take command of critical incidents at the scene, if available to do so. He immediately started to drive towards Upper Hutt.
62. The Area Commander rang Officer F and asked him to take the incident controller role. Officer F replied that he was currently too far away from the incident to do so. The Area Commander then said he would appoint Officer G instead.
63. Officer G, an Inspector and the Hutt Valley Prevention Manager, had also heard about the incident over the radio. He drove on State Highway 2 towards Upper Hutt at speed, with emergency lights and sirens activated.

¹³ The officer responsible for managing the Police response to an incident. Under Police radio protocols, the communications centre shift commander is the Incident Controller until that role is formally handed to a field commander.

64. En route, Officer G spoke to the Area Commander, and was directed to go the scene, assess the situation, and take command as Incident Controller. Officer G acknowledged this and continued driving towards Upper Hutt Police station, where he planned to obtain a rifle, ballistic body armour and a portable radio before going to the scene.

Officer B confronts and challenges Pera Smiler

65. At 12:46:49pm, Officer B heard Officer C radio that a witness had seen Mr Smiler run out of the north entrance of McDonald's and into a shopping centre on Main Street (Mr Smiler's movements were captured on cell phone footage, as described in paragraph 29).
66. Officer D ran towards the corner of Wakefield Street and Fergusson Drive, to divert people still driving and walking in the area. He then parked his patrol car across Fergusson Drive to block off the road.
67. Officer B decided that he needed get to the shopping centre to protect the people exposed to danger. He told the Authority:

"My priority was the person with the rifle, he's already fired three shots, two shots at police officers so his, I believe his intent was he was going to use a firearm again, and I needed to stop that threat and prevent the loss of life or injury to either members of the public or to police. So I know I needed to move forward"

68. Officer B ran diagonally across the carpark towards Officers C and E, who had reached the intersection of Mumby Lane and Wakefield Street. Officers C and E had stopped just outside Domino's Pizza shop ('Domino's') on the corner (see the map in Appendix A). All three officers could see that customers were hiding inside the shop.
69. As he ran, Officer B suddenly saw Mr Smiler walk from Main Street into the intersection with Wakefield Street, approximately 30 metres away. Officer B said that Mr Smiler was holding the rifle in his right hand, with the barrel pointing towards the ground.
70. At 12:46:57pm, Officer B radioed that he could see a "male with a firearm walking across Main Street towards McDonald's."
71. Officer B slowed to walking pace, and yelled "Armed Police, put the gun down!" Mr Smiler yelled something in response that Officer B could not make out. This initial engagement between Mr Smiler and Officer B was filmed by a member of the public on their cell phone.
72. Officer B brought his rifle up and took aim at Mr Smiler. He looked through the scope on the top of the rifle to check that the red laser sight was correctly aimed at Mr Smiler's torso. He also switched the safety catch to 'fire,' and moved his finger from the trigger guard onto the trigger.
73. He told the other officers to stay behind him, and directed Officer C to take over providing radio updates to CentComms.

74. At 12:47:07pm the dispatcher radioed Officer B and asked for confirmation that he had located Mr Smiler. At 12:47:19pm, upon receiving this confirmation from Officer B, the shift commander directed all officers to contain the area.
75. The shift commander later explained to the Authority that he was satisfied that several officers (led by Officer B) had Mr Smiler in sight, and were moving in to make contact with him and confine him to a “set area.” These officers were able to provide the shift commander with the best information about Mr Smiler’s movements and actions.
76. Officer B walked slowly towards Domino’s, while continuing to direct Mr Smiler to put his gun down. The front and side of Domino’s had large, plate glass windows, which met at a pillar at the corner of the building. A low concrete ramp led to a glass side door beside the pillar. A waist-height metal hand rail ran beside the ramp, at right-angles to the pillar.
77. Officer B walked up the ramp to the pillar, positioned himself in a semi-crouch and rested his arms on the hand rail. He kept his rifle trained on Mr Smiler, but maintained eye contact with him by looking over the top of the rifle. He removed the earpiece of his portable radio, explaining to the Authority:

“I didn’t think I could give my full attention [to Mr Smiler] with that earpiece in....I knew he was conversing with me...I wanted to hear everything that was going on, I didn’t want any radio traffic in my ear stopping me from hearing what was happening.”

78. Officer C took up a position to Officer B’s right, at the base of the ramp, with his rifle up and trained on Mr Smiler. Officer E remained behind Officers B and C.
79. Officer C activated his portable radio to provide CentComms with an update. CentComms could hear Officer B in the background telling Mr Smiler to drop his weapon. The shift commander ordered all other units to clear the radio channel, and requested a further update from Officer C as soon as possible.
80. At approximately 12:48pm, Officer C radioed CentComms, asking for Main Street to be blocked off as cars were still driving past. He then transmitted:

“Comms the suspect is standing in the middle of the road, challenging Police to shoot him. He is holding his rifle in one arm.”

81. Thirty seconds later, the shift commander directed the dispatcher to transmit the following:

“Units at the scene, you are advised to contain him, if you cannot contain him you are to shoot him.”

82. The shift commander told the Authority that he gave this direction as he was very concerned about the threat that Mr Smiler posed to the public in the immediate vicinity, and believed that Mr Smiler needed to be kept away from as many of those people as possible by Police. The shift commander could hear other officers reporting over the radio that they were taking up cordon positions to block off the streets surrounding McDonald's.
83. Police policy, and the law from which it derives, is clear that the assessment, responsibility and decision to shoot an armed offender belongs to the officer that fires his or her weapon.
84. The shift commander explained to the Authority that he did not intend this communication to be taken as an order to shoot Mr Smiler. Instead, he intended to reassure the officers confronting Mr Smiler that, in his assessment, an officer would be justified in using lethal force if Mr Smiler were to flee because the threat he posed to the public was so high. However, the officers would still be required to undertake their own risk assessment in the specific circumstances before they shot at him.
85. The officers at the scene had mixed responses to the shift commander's statement. Some found it "reassuring" while others found it "distracting." None of the officers spoken to by the Authority took the statement as a direction from the Incident Controller to shoot Mr Smiler. All of them understood that shooting an armed offender was their own decision, to be based on their own assessment of risk, as law and policy requires.
86. Officer B said that in response to his directions to put his rifle down, Mr Smiler yelled "*Just shoot me! Just shoot me!*" Mr Smiler walked repeatedly from the intersection of Main Street towards Officer B's position in "*figure 8's, back and forth.*" At his closest point, he was approximately 15 metres from Officer B.
87. Mr Smiler's demeanour and movements while interacting with Police were filmed by a person hiding inside a shop in Main Street. The footage showed Mr Smiler holding the rifle with his right hand in the middle, with the barrel pointing upwards.
88. Mr Smiler then moved the rifle to his left hand, and held it with the barrel pointing behind him, angled downwards towards the ground. He held both arms out to the side, exposing his chest to Officers B and C, who had their rifles trained on him. He repeatedly gestured with the handle of the rifle in the direction of the officers, apparently talking to them.
89. Officer B said that Mr Smiler held the rifle in one hand, around the top of the rifle, with the barrel pointing downwards. Officer B later recalled "*I had no idea who he was so I really didn't know what he was capable of so I just continued to voice appeal¹⁴ him. While he had that barrel pointing down to the ground he wasn't a threat to me, an immediate threat.*"

¹⁴ Direct an offender to surrender.

Officers H and I arrive

90. As Officer B continued to direct Mr Smiler to drop his weapon, Officer D ran back to Wakefield Street, and crouched behind a truck that was parked opposite the intersection with Mumby Lane (see the map in Appendix A).
91. At this point, two other officers arrived at the corner outside Domino's: a senior constable (Officer H), armed with a Glock pistol; and another constable (Officer I), armed with a Bushmaster M4 rifle. Their arrival is captured on the cell phone footage.
92. Officer I immediately took a position beside Officer C, who was now lying on the ground with his M4 rifle trained on Mr Smiler. Mr Smiler continued to pace backwards and forwards, and yell at Police.
93. Officer H was a senior officer with significant experience in critical situations. He tapped Officer B on the shoulder and asked if he was alright to continue talking to Mr Smiler. Officer B nodded his head to confirm that he was. Officer H also checked that Officer C was alright.
94. Officer H said that his priority was to check that both Officers B and C were comfortable and aware of their surroundings. By acknowledging him, Officer H was confident that both officers were calm and in control.
95. Officer H observed that Mr Smiler was pacing backwards and forwards in an agitated manner. He recalled Mr Smiler gesturing towards his heart, as if inviting Police to shoot him.
96. Officer H was satisfied that Officers B and C were handling the situation well and had Mr Smiler sufficiently covered with their M4 rifles. Officers E and H formulated a plan to enter Domino's by the back door, with Officer I, to evacuate the customers who were hiding inside.
97. At 12:53:35pm, Officer E updated CentComms, advising that Mr Smiler was now holding the rifle in his left hand, with the barrel pointing skywards:

"He is still in front of us – [Officer B] is talking to him at the moment and he's getting agitated. He'll be opposite Domino's and McDonald's...firearm is held in his left hand...the end point or the muzzle point is pointing towards the sky"

98. These observations are corroborated by the cell phone footage.
99. Several other officers had taken cordon positions near McDonald's, and were also providing CentComms with radio updates. Officer D had also run back to Wakefield Street, and was crouched behind a truck parked opposite the intersection with Mumby Lane (see Appendix A). At 12:56:58pm, an officer positioned in a building opposite McDonald's informed CentComms that a woman was now talking to Mr Smiler.

100. Cell phone footage shows that Mr Smiler turned to face the woman (Mrs Y), who was standing in the doorway of CityStop. He moved his rifle to his right hand and held it at waist height, parallel to the ground.
101. Officer B said that he had seen Mrs Y come out of CityStop, and watched as Mr Smiler turned towards her. Officer B estimated that Mr Smiler was between two and four metres away from Mrs Y.
102. Officer B said he yelled at Mrs Y to get back inside the shop because he was concerned that Mr Smiler might take her as a hostage.

The AOS Dog Handler and AOS Officer 1 go towards McDonald's

103. The AOS Dog Handler was off-duty and at home in Upper Hutt when he heard "lots of sirens" and turned on his portable Police radio.
104. As he listened to the radio transmissions, he realised that the nearest on-duty general purpose Police dog team was approximately 30km away. He knew that a Police dog was urgently required. At 12:49:23pm, he advised CentComms that he would go straight to the incident.
105. The AOS Dog Handler quickly put on his stab-resistant vest over his ordinary clothes, and loaded his Police dog into his Police van. The stab-resistant vest had his pepper spray, baton and handcuffs attached. He took his Glock pistol out of the locked gun safe in the foot well of his Police van, put it into 'action state' and put it into a holster on his hip. He did not have any ballistic body armour available.
106. He said that he then quickly read the Police Fire Orders¹⁵, which were printed in his notebook.
107. He got into his Police van and started driving towards the town centre of Upper Hutt. Based on what he could hear over the radio, he realised that "*the threat level was basically as high as could be.*"
108. At 12:50:57pm, while driving, he had a brief radio conversation with Officer H, assuring him that he was on his way to the incident.
109. The AOS Dog Handler drove towards a Police cordon at the intersection of Main Street and Geange Street, two blocks to the west of McDonald's. He got his Police dog out of the Police van and put it on a lead. He then looked for his portable radio to attach to his stab-resistant vest, but could not find it.

AOS Officer 1 drives to Main Street and meets the AOS Dog Handler

110. AOS Officer 1, a trained AOS marksman, was off-duty and was driving his private vehicle towards his home in Upper Hutt when he received two phone calls from a local Police officer about the

¹⁵ Also known as 'F61', See paragraphs 266-269.

developing incident. He was told that a man was firing a *“large calibre rifle”* in Upper Hutt McDonald’s, and that he had shot at a Police officer.

111. Anticipating an AOS call-out, he drove home and put on Police overalls and boots. He started driving towards Upper Hutt Police station. He intended to pick up a patrol car, and drive to the AOS base in Wellington, to join the rest of the AOS squad and arm himself.
112. At approximately 12:50pm, AOS Officer 1 received a notification on his AOS pager, directing AOS officers to go to the AOS base for an urgent call-out. At 12:51pm, he received a second pager notification: *“Active shooter¹⁶ in Upper Hutt.”*
113. AOS Officer 1 understood this to mean that an armed offender was posing an immediate threat, and people could be seriously hurt or killed by the offender. He later explained *“I recognised this statement to be the highest risk incident that New Zealand Police could face...”*
114. This information caused AOS Officer 1 to change his plan, and head towards Upper Hutt Police station. He decided that his specific skills and training were needed immediately at the incident scene. He also recalled recent AOS training where it was agreed that any AOS officer close to a critical armed offender event, such as this one, should go to the scene directly (as opposed to the AOS squad room), to help protect the public and support frontline officers. He knew that Officers C and D were *“reasonably junior...having less than two years’ experience.”*
115. When AOS Officer 1 arrived at Upper Hutt Police station, he found it deserted. He put on a stab-resistant vest, but could not find a portable radio to attach. He located the keys for a patrol car and drove towards Main Street.
116. At 12:55:06pm, while driving, AOS Officer 1 tried to contact Officer B using the car radio. He identified himself as ‘AOS,’ but received no acknowledgment (Officer B did not have his radio earpiece in).
117. AOS Officer 1 stopped at the cordon at the intersection of Main Street and Geange Street. He saw that the AOS Dog Handler was just about to leave his Police van with his Police dog. AOS Officer 1 called to him to wait so they could go towards Mr Smiler as a team.
118. AOS Officer 1 unlocked the gun safe in the boot of the patrol car, removed a set of ballistic body armour and put it on.
119. AOS Officer 1 said he removed a Bushmaster M4 rifle, checked that the magazine was attached, it was ready for use and the safety catch was pointing towards ‘safe.’
120. He also took a Glock pistol, ‘actioned’ it and put it into the holster on his hip. He said that he then reminded himself of Police Fire Orders¹⁷.

¹⁶ See paragraphs 272-274.

¹⁷ See paragraphs 266-269.

121. AOS Officer 1 and the AOS Dog Handler ran down the right-hand side of Main Street towards McDonald's. Their progress towards Mr Smiler was captured on CCTV footage as well as on cell phone footage. AOS Officer 1 held his M4 rifle in both hands, with the barrel angled towards the ground.
122. As they approached the next intersection, they passed two more officers who were dealing with a member of the public. AOS Officer 1 asked them if they knew where the offender currently was, but they told him that they did not. AOS Officer 1 then instructed them to advise CentComms that an AOS officer and AOS dog handler were moving towards the offender. This message was not transmitted¹⁸.
123. As AOS Officer 1 continued running, he could see another Police officer running towards him further along Main Street, checking shops. He deduced that Mr Smiler must be somewhere between him and that officer.

Police fire at Pera Smiler

124. Cell phone footage from two phones records the seconds before Mr Smiler was shot, the moment he was shot, and what happened in the minutes afterwards.
125. The footage is from two angles. The first set of footage shows the two AOS Officers running along Main Street, then stopping at the corner of Wakefield Street, and AOS Officer 1 aiming his rifle at Mr Smiler. The second set of footage shows Mr Smiler turning and reacting to the arrival of the AOS officers. The AOS officers themselves are out of frame.
126. The footage shows that AOS Officer 1 and the AOS Dog Handler slowed as they approached the intersection with Wakefield Street (see the map in Appendix A). The officers said that they could see into Wakefield Street by looking through the windows of the Red Cross shop on the corner. AOS Officer 1 said that he could see a man standing in the street with his back towards him.
127. Both officers said that they could not see or hear any other Police officers talking to Mr Smiler.
128. Moving around the corner, the footage shows that AOS Officer 1 brought his M4 rifle up, and looked over the top of the rifle towards Mr Smiler. AOS Officer 1 said that Mr Smiler turned towards himself and the AOS Dog Handler, and as he did so, AOS Officer 1 saw that Mr Smiler was holding a *"bolt-action rifle of a high calibre"* in both hands horizontally across his body, with the barrel angled downwards.
129. At approximately 12:57pm, AOS Officer 1 said that he yelled *"Stop, armed Police...Drop your firearm!"* Cell phone footage and audio confirms that AOS Officer 1 told Mr Smiler twice to put his gun down.

¹⁸ The shooting occurred 30 seconds later.

130. The AOS Dog Handler was positioned to the right of AOS Officer 1, and had also seen Mr Smiler turn towards them. He recalled that Mr Smiler was about ten metres away from their position.
131. The AOS Dog Handler judged that this was close enough for him to try to incapacitate Mr Smiler by releasing his Police dog. He believed that the Police dog would reach Mr Smiler before Mr Smiler could evade it by running into the shops on Wakefield Street.
132. The AOS Dog Handler removed the chain from the Police dog's neck, held the dog by its scruff and stepped forward, directing the Police dog's sight towards Mr Smiler. He then released the Police dog with the command: "*Rouse!*¹⁹"
133. As the Police dog ran towards Mr Smiler, the AOS Dog Handler saw Mr Smiler start to raise the barrel of his rifle towards himself and AOS Officer 1. The AOS Dog Handler ducked behind the shop corner and reached for his pistol.
134. AOS Officer 1 said that he saw Mr Smiler immediately lift the barrel of the rifle and aim it directly towards them: "*It's almost like he saw us cross that window or heard us or saw us and was turning round, saw us and immediately presented...I came round, challenged, he was presenting.*"
135. AOS Officer 1 said he believed that Mr Smiler was going to shoot him or the AOS Dog Handler and feared for their lives. He aimed his rifle at Mr Smiler, switched the safety catch to 'fire,' and fired two quick shots at Mr Smiler, one of which hit him in the chest. AOS Officer 1 heard a third shot, but was unsure where it had come from.
136. The officers' description of Mr Smiler raising the rifle is corroborated by cell phone footage. Mr Smiler can be seen holding the rifle in both hands with his right hand around the trigger. He then brings the rifle up to a firing position at shoulder height. He aims towards the shop corner, where AOS Officer 1 and the AOS Dog Handler are positioned.
137. After he was shot, Mr Smiler collapsed on the ground and dropped his rifle. As he fell, the footage shows the Police dog reach Mr Smiler and bite his lower right leg.

Officer B fires at Pera Smiler

138. Officer B was in position beside the pillar at the corner of Domino's, with his rifle aimed at Mr Smiler.
139. He told the Authority that he heard another Police officer challenge Mr Smiler to drop his weapon, from the direction of Main Street.
140. He leaned forward and saw a Police officer holding a rifle, and a Police dog handler. He then looked back at Mr Smiler, and ensured that his own rifle was still correctly aimed at him.

¹⁹ While there is no standard Police definition of the command "*rouse*", it is generally used in training and operational deployment to command a dog to bite.

141. Officer B said that he saw: Mr Smiler turn to face the two officers; a Police dog run towards Mr Smiler; then Mr Smiler start to raise his rifle towards the officers.
142. Officer B told the Authority that he believed that Mr Smiler was about to shoot the two officers, so he fired a single shot at Mr Smiler to prevent this from happening. The shot hit Mr Smiler in his back. Simultaneously, he said he heard two other shots being fired.

Mrs Y's version of events

143. The Authority interviewed Mrs Y about her recollection of events:
- She was working in CityStop²⁰ convenience shop when she had heard a shot, and saw Mr Smiler (who she did not know) "*wandering around*" on the road.
 - She went out of the shop and confronted him asking "*have you got a bloody problem?*"
 - She told the Authority that he was "*really agitated*" and "*angry at the Police,*" who he thought were interfering with his plan to join the army. But as she spoke to him, he "*calmed right down.*" He was standing on the main road, about five metres from her.
 - A Police officer kneeling by the door of Domino's yelled at her to get back in the shop (see paragraphs 100-102), but she "*wasn't scared...[I] just wanted to talk to him.*" She felt that, by talking to him, she might be able stop what was happening.
 - He was holding the rifle his left hand with the barrel pointing skywards. She invited him to come over and to give her the rifle. He started to move in her direction, possibly to give her the firearm.
 - He stepped up onto the pavement in front of Citystop, and was facing towards the corner or Wakefield and Main streets. He said: "*I've got a lady here.*"
 - Mrs Y then saw a Police dog run out from behind the shops to their left. Mr Smiler "*lowered the shotgun*", and she thought that he was going to try to shoot the Police dog.
 - Mrs Y heard shots being fired at about the same time as the Police dog reached Mr Smiler, bit him on the leg, and "*toppled him over to the ground.*"

Police actions after Pera Smiler was shot

144. After Mr Smiler fell to the ground, the officers ran towards him. Officer B continued to aim his rifle at Mr Smiler as he approached, in case he was still a threat.
145. Cell phone footage shows that Mr Smiler's rifle was moved away from him, and Mr Smiler was rolled on to his stomach in order for handcuffs to be applied.

²⁰ See the map in Appendix A.

146. It was quickly apparent to the officers that Mr Smiler was badly injured and no longer posed a threat, so the handcuffs were removed. The AOS Dog Handler then removed the Police dog from Mr Smiler's leg. The Police dog was removed approximately one minute after Mr Smiler had been shot.
147. AOS Officer 1 and other officers then rolled Mr Smiler on to his back and started to give first aid. At 12:58:05pm, an officer radioed for an ambulance to come.
148. Officer H directed other officers arriving at the scene to go into McDonald's to check for injured people. Officer I stood over Mr Smiler's rifle to guard it.
149. Officer A had been in her patrol car at the SFP, and on the radio to CentComms, when she heard the shots being fired. She immediately drove towards McDonald's. After establishing that Mr Smiler was being attended to, she assigned a detective to stand with Officer B, who she believed was the only officer to have fired his weapon.
150. Officer G arrived at the scene at approximately 1pm, and checked with CentComms that an ambulance was on the way. Approximately four minutes later, he formally took control of the incident from the shift commander. By this stage, it had been established that there were no wounded people in McDonald's. An off-duty paramedic was attending to Mr Smiler.
151. Officer F also arrived at the scene and, with Officer A, started to direct officers to check nearby shops for injured people and any further offenders. People who had witnessed events were gathered together so they could be spoken to by Police. Officer A said that she, Officer F and Officer G would periodically meet to co-ordinate and discuss progress.
152. An ambulance arrived at approximately 1:09pm. Mr Smiler was declared dead at the scene by ambulance staff at 1:21pm.

AOS Officer 1 and AOS Dog Handler

153. AOS Officer 1 and the AOS Dog Handler decided to leave the scene of the shooting soon after Officer G took over as Incident Controller. AOS Officer 1 told the Authority that he was concerned about being filmed by the television news crews who were arriving in the area.
154. AOS Officer 1 informed a detective that the area at the corner of the Red Cross shop formed part of the investigation scene. The detective told the Authority that he understood this statement to mean that AOS Officer 1 had shot at Mr Smiler from this location. The detective also informed the Authority that he passed this information on to Officer F and another senior officer.
155. AOS Officer 1 and the AOS Dog Handler intended to go to the AOS base, where they knew they would undergo post-shooting procedures. The AOS Dog Handler first drove to his house to pick up his cell phone. While driving, the AOS Dog Handler contacted the AOS commander and informed him of their involvement in the incident. The AOS commander directed them to go to the Police dog base instead.

Post shooting tests

156. It is not current policy that alcohol and drug testing be carried out on Police officers, but it is considered best practice and officers are generally asked if they consent to undergo such testing following a critical incident.
157. On Officer G's direction, Officer B was driven back to Upper Hutt Police station, where he underwent drug and alcohol testing, returning negative results. Gunshot residue tests were also carried out. Officer B's firearm, and some equipment and clothing were seized as evidence by supervisors.
158. AOS Officer 1's firearms, uniform and equipment were seized, and he was tested for the presence of alcohol and drugs, returning a negative result. He was also tested for gunshot residue.
159. Following the receipt of legal advice, the AOS Dog Handler declined to undergo any testing. He said that he hadn't been drinking.
160. Officers C, D, E, H and I were taken back to Upper Hutt Police station, where they were tested for the presence of alcohol. All returned negative tests.
161. All officers directly involved in the incident were formally interviewed about their part in the incident.
162. These officers were also stood down from work in accordance with the Police trauma policy.
163. On 16 September 2015, the senior officers involved in the incident, including the Area and Wellington District Commanders, held an incident debrief. On 26 July 2016, an operation debrief was held for the front line officers involved.

Police officers involved

164. The officers involved in this incident, who were armed with either a Glock pistol or a Bushmaster M4 rifle, were current in all the relevant certifications.

Police investigation

165. The Police conducted a criminal investigation into the shooting of Mr Smiler. This investigation concluded that none of the officers could be held criminally liable for their actions during this incident.
166. The .303 rifle used by Mr Smiler was recovered at the scene. The rifle had one live round in the chamber, and one in the magazine. Two further rounds were found in the rifle case. Three spent cartridges were found in McDonald's, indicating that Mr Smiler fired the rifle three times while inside.

167. On 15 December 2015, Mr A appeared in the Hutt Valley District Court, charged with possessing the firearm without a licence²¹. He pleaded guilty, and was sentenced to 80 hours of community work.

The Authority's Investigation

THE AUTHORITY'S ROLE

168. Under the Independent Police Conduct Authority Act 1988, the Authority's functions are to:

- receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and to
- investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.

169. The Authority's role on the completion of an investigation is to form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint.

THE AUTHORITY'S INVESTIGATION

170. As required under section 13 of the Independent Police Conduct Authority Act 1988, Police notified the Authority on 8 September 2015 of the shooting of Mr Smiler. The Authority immediately commenced an independent investigation.

171. The Authority visited the scene and spoke with several witnesses. The Authority interviewed Mr Smiler's mother, and the key officers involved.

172. The Authority also monitored the Police investigation throughout and reviewed the documentation produced by the Police investigation team. The Authority has viewed CCTV and cell phone footage of the incident.

ISSUES CONSIDERED

173. The Authority's investigation considered the following issues:

- 1) Did Police respond appropriately to information that Mr Smiler was missing?
- 2) Was the initial tactical response to Mr Smiler's actions properly considered and appropriate in the circumstances?

²¹ Section 20 of the Arms Act 1983.

- 3) Was the AOS Dog Handler justified in releasing his Police dog at Mr Smiler?
- 4) Were officers justified in shooting Mr Smiler?
- 5) Did Police comply with all requirements in respect of communications, and command and control during the incident?
- 6) Was all reasonable assistance given to Mr Smiler after he was shot?
- 7) Did Police follow post-shooting procedures appropriately?

The Authority's Findings

ISSUE 1: DID POLICE RESPOND APPROPRIATELY TO INFORMATION THAT MR SMILER WAS MISSING?

- 174. Mr Smiler's mother went to the Upper Hutt Police station at 10:15am on Tuesday 8 September to report that her son had not arrived at work as expected and could not be contacted, and that she had grave concerns for his safety because he had attempted suicide the previous evening (see paragraph 18).
- 175. In accordance with Police policy, the watch house officer took down all relevant information (including Mr Smiler's physical description, contact details, suspected movements, and emotional state). He also ensured that the photograph that Police had of Mr Smiler was a good likeness and could be used by officers looking for him. The watch house officer completed a Missing Person Report and ensured that the information was entered into the Police database.
- 176. The watch house officer checked his actions with his supervisor, Officer A. Officer A recognised the urgency of the situation and that there were genuine concerns for Mr Smiler's safety. She ensured that additional, relevant information was included in the Police database and that officers were dispatched immediately to look for Mr Smiler.
- 177. As described in paragraphs 21-22, Officer B immediately sent Officers C and D to look for Mr Smiler near the Hutt River. He also organised for Mr Smiler's cell phone signal to be checked, and he contacted the Lower Hutt sergeant when the results indicated that Mr Smiler had been near his workplace.
- 178. Police did not locate Mr Smiler. It was later established that he had travelled from Lower Hutt back to Upper Hutt early that morning.

| |
|---|
| FINDING |
| Police responded appropriately and proactively to information that Mr Smiler was missing. |

ISSUE 2: WAS THE INITIAL TACTICAL RESPONSE TO MR SMILER'S ACTIONS PROPERLY CONSIDERED AND APPROPRIATE IN THE CIRCUMSTANCES?

- 179. As described in paragraphs 30-34, Police received multiple calls about a person who was "shooting at people" in Upper Hutt McDonald's. The reports indicated that Mr Smiler had a rifle, and had shot at least one person inside the restaurant.
- 180. The situation that confronted Police was fast-moving, high-risk and urgent. The incident occurred at lunchtime in a busy restaurant in the central shopping area of Upper Hutt. Consequently, many people were exposed to the threat, and remained at risk throughout the

incident. The identity of the armed offender, as well as his intentions and motivations, were unknown to Police.

181. The standard Police practice for responding to an 'active shooter'²² is to cordon the area and verbally appeal to the offender in order to try to negotiate surrender (see paragraphs 272-274). However, the immediate danger that Mr Smiler posed to members of the public in McDonald's and nearby left Police with no option but to arm themselves, locate and confront Mr Smiler.
182. The shift commander understood that this was the required response, and, within the first five minutes of the incident, directed officers going towards central Upper Hutt to be armed and to acknowledge Police Fire Orders²³ (see paragraph 38).
183. The officers based at Upper Hutt Police station were less than 600 metres away from Upper Hutt McDonald's. Upon hearing about the developing incident, Officers B, C and D immediately armed themselves in a manner consistent with Police policy. They turned their minds to Fire Orders, and (with the exception of Officer D) donned ballistic body armour (see paragraphs 41-44).
184. Officer B assessed that he could not drive directly to the SFP without putting himself and his fellow officers in a dangerous position. His priority was to find Mr Smiler, and to protect the public who he believed were being shot at. On this basis, he made the decision to park his station wagon before reaching McDonald's, and to advance towards Mr Smiler on foot.
185. As the officers moved across the supermarket carpark, Mr Smiler shot at an officer in a patrol car and then shot directly at Officers B and D, before leaving McDonald's and moving into a shopping area. These actions increased the officers' perception of the threat level presented by Mr Smiler, and motivated them to continue to advance and eventually confront him, with their firearms drawn. By talking to Mr Smiler and holding his attention, Officer B was able to keep Mr Smiler contained within Wakefield Street with minimal force.
186. The radio commentary provided by Officers B, C and E during this period about Mr Smiler's location, actions and demeanour (see paragraphs 70, 80, and 97) allowed the officers who were responding to the incident to assess the threat posed by Mr Smiler and to start building an armed cordon in the streets around McDonald's.
187. The commentary also informed the AOS Dog Handler and AOS Officer 1 of the gravity of the unfolding situation. Both officers assessed that their specialist skills and expertise were urgently required, and consequently decided to respond immediately, despite being off-duty (see paragraph 107).
188. AOS Officer 1 appropriately judged that his close proximity to the scene meant that it was best for him to go there directly, rather than driving to the AOS base in Wellington to deploy with the

²² See paragraphs 272-274.

²³ See paragraphs 266-269.

squad. He told the Authority that this was a scenario and response that the AOS had previously discussed and agreed upon (see paragraph 113).

189. He also said that he was conscious that the officers who had made contact with the offender were “*reasonably junior*” and were dealing with an extremely dangerous situation. He knew that Mr Smiler was not complying with their instructions to surrender, and the rest of the AOS squad “*would be at least 30 minutes away from arriving.*”
190. Both AOS Officer 1 and the AOS Dog Handler made all reasonable efforts to appropriately equip and arm themselves (AOS Officer 1 by first going to Upper Hutt Police station) before going to the scene. For different reasons, both officers were without a portable radio when they arrived at the cordon point on Main Street. However, they attempted to communicate their presence and intentions over the radio (see paragraphs 116 and 122).
191. AOS Officer 1 and the AOS Dog Handler followed best practice by forming a team and attempting to establish Mr Smiler’s last known location before going towards McDonald’s.

FINDINGS

The only viable tactical response to Mr Smiler’s actions was for Police to arm themselves and confront Mr Smiler.

All officers followed Police procedures in arming themselves, and acknowledging Fire Orders. Officer B used communication to hold Mr Smiler’s attention and prevent him from leaving Wakefield Street.

AOS Officer 1 and the AOS Dog Handler recognised the extreme risks of the situation and responded while off-duty to protect the public and fellow officers.

AOS Officer 1’s decision to go directly to the incident, rather than to the AOS base, was justified in the circumstances.

AOS Officer 1 and the AOS Dog Handler made all reasonable efforts to appropriately equip themselves and to communicate their intended movements.

ISSUE 3: WAS THE AOS DOG HANDLER JUSTIFIED IN RELEASING HIS POLICE DOG AT MR SMILER?

192. Section 39 of the Crimes Act 1961 provide legal justification for Police to use reasonable force to arrest an offender. However, any force used must be the minimum necessary to achieve the objective, and reasonable under the circumstances as they believe them to be. The Police Tactical Options Framework guides Police in determining the appropriate level of force to use in certain situations (see paragraphs 258-265 for Law and Police General Guidelines on use of force).
193. Police may use Police dogs as a means of force to apprehend violent 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. See paragraphs 275-283 for relevant policy).

194. When the AOS Dog Handler reached the corner of Wakefield and Main Streets and saw Mr Smiler, his belief was that Mr Smiler posed the highest possible threat, and he needed to be apprehended. He had heard over the radio that Mr Smiler had already fired at Police, and that Officer B had been communicating with him for several minutes, but he was refusing to drop his weapon.
195. The AOS officers could not safely get sufficiently close enough to Mr Smiler to use a Taser to incapacitate him²⁴. This being the case, the AOS Dog Handler judged that the dog was the only less-than-lethal tactical option available to incapacitate Mr Smiler in the circumstances. The AOS Dog Handler believed that this would be effective, since the dog would be able to get to Mr Smiler before Mr Smiler could escape into the nearby shops.
196. The Authority accepts that the AOS Dog Handler was justified in releasing the Police dog at Mr Smiler, in an attempt to resolve the situation with minimal force. Because Mr Smiler was armed, it was too dangerous to warn Mr Smiler before releasing the Police dog.
197. The Authority accepts that the Police dog was removed from Mr Smiler as soon as the AOS Dog Handler was satisfied that he was no longer a threat.

FINDINGS

The AOS Dog Handler was justified in releasing the Police dog at Mr Smiler. This was the only viable, less-than-lethal tactical option available to Police in the circumstances.

The AOS Dog Handler removed the Police dog as soon as it was safe to do so.

ISSUE 4: WERE OFFICERS JUSTIFIED IN SHOOTING MR SMILER?

198. Sections 39 and 48 of the Crimes Act 1961 provides legal justification for Police to use reasonable force to arrest an offender or in defence of themselves or another (see paragraphs 258-259).
199. 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.

²⁴ The Taser operator needs to be within 2 - 4.5 metres of the target to effectively deploy it, due to the length of the wires attached to the probes that carry the electric current.

AOS Officer 1

200. When AOS Officer 1 confronted Mr Smiler, he knew that Mr Smiler had already fired at least once at Police, and fired shots inside McDonald's. He wasn't sure if people were injured and still inside the restaurant. He therefore believed that Mr Smiler posed a serious threat to himself, and the people around him.
201. AOS Officer 1 told the Authority that, after he challenged Mr Smiler to drop his firearm, within "*split seconds*" Mr Smiler started to raise the barrel of the rifle towards him and the AOS Dog Handler (see paragraph 134). He believed that Mr Smiler was going to shoot them, and he feared for their lives: "*I felt immediate threat of death to myself or [the AOS Dog Handler]*". AOS Officer 1 was not aware that the AOS Dog Handler had just released his dog.
202. The AOS Dog Handler also said that he saw Mr Smiler raise his rifle towards them, and had ducked behind the corner of the shop to remove himself from the line of fire.
203. AOS Officer 1 had no cover immediately available to him, so using a firearm was the only realistic tactical option available to protect the AOS Dog Handler and himself from being shot by Mr Smiler.
204. The Authority has watched cell phone footage of Mr Smiler in the moments before he was shot by Police (see paragraph 136). Mr Smiler can clearly be seen to raise his rifle to eye level, and aim it at the two officers.
205. This footage is different Mrs Y's recollection of events, that Mr Smiler was lowering the barrel of the rifle just before he was shot, and may have been aiming at the incoming Police dog rather than at the officers (see paragraph 143).
206. After viewing the footage, the Authority is satisfied that that the height at which Mr Smiler was aiming the rifle was reasonably interpreted by AOS Officer 1 and Officer B as towards the officers rather than towards the Police dog. In addition, the footage does not show that Mr Smiler adjusted his aim to follow the track of the running Police dog.
207. The Authority is satisfied that when AOS Officer 1 shot Mr Smiler, he posed an immediate threat of death or grievous bodily harm to him and the AOS Dog Handler.

Officer B

208. Officer B believed that Mr Smiler had shot and possibly killed at least one person inside McDonald's when he first responded to the dispatcher's radio call (see paragraph 40). As he went towards Wakefield Street and ultimately made contact with Mr Smiler, his perception of the threat increased. Having been fired upon by Mr Smiler from considerable distance, Officer B knew that Mr Smiler held a working, high-powered rifle and was prepared to shoot repeatedly at Police.
209. Officer B said that he didn't know Mr Smiler or what he was capable of, but he believed that Mr Smiler intended to use the firearm again. However, while Mr Smiler held the rifle with the barrel

pointing downwards, Officer B did not feel that Mr Smiler posed an “*immediate threat*” to him (see paragraphs 67 and 89). This being the case, Officer B focused on communicating with Mr Smiler to try to convince him to drop his rifle.

210. At approximately 12:57pm, Officer B saw that an armed officer and a dog handler had arrived at the opposite end of Wakefield Street, and had challenged Mr Smiler.
211. When he saw Mr Smiler start to raise the barrel of the rifle towards AOS Officer 1 and the AOS Dog Handler, he feared Mr Smiler was about to shoot them. He assessed that shooting Mr Smiler was the only realistic way to protect them. The shots fired by Officer B and AOS Officer 1 were simultaneous (see paragraph 142).
212. In the circumstances, Officer B was lawfully justified in using a firearm to try to prevent Mr Smiler from shooting AOS Officer 1 and the AOS Dog Handler.

FINDING

Both AOS Officer 1 and Officer B were justified in shooting Mr Smiler.

ISSUE 5: DID POLICE COMPLY WITH ALL REQUIREMENTS IN RESPECT OF COMMUNICATIONS, AND COMMAND AND CONTROL DURING THE INCIDENT?

213. Command and control is the exercise of authority and direction by a properly designated commander for the purpose of accomplishing a task. It includes responsibility for effectively controlling the available resources for that purpose.
214. The ‘Radio Protocols’ chapter of the Police Manual sets out Police communication requirements and incident control responsibilities (see paragraph 284-288). That policy makes clear that the communications centre shift commander is responsible for leading the overall Police response until such time as incident control is formally handed over to a suitable officer in the field.
215. It is best practice for the Incident Controller to stand back, usually at the SFP, and have oversight of the entire incident so that resources can be managed effectively and risks properly assessed. The Incident Controller has ultimate responsibility for all actions and decisions during the incident.
216. Throughout this short, fast-moving incident there were two different Incident Controllers, the shift commander followed by Officer G. They were supported by the District Command Centre, who took a strategic view of the unfolding scenario, and started to plan for what additional resources might be needed by Police.
217. Several officers also exercised command and control functions while directly confronting Mr Smiler.
218. The Authority has looked at whether all of these officers fulfilled their roles and responsibilities as part of the Police response.

Command and control during the engagement with Mr Smiler

219. The shift commander was responsible for controlling the overall Police response during the initial, critical phase of the incident (from the time that Mr Smiler was located and confronted, until just after Mr Smiler was shot by Police). The shift commander was the Incident Controller for approximately 21 minutes.
220. He told the Authority that, throughout this period, he believed that Mr Smiler had already shot at least one person inside McDonald's, and had shot at a Police officer in his patrol car (Officer B had not able to report the shots fired at himself and Officer D over the radio, so the shift commander was unaware of this). On the information available to him, the shift commander assessed that the threat to the public and Police was extremely high.
221. His first actions were to alert the AOS and, in accordance with standard practice, to direct all attending officers to arm themselves and to acknowledge their responsibilities under Police Fire Orders (see paragraph 38).
222. The shift commander then set the SFP at the intersection of Fergusson Drive and Exchange Street. This was in fact a poor choice, as it was natural for officers going to the SFP from Upper Hutt Police station to drive along Fergusson Drive, taking them directly past Mr Smiler's location.
223. Officers A and B realised the danger and parked or turned around before reaching McDonald's (see paragraphs 46 and 58). However, another officer responding from Upper Hutt Police station drove along Fergusson Drive, past McDonald's and was shot at by Mr Smiler (see paragraphs 27.2 and 49).
224. When speaking to the Authority, the shift commander accepted that the SFP was poorly placed. He explained that he was unfamiliar with Upper Hutt, and had checked the SFP's placement with other communications centre staff before radioing its location. He assumed that officers coming from the west (such as those travelling from Upper Hutt Police station) would drive to the SFP along Queens Street (which was one block north of where McDonald's was located).
225. The shift commander also commented that he expected to be advised by officers in the field if there was a problem with the location of the SFP. In fact, Officer B tried to do this but was unable to transmit due to heavy radio traffic (see paragraph 46).
226. Once the shift commander knew that Officer B and other officers had seen Mr Smiler and made contact with him, the shift commander said that his priority was to ensure that Mr Smiler remained contained in the area between Main Street and Wakefield Street. He told the Authority that radio transmissions indicated that a wider cordon was being established around this position, to protect the public and to ensure that Mr Smiler could not flee from Police. Consequently, his "*energy was concentrated*" on Mr Smiler's immediate location (see paragraph 75).
227. The information he received from officers at the scene (especially Officers B and C) told him that the threat posed by Mr Smiler was significant and increasing. Mr Smiler was wandering in and out of Main Street and was refusing to comply with Police instructions. Members of the public

were clearly still exposed to the threat, with many still trapped within the cordon and taking shelter in shops. This scenario prompted the shift commander to direct officers to urgently contain the area (see paragraphs 81-82).

228. The Authority is mindful that the shift commander was responding to a fast-paced and challenging event with limited information. While he was aware of Officer B's position and engagement with Mr Smiler, he had practically no information about AOS Dog Handler's and AOS Officer 1's intentions or progress towards Wakefield Street.
229. The shift commander said he was aware that a senior officer would be sent to the scene to take over as Incident Controller, as per policy (see paragraph 288).
230. On this particular day, Officer G was the closest officer with the requisite experience, and was directed to the scene by the Area Commander. Officer G immediately drove to Upper Hutt Police station to properly equip himself before making his way towards the scene. He arrived just after Mr Smiler was shot.
231. Officer A was aware that senior staff who would normally take command of critical incidents were not in Upper Hutt at the time of the incident. She knew that a senior officer might be required to take command of officers arriving at SFP (see paragraph 56), and so she took the proactive decision to drive to the SFP so she could undertake that role if necessary. However, soon after she arrived at the SFP, Mr Smiler was shot and most officers went directly towards the scene to assist.
232. Officers B and H were the most senior officers within the group of officers that made first contact with Mr Smiler. As such, they each took the role of forward commander²⁵ to implement the tactical response being directed and overseen by the shift commander (as Incident Controller).
233. Officer B took immediate responsibility for attempting to contain the risk posed by Mr Smiler. He properly prepared Officers C and D before going to the scene, was mindful of their safety and gave them appropriate instructions when contact was made with Mr Smiler. He astutely recognised his inability to take over the Incident Controller role at the scene, appreciating that it was more important for him to make contact with Mr Smiler (see paragraph 60).
234. When Officer H arrived, he seamlessly took over command of the officers who were challenging Mr Smiler. He ensured that Officers B and C were able to continue with their containment of Mr Smiler, while he and other armed officers planned to evacuate members of the public who were inside Dominos and exposed to immediate danger.

Command and control after Mr Smiler was shot

235. The shift commander was still in overall command of the incident when Mr Smiler was shot. Officer H maintained his command role at the scene, ensuring that first aid was being provided

²⁵ The forward commander is responsible for controlling the tactical response in the field, and ensuring that the tactics directed by the Incident Controller are implemented.

to Mr Smiler, and that McDonald's was searched for any additional offenders and for people with injuries.

- 236. Officer A arrived at Wakefield Street a couple of minutes after Mr Smiler was shot, and took over command at the scene for a short time until Officer G arrived. She assigned a detective sergeant to stay with Officer B until he could be taken away from the scene. This was important for Officer B's welfare, and for the integrity of the subsequent investigation.
- 237. Officer G arrived at the scene at about 1pm, and formally took over the Incident Controller role shortly afterwards. He told the Authority that his priority was to ensure that the incident scene and all evidence was preserved, so it could be handed over to the investigation team.
- 238. He was aware that Officers A and F (who had also arrived) were focussing their attention on cordoning the scene, as well as co-ordinating officers to search the surrounding shops and streets for any injured people. Officers were also directed to identify people who had witnessed events, so that statements could be taken.
- 239. The three officers regularly met at a central point to update each other and co-ordinate their decision-making.

FINDINGS

The shift commander exercised good command and control of the incident, given the extreme and challenging circumstances.

Officers G, A and F worked together to exercise appropriate command and control immediately after the shooting.

Officer B and Officer H were proactive in assuming responsibility for the immediate Police response, and demonstrated sound leadership and judgment in their decision-making.

ISSUE 6: WAS ALL REASONABLE ASSISTANCE GIVEN TO MR SMILER AFTER HE WAS SHOT?

- 240. Cell phone footage shows that officers immediately ran towards Mr Smiler after he was shot. They quickly established that Mr Smiler was no longer a threat, and so they immediately started to provide him with first aid.
- 241. CentComms had already notified the ambulance service about the incident, and an ambulance was immediately called to the scene. An off-duty paramedic at a cordon point was also brought forward to assist.
- 242. However, Mr Smiler's injuries were not survivable and he died at the scene.

FINDING

All reasonable assistance was provided to Mr Smiler after he was shot.

ISSUE 7: DID POLICE FOLLOW POST-SHOOTING PROCEDURES APPROPRIATELY?

- 243. Post-shooting procedures were appropriately followed as described in paragraphs 153-163.
- 244. While there is currently no policy requiring officers to submit to alcohol and drug testing, most officers consented to being tested. All relevant officers were tested for firearm residue.
- 245. Officer B and AOS Officer 1, as well as the other officers involved in the incident, undertook post-shooting interviews.

| |
|---|
| FINDING |
| Police undertook post-shooting interviews and testing in a manner consistent with policy. |

Conclusions

246. In summary, the Police response during this incident on 8 September 2015 was justified, immediate and effective. The Police officers who armed themselves and went towards Upper Hutt McDonald's did so at great personal risk, in order to protect the public. They believed that people in the restaurant had been shot. The bravery and professionalism of all the officers who responded on that day is acknowledged by the Authority.
247. The Authority particularly recognises the actions of the officers who confronted Mr Smiler. These officers actively sought out Mr Smiler, and put themselves in Mr Smiler's direct line of fire, aware that he was prepared to shoot at Police. It was due to the swift and professional response of these officers that the threat posed by Mr Smiler was able to be contained without injury to the public.
248. Mrs Y also attempted to defuse the situation, at significant risk to herself. She built a rapport with Mr Smiler, and tried to persuade him to put his rifle down. The Authority understands that Police are concerned about untrained members of the public intervening in volatile and dangerous situations such as this one, putting themselves and others at risk. However, the fact remains that Mrs Y's actions were well-intentioned, and brave in the circumstances.
249. The Authority has concluded that Police responded appropriately and proactively to the information that Mr Smiler was missing and that his family had concerns for his safety.
250. When the situation escalated and Police received 111 calls alerting them to the fact that Mr Smiler was "*shooting at people*" inside Upper Hutt McDonald's, the only viable tactical response was for Police to arm themselves and confront Mr Smiler.
251. The initial responders, Officers B, C and D, followed Police procedures in arming themselves, and acknowledging Fire Orders. Upon locating Mr Smiler in Wakefield Street, Officer B used communication to hold Mr Smiler's attention and prevent him from leaving the area.
252. The Authority has also concluded that AOS Officer 1 and the AOS Dog Handler recognised the extreme risks of the situation and responded while off-duty to protect the public and fellow officers. AOS Officer 1's decision to go directly to the incident, rather than to the AOS base, was justified in the circumstances.
253. AOS Officer 1 and the AOS Dog Handler made all reasonable efforts to appropriately equip themselves and to communicate their intended movements to CentComms. As required by policy, both officers turned their mind to Fire Orders when arming themselves.
254. Upon encountering Mr Smiler, the AOS Dog Handler was justified in releasing the Police dog at Mr Smiler. This was the only viable, less-than-lethal tactical option available to Police in the circumstances. Once Mr Smiler had been secured, the AOS Dog Handler removed the Police dog as soon as it was safe to do so.

255. The Authority has concluded that both AOS Officer 1 and Officer B were justified in shooting Mr Smiler, in the circumstances. All reasonable assistance was provided to Mr Smiler after he was shot, and post-shooting procedures were complied with.
256. From a communications perspective, the shift commander exercised good command and control of the incident, given the extreme and challenging circumstances.
257. In the Authority's view, Officers G, A and F worked together to exercise appropriate command and control immediately after the shooting. In addition, Officer B and Officer H were proactive in assuming responsibility for the immediate Police response, and demonstrated sound leadership and judgment in their decision-making.

A handwritten signature in black ink, appearing to read 'David Carruthers', written in a cursive style.

Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

6 September 2016

IPCA: 15-0484

Applicable Laws and Policies

Use of Force by Police

258. 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.”*
259. Section 48 of the Crimes Act 1961 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.”*
260. Section 62 of the Crimes Act 1961 makes a Police Officer criminally responsible for any excessive use of force.

General Guidelines on use of force

261. 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), pepper spray, batons, Police dogs, Tasers and firearms.
262. 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.
263. 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)).
264. A key part of an officer’s decision to decide when, how, and at what level to use force depends on the actions, 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.

265. 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 firearms

266. The Crimes Act provisions are mirrored in Police General Instruction F061 (Fire Orders) in the 'Police Firearms' chapter of the Police Manual. 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.
267. General Instruction F061 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 or in a less violent manner.
268. General Instruction F061 directs that an offender is not to be shot until all of the following conditions have been satisfied:
- *“they have first been asked to surrender (unless it is impractical and unsafe to ask them)*
 - *it is clear that cannot be disarmed or arrested without first being shot*
 - *further delay in apprehending the offender would be dangerous or impractical.”*
269. 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 Police issue notebook *“if time and circumstances permit”*.
270. Police policy also requires officers to notify their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms.
271. The Police Manual states that authorised ballistic body armour must be worn when a firearm is carried or when Police attend or expect to attend an armed incident.

Active shooter

272. An 'active shooter' is an armed offender who is either discharging shots with reckless disregard or purposeful intent, and poses an immediate and serious threat to life within a defined area.
273. When responding to an active shooter incident, if the actions of the active shooter permit, Police should:
- Take time to cordon the area;

- Contact specialist groups such as the AOS; and
- Adopt the wait and appeal role to negotiate surrender.

274. Deployment in response to an active shooter should be aimed at locating, and neutralising the threat. The immediate danger of casualties may require action beyond the traditional cordon and contain response. In some situations, Police must rapidly assess the situation and act quickly in order to save lives.

Use of Police dogs

General Instructions

275. A dog handler is personally responsible for any use of force by that dog.

276. Before releasing the dog, the handler must be satisfied that the use of force is justified under the circumstances, and must call on the offender to desist unless it is impractical or dangerous to do so.

277. The handler must also ensure that any force used by the dog is the minimum possible in the circumstances.

Manual of Best Practice

278. The Police *Manual of Best Practice* states that Police dogs may be used as a means of force to apprehend suspects and violent offenders who cannot be apprehended by other means.

279. Police dogs are trained to take controlled bites on the limbs and fleshy parts of the body in order to secure a hold on the suspect. Dog bites can cause damage to clothing, bruises, and more serious wounds.

280. Dogs cannot assess how much force is appropriate in a given situation. They may react independently according to instinct or training and should therefore be used as a last resort.

281. A handler using a dog must consider whether the use of force is justifiable and appropriate in the circumstances. They must also consider the possible consequences and whether there are other members of Police who could carry out the arrest.

282. Before releasing the dog, the handler should warn the suspect. However, in some circumstances – such as armed offender incidents – it may not be practical to warn the suspect.

283. Following apprehension, the dog should “*generally*” be removed as quickly as possible to avoid unnecessary injury.

Incident control and Communication

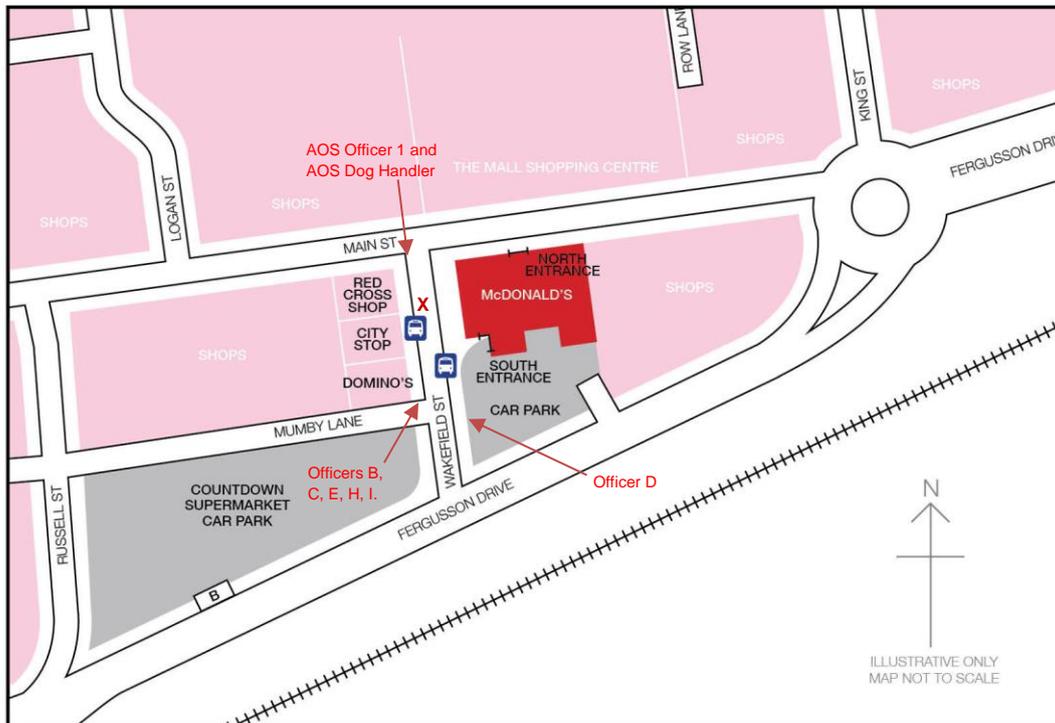
284. The ‘Radio Protocols’ chapter of the Police Manual sets out communication requirements and incident control responsibilities when Police are responding to incidents. The policy states that:

“An efficient and effective Police response to incidents requires that everyone involved in the process clearly understands their own role and responsibilities, and those of the other participants.”

285. Under the policy, the communications centre is responsible for the initial Police response to an incident. This responsibility to act as the ‘Incident Controller’ formally lies with the communications centre shift commander; although in practice a team leader or dispatcher is often delegated to take this role.
286. For as long as the communications centre retains the responsibility for incident control, officers at the scene must comply with the directives given by the shift commander (or by the delegated team leader or dispatcher). The shift commander makes the final decision on operational matters and *“is expected to actively manage, direct and supervise those staff responding to the incident, including initial tactics to be utilised”*.
287. The policy provides that the communications centre retains the responsibility for incident control until that role is formally passed to a suitable officer in the field, preferably ranked sergeant or above, who is willing to assume command. The policy sets out formal procedures for handing over this responsibility, and states that incident control will not be handed over to a field supervisor until he or she has arrived at a safe forward point, been fully briefed, and formed a tactical response plan.
288. Once incident control has passed to a field unit, the shift commander is still required to maintain active oversight of the Police response. This may include engagement with the Incident Controller over tactics and timing, peer support and mentoring, and advice about legislative powers.

Appendix

APPENDIX A – ILLUSTRATIVE MAP OF UPPER HUTT CBD



This map shows where the Police officers were in relation to Mr Smiler (denoted by the red 'X') when he was shot.

The rectangle marked 'B' denotes where Officer B parked his patrol car, before crossing the supermarket car park on foot.

Mr Smiler got off the bus at the bus stop outside the south entrance to McDonald's, before entering the restaurant.

About the Authority

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 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?

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.



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