

Non-fatal shooting in Grey Lynn justified

1. On Monday 18 July 2022, a Police officer in Grey Lynn shot a man (Mr X) who walked towards him with a shotgun. Mr X suffered injuries to his stomach, but survived.
2. Earlier, Mr X was dropped off outside a house in Grey Lynn by his mother. He had lived at the house with a family associate for almost 20 years but had recently been staying with his mother while recovering from serious injuries sustained in an assault earlier in the year.
3. Mr X stood on the footpath outside the house yelling threats. Over a period of ten minutes, he fired five shots from a shotgun¹ at the house.
4. Neighbours rang 111 to report the gunshots to Police. The Police helicopter (Eagle)² arrived and provided commentary to officers on the ground, who made their way towards Mr X.
5. After being challenged by Police, Mr X turned and walked towards an officer, carrying the shotgun in his right hand. The officer shot Mr X once with his Bushmaster M4 rifle. Police later cleared³ the house targeted by Mr X but no one was inside.
6. Police notified us of the shooting as required by section 13 of the Independent Police Conduct Authority Act 1988.⁴

¹ 12-gauge pump action shotgun.

² Eagle/Air Support Unit is a team of Police officers trained to provide air support activities from the Police's helicopter.

³ Clearance involves entry to a building to clear/ search it, confront any suspects/offenders, and rescue any people inside.

⁴ Section 13 says: "Where a Police employee acting in the execution of his or her duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner shall as soon as practicable give to the Authority a written notice setting out particulars of the incident in which the death or serious bodily harm was caused."

The Authority's Findings

Issue 1: Did Police manage the incident before the shooting appropriately?

Although the planned tactical responses to Mr X were sound, and on balance Police managed the incident appropriately, there was a lack of coordination and communication between the Shift Commander and Officer C.

Issue 2: Was Officer A justified in shooting Mr X?

Officer A was justified in shooting Mr X in self-defence.

Officer A could and should have more clearly identified himself as an armed Police officer.

Issue 3: Was Police policy followed appropriately after the shooting incident?

Officer A should not have been involved in entering and clearing the house targeted by Mr X.

There was confusion over Officer A's identity and this led to a delay in securing his rifle, which is not best practice.

The post-shooting actions of Officers B and C travelling together after the shooting, and later Officers A, B and C having a meeting together before their interviews, had the potential to breach Police policy.

Analysis of the Issues

ISSUE 1: DID POLICE MANAGE THE INCIDENT BEFORE THE SHOOTING APPROPRIATELY?

What happened before Mr X was shot?

7. Mr X fired the first two shots at the house at about 5.24pm and a third and fourth shot at about 5.25pm. A neighbour, Mr Y, shouted out for Mr X to stop and Mr X did not fire his fifth and final shot until about 5.34pm, although he continued yelling threats at the house.
8. From about 5.26pm, the Emergency Communications Centre (NorthComms) received nine '111 calls' reporting gunshots. The calls were from neighbours and a person in the nearby park. No calls were received from the house at which Mr X was shooting.
9. At about 5.30pm, NorthComms asked over the radio where officers wanted a Safe Forward Point (SFP)⁵ and said Mr X was "on foot". Officer C responded and outlined his intentions (see paragraph 19).

⁵ A SFP is a safe location near an incident, from which the forward operations can be supported.

10. Eagle arrived at about 5.32pm and provided commentary as the situation unfolded. Eagle also streamed footage of the incident to NorthComms. Two Sergeants, Officers A and B, and a Senior Sergeant, Officer C, were amongst officers who responded to the shooting.
11. Eagle captured footage of Mr X firing his fifth and final shot, of Officers A, B and C when they arrived at Mr X's location at about 5.35pm, and of Officer A shooting Mr X at about 5.36pm.

What did NorthComms staff communicate?

12. The lead dispatcher communicated the following information over the radio:
 - shots had been fired at a house;
 - the address and that the street is a dead end;
 - the weapon was a rifle (Eagle later broadcast that it was a shotgun);
 - a physical description of Mr X;
 - Mr X was on foot and appeared to be yelling at somebody inside the property who was yelling back;
 - Mr X was swaying and appeared agitated, possibly *"on something"*;
 - there were no reports of injury; and
 - Mr X had reloaded the weapon.
13. Mr X's name was partially disclosed during a call to Police, his details being recorded on a secondary event log that was cross-referenced with the event log being viewed by the lead dispatcher. The lead dispatcher did not have the opportunity, nor any reason, retrospectively to review the event log, which she was managing in real-time as the incident unfolded. In any event, it would not have been possible conclusively to establish Mr X's identity based on the limited information available. Consequently, Police did not miss an opportunity to share information about Mr X.

How did the Shift Commander respond?

14. The Shift Commander manages the response to an incident and is the initial Incident Controller until a suitable officer on the ground can be appointed to the role. When there is a serious incident, the 111 call-taker or dispatcher presses a button, which sends an alert notification to the Shift Commander's computer terminal.
15. At the start of this incident, the NorthComms Shift Commander (an Inspector) was not in the room, so did not see the notification on his computer screen. He returned after the Team Leader contacted him on his mobile telephone to alert him to the unfolding firearms incident. About five minutes had elapsed since the incident had first come to the notice of Police.

16. From about 5.31pm, the Shift Commander started reviewing the primary event log and was briefly updated by the lead dispatcher. The Shift Commander was told that:

- the District Command Centre (DCC)⁶ had been contacted with a view to deploying the Armed Offenders Squad (AOS)⁷. It was anticipated that it would take between 20-30 minutes for the AOS to deploy;
- Officer D, an acting Inspector, was en route to the incident (Officer D had also contacted the DCC about deploying the AOS);
- there were several reports of shots being fired but no injuries;
- Officers A, B and C were on their way to the incident; and
- Eagle was almost at the incident.

17. In response, the Shift Commander:

- instructed the lead dispatcher to make Officer C the Forward Commander⁸ (which she did over the radio at about 5.34pm);
- asked if a SFP was set (the lead dispatcher had communicated a location) and instructed a second dispatcher to send an ambulance to the SFP; and
- instructed staff to call neighbours and tell them to stay inside and keep away from the windows. Those still on 111 calls were told the same (although the Shift Commander and other NorthComms staff spoken to by the Authority thought that attempts had been made to contact the occupant of the targeted address, this does not appear to be the case. Ideally, a call should have been made to pass on the safety information shared with other neighbours. It may also have been possible to gather additional information about the unfolding event, as well as establish the number and condition of any occupants).

18. He weighed up the following risks:

- Mr X was firing shots in a public place and there was the possibility of death or serious injury if people came outside;
- there was not enough time to get AOS there (20-30 minutes); and
- Mr X was on foot outside the house and not contained, so a contact team could go forward to neutralise the threat.

⁶ The DCC 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.

⁷ AOS members deal with people who are, or are believed to be, armed and a danger to themselves, the public or police.

⁸ The officer responsible for controlling the tactical response in the field.

How did the Police response to Mr X unfold?

19. The lead dispatcher initially queried where officers wanted a SFP, indicating that Mr X was “on foot”. As Mr X was discharging shots and had the potential to relocate, and the situation was relatively dynamic, Officer C replied:

“Given that, [get] Eagle ASAP, to give us obs from overhead. All units armed. Will identify the direction in which Eagle’s seen this guy”.

20. Officer C told us that there was no need for a SFP because officers were already armed following a previous unrelated incident. He thought his transmission made clear that he wanted to ensure all officers were armed before making their way to Mr X’s general location. Officer C also said that his intention was to head towards Mr X’s location, assess the situation and then formulate an appropriate response, based on his observations and commentary provided by Eagle’s Tactical Flight Officer.
21. The Shift Commander was not in the room to hear Officer C’s brief broadcast and was not advised of Officer C’s intentions. Consequently, when he entered the room the Shift Commander requested that a SFP be set up and directed that an ambulance be sent there. Although it was a sound decision to create a safe staging area, the relevance of Officer C’s direction appears to have eluded the notice of NorthComms staff at this time.
22. At about 5.32pm, the lead dispatcher acknowledged a message from Eagle and asked if a specific location was “too close as a SFP”. Eagle did not respond to this query but continued to provide commentary.
23. About two minutes later, Officer C confirmed Mr X’s location with NorthComms. Officer C advised that he was in a nearby street⁹ and that he would head to Mr X’s location. Seconds later Eagle reported Mr X had fired a fifth shot at the house.
24. Officers A and B arrived in the vicinity of Officer C at around the time Officer C confirmed Mr X’s location with NorthComms. Officers A and B had, independently of Officer C, discussed options for dealing with Mr X. They agreed that it was necessary to go to Mr X’s location to contain him and gain control of the situation. This response to a threat like that posed by Mr X was a tactic Officers A, B and C had collectively considered prior to this incident (see paragraph 35), and was an approach considered by Officer C on this occasion, depending on the skillsets of those who were deployed. The movements of the officers were captured by Eagle and accompanied by commentary provided by its Tactical Flight Officer.
25. At about 5.35pm, the lead dispatcher again broadcast the SFP location after a Police unit asked for it to be repeated. This resulted in no comment from Officer C, who was focussed on coordinating the response to Mr X and believed that his movements, and those of Officers A and B, were being relayed in real time to NorthComms staff via an app on their mobility devices (see also paragraph 22).

⁹ About 200 metres from Mr X.

26. At about 5.36pm the Shift Commander saw Eagle footage of Officers A, B and C approaching Mr X. Unaware of who these officers were, or their intentions, he cut across the lead dispatcher and directed:

“Units hold in a group. Hold in a group till there’s more of you there. Stand by.”

27. The footage that was available to the Shift Commander was accompanied by a slight time delay (a consequence of the technology used to stream Eagle camera footage to the Emergency Communications Centre). Consequently, Mr X was shot by Officer A while the Shift Commander was mid-sentence.

What were the tactical approaches adopted by the Shift Commander and Officers A, B and C?

28. Of relevance to the approaches adopted by the Shift Commander and Officers A, B and C are the concepts of ‘active shooter’ and ‘active armed offender’. At the time of this event the definition of ‘active shooter’ had been supplanted by that of ‘active armed offender’.

29. ‘Police firearms policy’ from 2014 defined an *active shooter* as:

“An offender armed with a firearm who is either discharging shots with reckless disregard or purposeful intent, and poses an immediate and serious threat to life within a defined area”.

30. However, current Police policy¹⁰, in force at the time of this event, defines an *active armed offender* as:

“An armed offender or offenders who are actively causing the immediate death or serious injury of multiple victims. The situation is not contained and there is substantial risk of ongoing danger to other persons.”

31. The Authority has been advised that the move to this definition (formulated by the Australia-New Zealand Counter-Terrorism Committee) was prompted by mass-casualty events in overseas jurisdictions, where the mechanisms of harm were items other than firearms (e.g., vehicles and knives). Of note also, is consideration of an offender’s potential to cause harm (it would naturally be absurd to wait for casualties to be sustained before responding directly to a threat).

32. In respect of *active shooters*, policy directed that the following steps be observed, if the actions of the suspect permitted:

- *“take time to cordon the area*
- *contact specialist groups such as the Armed Offenders Squad or Special Tactics Group, and*
- *adopt the wait and appeal role to negotiate surrender.”*

¹⁰ AOS Manual of operating procedures – October 2015.

33. There was provision for a ‘contact team’ to locate, isolate and take action to thwart the life-threatening actions of the offender (considered by the Shift Commander – see paragraph 18), and recognition that *“the immediate danger of casualties may require action beyond the traditional cordon and contain response”*.
34. Similarly, *active armed offender* doctrine recognises that an immediate and proactive Police response may be necessary in situations where any delay in apprehending an armed offender would be extremely detrimental to public safety, or the Police members themselves. Where circumstances dictate, this approach takes precedence over the more time-intensive and methodical cordon, contain and appeal approach, and has been reinforced by events such as the 2019 Christchurch Mosque shootings.
35. An enhanced frontline training package, which is now being delivered to all workgroups within New Zealand Police, focuses on *active armed offenders* (as defined at paragraph 30) and the prescribed Police response to such incidents (see paragraph 34). Of note, Officer A described himself as a coach with responsibility for delivering this training to other frontline members of staff. Officer B had received this training a short time before this incident, while Officer C, although not a recipient of the training and relying on his understanding of an *active shooter*, was of the view that their objective was to *“quickly locate and stop the active shooter with no death or GBH to innocent people or Police.”* Officer C’s position, despite referencing an *active shooter*, aligns with the model tactical response to an *active armed offender*. Of additional relevance is the fact that Officers A, B and C had previously discussed how to respond to a situation like that presented by Mr X on this occasion, this information also being disseminated to members of their sections.
36. Concerning his considerations in respect of Mr X, the Shift Commander told the Authority:
- “Whilst [Mr X is] an active shooter it’s not the same as an active shooter with multiple casualties... So it’s high risk requiring an urgent response because of the potential of something going on, it’s not like an active armed shooter that we actually have to do immediately, so we could still stage, but the longer we delay the greater the risk something else might go wrong...We should still have staged...we had enough time to do that...But not much time.”*
37. Although he was not overseeing the incident at the time Officer C broadcast his intentions (see paragraph 19), the Shift Commander conceded that the approach articulated by Officer C was appropriate in the circumstances.

How was the decision made to confront Mr X?

38. In light of the active armed offender policy outlined above, Officers A and B resolved to go to Mr X’s location to contain him. Mr X had fired his shotgun in a built-up residential area, with a large park nearby, and Officer A believed that Mr X’s desire to damage something, or someone, was greater than his desire to get away. Officer A was also concerned about the threat to the general public and thought Mr X needed to be challenged and contained *“as quickly as possible”*. Officer B stated that it was not an option *“to just stay in the car and drive off to an SFP”*, while

Officer C told us it was “*imperative*” officers go forward and “*take the course of action that would keep people safe*”.

39. Although there was very little discussion between Officer C and Officers A and B at the time, either over the radio or in person at the scene, the officers moved to Mr X’s location quickly in accordance with a previously rehearsed plan of how to respond to an active armed offender (see paragraph 35). Due to the immediacy of the threat posed by Mr X, Officer C deemed other approaches, such as cordoning, containing and appealing to Mr X, or deploying a dog, as unsuitable. Officer C was also of the view that there was insufficient time to wait for AOS to be deployed.

What was the Authority’s assessment of initial Police decision-making?

40. We accept that Mr X met the definition of an active armed offender (see paragraph 30) and that Police were justified in locating, isolating and minimising the threat that he posed.
41. We recognise that the Shift Commander was entitled to a break and could not have anticipated an incident of this nature occurring in his absence. We are also aware that a significant proportion of the Shift Commander’s section was absent due to illness, with positions being backfilled by other members of staff, some of whom had relatively limited Emergency Communications Centre (ECC) experience. These circumstances likely led to a delay in the effective oversight of this matter, but it is apparent that the Shift Commander sought to manage this rapidly unfolding event as effectively as possible upon his return to the ECC.
42. However, it appears that there was not a coordinated, collectively understood tactical approach to Mr X, which highlights the importance of rolling out relevant training to all Police workgroups, so that consistent approaches are adopted by frontline responders and Emergency Communications Centre staff. Ideally, in his capacity as Incident Controller, the Shift Commander should have endeavoured to coordinate frontline units at the earliest opportunity, or initiated dialogue with the Forward Commander (Officer C) to formalise a widely understood plan. However, we accept that this was a complex event that had progressed in the Shift Commander’s absence, with extended transmissions by Eagle limiting opportunities for others to broadcast.

FINDINGS ON ISSUE 1

Although the planned tactical responses to Mr X were sound, and on balance Police managed the incident appropriately, there was a lack of coordination and communication between the Shift Commander and Officer C.

ISSUE 2: WAS OFFICER A JUSTIFIED IN SHOOTING MR X?

What happened when Officers A and B arrived?

43. At about 5.35pm, Officers A and B’s car arrived at the same time as Officer C’s. Both cars stopped at the end of the road and the officers got out. Officers A and B spoke briefly, then Officer B ran

to Officer C and spoke briefly to him. Officer B returned to his car and moved further down the street, closer to Mr X (as suggested by Eagle), while Officers A and C ran towards Mr X's location outside the house.

44. The road on which the house is located continues at a 90-degree angle to the right (north) relative to the officers' direction of travel. After about 45 metres the road immediately turns back on itself, continuing for another 55 metres in a southerly direction. This stretch of road is parallel to and situated around two metres below the initial section of road. A gentle, bush-clad incline separates the parallel sections of road. Officers A, B and C were therefore at a higher elevation than Mr X when they entered the road.
45. Officer A was ahead of Officer C. They ran around the 90-degree bend and towards three parked cars that Eagle suggested would be good for cover (the cars being located on the nearside of the street at the top of the bush-clad incline).
46. Eagle commented that if the officers went to the parked cars they would see Mr X *"down past the bush on the far side of them"*. At this stage Officer A was expecting Mr X to be ahead of him on the far side of the bush, whereas Mr X was in fact much closer to and to the left of Officer A, on the opposite side of the bush-covered embankment.
47. Officer A was surprised and took cover behind the second parked car, pointing his gun at Mr X, while Officer C took cover behind the first car. Officer A told us he challenged Mr X saying: *"armed Police"* and either *"show me your hands"* or *"don't move"*. Officer C also responded and told us he thinks he said *"Armed police. Drop the gun"* on two occasions.
48. Mr X says he just heard instructions to drop his gun and turned and walked towards the person to see who it was. Eagle footage shows Mr X took four steps into the road, towards Officer A. He swayed as he walked forward and the shotgun moved with the motion of his walk. At about 5.36pm, Officer A shot Mr X once in self-defence. About 6 seconds had elapsed since Officer A first challenged Mr X.
49. Mr X was shot in the stomach. Officers provided first aid and requested an ambulance, which arrived at about 5.48pm (about ten minutes after the shooting). The ambulance took Mr X to hospital where he had surgery and survived.
50. Mr X told us he was not going to listen to the Police and *"there wasn't any way, any way, they was gonna get me to release the gun"*, although he told us he had no intention of shooting Police. Police had not identified Mr X at this time and were not aware of his physical limitations.¹¹

Did Officer A identify himself as armed Police to Mr X?

51. Officer A believes he said *"armed Police"*. Officer A told us Mr X would have been aware Police were either there or about to arrive because Eagle was in the sky nearby. Mr X was aware of the helicopter and had waved to it.

¹¹ He could not lift the shotgun with one hand.

52. Officers B and C cannot remember the specific words Officer A used but recall it was words to the effect of “armed police, put the gun down”. Three witnesses remembered hearing Police identify themselves as Police or armed Police. Another three witnesses did not recall hearing this.
53. We reviewed CCTV footage provided by a neighbour. This contains audio of Mr X being challenged by Police: “Oi! Show me your hands. Show me your hands! Put it down! Put it down!”.
54. We consider Officer A followed Police policy by asking Mr X to surrender.¹² We would however have expected Officer A to have identified himself more clearly as an armed Police officer, so that it would have been more obvious to Mr X exactly who was giving him instructions (Mr X told us that he was unsure who was challenging him, prompting him to walk towards the voice to find out).

What are the possible justifications for Officer A’s use of force in these circumstances?

55. The Crimes Act 1961 provides legal justification for using force in certain circumstances:
- a) Section 39 empowers Police to use “such force as may be necessary” to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process.
 - b) Section 40 empowers Police to use “such force as may be necessary” to prevent the escape of someone who takes flight to avoid arrest.
 - c) Section 48 provides that any person is justified in using “reasonable” force in defence of themselves or another.
56. Section 39 and 40 do not apply as Mr X was not resisting arrest or fleeing to avoid arrest at the time. We therefore focus on section 48.

Was Officer A legally justified in using force against Mr X to defend himself or another?

57. Section 48 of the Crimes Act provides that any person, including a Police officer, is legally justified in using reasonable force in defence of themselves or another.
58. An assessment under section 48 involves three questions:
- a) What were the circumstances as the officer believed them to be? (a subjective test);
 - b) Was the officer’s use of force for the purpose of defending himself or another? (a subjective test); and
 - c) Was the officer’s use of force against Mr X reasonable in the circumstances as the officer believed them to be? (an objective test).

¹² The Police firearms policy on communication states an offender “must have first been asked to surrender (unless it is impractical or unsafe to do so).”

What did Officer A believe the circumstances to be?

59. Officer A, an experienced officer and AOS trained, described the circumstances as he believed them to be:

- he thought Mr X was further down the road:

“He is literally not where I expected him to be and that puts me thinking differently... It unfolded really quickly... in the half a second it took me to pan to the left I still thought he was down here... it surprised me that he was where he was ... all my forward planning was around him being down this way. He was now extremely close to me.”

- he was exposed with no cover between two cars and *“didn’t want to be shot in the face”*;
- Mr X was close and getting closer, so the threat of serious injury or death was *“significant”*;
- Mr X was puffing up and walking towards him in a way that appeared aggressive;
- he had *“no conscious appreciation”* that the road he was on was two metres above Mr X;
- Mr X started to move the shotgun up, and *“it certainly wasn’t pointing dead at the ground anymore”*;
- nothing Mr X did suggested he would put his shotgun down;¹³
- Mr X had fired the shotgun, with the last shot fired about the time they arrived;
- he could not recall how Mr X was holding the shotgun, but believed it was in one hand;
- it all happened quickly;
- Mr X did not say anything but was not following Police instructions; and
- he had no other information on Mr X, just a physical description.

60. Officer A says he would not have fired his rifle if Mr X had kept his shotgun pointing directly at the ground:

“The shotgun started to come up, at that point, at that range that’s when I made the decision to shoot.”

61. The following information contradicts Officer A’s belief of the circumstances:

- a) Eagle footage; and
- b) the two-metre elevation of the road above Mr X’s location.

¹³ Mr X told us he would not give up his shotgun to Police.

62. Officer A's belief that Mr X was starting to raise the shotgun is supported by a civilian witness, Mr Y, and Officer B.¹⁴ Mr Y stated he saw Mr X raise the shotgun with both hands and point it directly at the officer, whereas Officer B recalls *"the bottom end of the shotgun coming up, tracking vertically kind of towards where [Officers A and C] were"* in what he calls *"a purposeful movement"*.
63. The Eagle footage shows Mr X took four steps towards Officer A, but had the shotgun pointing to the ground, held in his right hand by the grip. The shotgun is not raised, although we accept that it moved back and forth slightly as a consequence of Mr X's ambling gait. While we acknowledge that Eagle was operating at altitude and some lateral distance from Mr X, in our view, the footage cannot be reconciled with the officer's recollection.
64. Officer A watched the footage and told us he believed *"at the time on that night [Mr X] was raising the firearm up ... it's not gonna change what I thought at that time."* He says Mr X was advancing towards him, starting to bring the shotgun up and *"at that point I've got less than a second to react to that"*.
65. Officer A also believed he was exposed with no cover. Eagle footage shows he had some cover behind the front driver's side pillar of the second car on the street. Officer A was surprised when he saw the footage and says he genuinely thought he was between two cars and exposed *"to a man that's advancing on me and bringing a shotgun up"*. On seeing his position behind the car he commented his upper body and face were still exposed.
66. Officer A's elevated position relative to Mr X meant that Mr X would have needed to raise his shotgun above the horizontal to hit Officer A. However, Officer A says he had no conscious appreciation he was on ground higher than Mr X, describing the slope as gradual over the distance, and when he was crossing the ground, he did not feel like he was going downhill.
67. Officer A says he believed Mr X was raising his shotgun to shoot him and he felt exposed with no cover, and his actions were consistent with that belief. Events happened quickly, with Officer A surprised when Mr X was standing closer to him and in a different location than he had planned for. It was a high-stress situation, with Mr X only eight metres away with a loaded shotgun. We consider it is likely that in the stress of the moment Officer A's perception was mistaken regarding Mr X raising the shotgun, the slope of the land, and the cover he had. However, we accept unequivocally that Officer A held those beliefs and considered the threat was real and imminent.

Was Officer A's use of force for the purpose of defending himself or another?

68. We also accept Officer A genuinely believed Mr X posed a real and imminent threat and used force to defend himself (and Officer C who was close to him).

Was Officer A's use of force against Mr X reasonable in the circumstances as he believed them to be?

69. We accept pepper spray and Taser were not options in the circumstances.

¹⁴ Officer C was focussed on the optical sight of his rifle at that time and does not recall Mr X's hand position.

70. Officer A did not want to remain at the location from where Officer C had previously contacted NorthComms (see paragraph 23), as it would have taken time to cover the intervening distance and he was concerned Mr X could access any of the neighbouring properties.
71. He considered approaching Mr X and observing him, but felt it was better to challenge Mr X and give him the option to *“just put his gun down”*. Officer A was closer to Mr X than he expected, and it was reasonable that he challenged Mr X.
72. When challenged by officers, Mr X did not put his shotgun down and surrender. Instead, he took four steps towards Officer A, with a loaded shotgun in his hand. Officer A knew Mr X had fired shots into the house and had fired a shot only two minutes before, so considered him an active threat.
73. At this time, Mr X was only eight metres away from the officer and walking closer. Officer A believed that, in order for Mr X to hit and kill him or a colleague, he did not necessarily have to aim the shotgun. In any event, he told us that it takes less than a second to bring a weapon up to take a shot, saying *“[a]ction always beats reaction”*.
74. In our assessment, Officer A’s use of force was reasonable in the circumstances as he believed them to be. We accept the force used was proportionate to the level of threat posed. We therefore consider Officer A’s use of force in self-defence was justified.

FINDINGS ON ISSUE 2

Officer A was justified in shooting Mr X in self-defence.

Officer A could and should have more clearly identified himself as an armed Police officer.

ISSUE 3: WAS POLICE POLICY FOLLOWED APPROPRIATELY AFTER THE SHOOTING INCIDENT?

What happened after Mr X was shot?

75. At about 5.44pm, Officer E (a Detective Sergeant) arrived at the scene and established Mr X had been shot once by an officer. He managed initial enquiries and took photos of the scene while officers entered the house to clear it. At about 5.48pm, Officer E phoned a Detective Senior Sergeant to advise her of the circumstances.
76. The ambulance took Mr X to hospital at 5.56pm, and about this time, Officer E appointed an officer to be in charge of the scene and Mr X’s gun was made safe. At 5.59pm Officer C briefed Officer E on the identity of the involved officers. Shortly after this, at about 6.02pm, Officer D (an Acting Inspector) took over as the Incident Controller.

Was it appropriate for Officer A to be involved in the house clearance?

77. At about 5.45pm, Officer A led a team (including Officer B) to enter the house and check for casualties and other offenders.¹⁵ The clearance team initially voice appealed to any potential occupants of the house, before entering the house about nine minutes after Mr X was shot. No one was found. While we accept it was tactically appropriate for Police to clear the house, as the officer who shot Mr X, Officer A should have been relieved of further duty and his firearm secured.
78. Officer C (Forward Commander) and Officer E (managing initial enquiries at the scene) were not concerned Officer A was involved in the clearance. Officer C says it was *“the most sensible and pragmatic thing in the circumstances”*, as Officer A was the most appropriately trained and experienced person. Officer E only found out Officer A fired the shot during the house clearance, but says he was not concerned because he would secure the rifle after the clearance.
79. Officer D (Incident Controller) has a different view. He says he rang Officer C and after being told Officer A was clearing the house said: *“that officer needs to be out of there”*. He told us his main concern was Officer A’s well-being and possible state of mind after the shooting. Policy¹⁶ was not followed as Officer A should have been removed from the scene *“as soon as possible”* and his rifle secured and made safe *“as soon as practicable”* for evidential purposes.

Was the identity of Officer A adequately communicated?

80. Police policy¹⁶ states the Incident Controller must ensure steps are taken to protect employees by using alpha codes instead of names during investigations and removing involved employees from the scene as soon as possible.
81. Officers A, B, C, D and E were standing in a group at the scene. At about 6.09pm, Officer E identified to the group which officer was the shooter. Officer D asked Officer A if he was OK and then asked Officer E to assign an alpha code to protect the officer’s identity.
82. Officer E asked another officer at the scene, Officer F, to be the Exhibits Officer and follow the officer who shot Mr X back to the Police station and secure his rifle as evidence. Officer E says he *“touched [Officer A’s] shoulder and said: ‘This is Constable A.’”* Officer D recalls Officer E pointing to Officer A.
83. It was dusk and getting dark. Officer F says that when Officer E gestured towards Officer A she began to say Officer A’s name, as he was known to her. However, Officer E cut her off and repeated: *“Constable A”*, which caused her to doubt whether the officer she thought had been identified as Officer A was in fact Officer A. Officer F told the Authority that she did not want to annoy more experienced officers at the scene so did not seek confirmation as to Officer A’s

¹⁵ Section 14 of the Search and Surveillance Act 2012 permits officers to enter a place when they have reasonable grounds to suspect that there is a risk to the life or safety of any person that requires an emergency response.

¹⁶ ‘Investigation of critical incidents’ policy.

identity. Officer F did not see Officer A leave the scene, but when she saw Officer B leaving with a senior officer (Officer C) she mistakenly believed that Officer B was Officer A.

84. It is unclear whether the identity of Officer A was miscommunicated by Officer E or misinterpreted by Officer F, but it appears to us to be worth noting that Officer F was initially unaware that three officers had confronted Mr X and that she was required to conduct post-shooting procedures in respect of them all (e.g., seize and document firearms and other appointments). We consider Officer E followed policy to protect the identity of the officers. However, obviously, there is a need for care when assigning alpha codes at the start of an investigation, for staff to speak up if they are unsure, and for Police to ensure that junior members feel empowered to ask questions where any doubt or uncertainty exists.

Were procedures after the shooting delayed?

85. Officer F followed Officers B and C to the Police station. Officer A had travelled back in a different car with Officer G (a Sergeant). Arriving at about 6.24pm, Officer F secured Officer B's rifle after he unloaded it. Soon after, Officer F went to a room where Officers A, B and C and the Critical Incident Liaison Officer (CILO),¹⁷ were waiting and secured Officer B's vest and the equipment he was carrying.
86. Officer F treated Officer B as the shooter until about 8.25pm when Officer G asked her when she was coming to collect Officer A's rifle, vest and equipment. Officer G then took her to Officer A in the AOS squad room, where Officers A, B and C, the CILO and a buddy for Officer A (Officer H, a Senior Sergeant) were. It was at this point the CILO told her there were three officers involved.
87. We are concerned about the delay in correctly identifying Officer A, although we accept it did not affect the outcome of the Police investigation. It was over three hours after the shooting that Officer F focused on Officer A's rifle and equipment and did a gunshot-residue test. Once she was aware of the other two officers having been involved, she also took photos of their equipment.

Was Officer A's rifle appropriately managed?

88. Officer A travelled back to the Police station with his rifle and Glock pistol still in the action state.¹⁸ He says he put his rifle down but kept control of it.
89. After about two hours at the Police station, the officers moved rooms to the AOS squad room. It was decided Officer A would take his firearms out of the action state and into the load state in the vehicle bay by the AOS squad room, supervised by the CILO. The firearms were then put on a bench in the AOS squad room.
90. The CILO and Officer H kept an eye on Officer A's rifle for chain of custody¹⁹, until Officer F secured it at about 8.30pm. The rifle was later sent to the Police armoury for examination.

¹⁷ A CILO supports the involved officers and is the primary point of contact between the Police investigation and the officers.

¹⁸ When the firearm is ready to fire, ammunition is in the chamber of the firearm not just loaded in the magazine.

¹⁹ The order in which evidence is handled and controlled to ensure an unbroken chain of continuity.

91. Police policy¹⁶ states firearms used in a critical incident should be made safe as soon as practicable and secured to maintain the chain of custody of the firearm exhibit. Although it had no discernible effect in this case, the delay in seizing Officer A's rifle could have had an adverse impact on the integrity of the investigation. The delay included Officer A clearing the house instead of being removed from duty, and the misidentification of the officer who shot Mr X. This meant Officer F did not secure Officer A's rifle until over three hours after the incident.

Did Officers A, B and C undergo alcohol and drug testing?

92. The Police's 'Drug and Alcohol' policy says that a Police employee directly involved in a critical incident should be tested for drugs and alcohol as soon as reasonably practicable after the event. Tests were completed in respect of Officers A, B and C a short time after they returned to Auckland Central Police Station. All officers tested negative.

Were processes adequate to prevent the cross-contamination of evidence?

93. Police policy¹⁶ states directly involved employees are not to discuss the incident with each other prior to interview to ensure their account of events is not cross-contaminated. There were two occasions that the Authority feels could have had the potential, albeit unwittingly, to undermine this policy:

- 1) Officers B and C driving together from the scene to the Auckland Central Police station.

Officer E says there was a brief discussion with Officer D on how best to transport involved officers back to the Police station to protect their privacy. However, we are concerned two involved officers were together and unsupervised during the car ride back to the Police station.

- 2) The CILO bringing Officers A, B and C together for a meeting at a café before their Police interviews.

We acknowledge the meeting was intended to support the welfare of the officers and they are clear they did not discuss the case. However, we are concerned about this practice and raised it with Police. We note on 28 August 2022, Police emailed all CILOs advising them to stop the practice of arranging a pre-interview meeting with the involved officers.

94. Both situations risked cross-contaminating the evidence, or a perception of this, which is a reputational risk to Police.

FINDINGS ON ISSUE 3

Officer A should not have been involved in entering and clearing the house targeted by Mr X.

There was confusion over Officer A's identity and this led to a delay in securing his rifle, which is not best practice.

The post-shooting actions of Officers B and C travelling together after the shooting, and later Officers A, B and C having a meeting together before their interviews, had the potential to breach Police policy.

Recommendations

95. Further to paragraph 54, it is not a requirement of current firearms policy for armed Police officers to identify themselves as such when challenging offenders. We think that this is clearly a desirable practice, where it is practicable to do so, and firearms policy should be amended accordingly.

Subsequent Police Actions

96. Lessons identified from this event have been incorporated into an enhanced command and control training package, which has been delivered to all the communicators and dispatchers at the Northern Emergency Communications Centre. In addition, a two-day command and control training package has been delivered to all section managers, team leaders and acting team leaders, with this training being rolled out to other ECCs from August 2022.
97. An amended aide-memoire, reflecting learnings from this and other critical incidents, is now available to Shift Commanders at all ECCs. This details the actions to be taken by the Shift Commander during an Active Armed Offender event, as well as outlining the role of the Forward Commander and tactical matters that should be taken into consideration.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

20 August 2024

IPCA: 22-14385

Appendix – Laws and Policies

LAW

Crimes Act 1961

Law on the use of force

98. Section 48 of the Crimes Act 1961 says:

“Self-defence and defence of another

(1) *Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.”*

POLICY

‘Police firearms’ policy

99. The New Zealand Police are not routinely armed. As such, it is recognised that firearms need to be made available for deployment in such a way that they are accessible, depending on the situation.

100. Employees who carry firearms because their assessment of a situation is that it is in, or likely to escalate to be within, the death/grievous bodily harm range as specified by the Tactical Options Framework must advise their immediate supervisor and the Police Communications Centre of their decision to deploy with firearms as soon as practicable.

101. With the exception of specialist groups, employees must wear ballistic body armour when deploying to an incident where they believe firearms are or could be present. This includes circumstances where routine carriage of firearms has been authorised in response to a specific threat.

102. When dealing with an armed offender or an offender believed to be armed, these basic principles apply:

- An ongoing risk assessment should be conducted during the course of an incident.
- It is better to take the matter too seriously than too lightly.
- Caution is not cowardice.
- When the offender's actions permit, focus on de-escalation, communication, and prevention, cordon the area, and adopt the wait and appeal role in order to negotiate a surrender.
- Never go unnecessarily into danger. However, if the offender is acting in a way that makes casualties likely, act immediately to prevent this.

- Treat all armed offenders, or offenders believed to be armed, as dangerous and hostile unless there is definite evidence to the contrary.

103. 'Fire Orders' are operationally specific instructions on the circumstances in which Police employees may use firearms.

104. Every Police employee issued with a firearm is personally responsible for ensuring they are thoroughly conversant with relevant law, particularly sections 39, 40, 41, 48, and 62 of the Crimes Act 1961. Any employee who fires a shot must be personally satisfied through their perceived cumulative assessment that there exists justification for doing so.

105. An offender must not be shot without first considering communication (asking them to surrender) unless it impractical or unsafe to do so. Officers must consider where there are less violent alternatives and whether any further delay in apprehending the offender would be dangerous or impractical.

Discharge of Police firearms

106. Where an incident involving death or injury has been caused through the discharge of a firearm by a Police employee or when an employee has fired shots that could have caused death or injury to any person, the incident controller present or the person appointed to do so must:

1. take control of the scene
2. ensure first aid is rendered
3. manage the scene according to the principles contained in the 'Investigation of critical incidents' chapter
4. inform the District Commander, who in turn will initiate alcohol and drug testing of employees involved in the shooting in accordance with the 'Police drug and alcohol policy'.

'Investigation of critical incidents' policy

Post incident briefing on handover

107. "When establishing and carrying out investigations into critical incidents, Police will:

...

- direct involved employees not to discuss the incident with each other prior to interview to ensure their account of events is not cross-contaminated
- use alpha codes to protect employees' identities during investigations and seek advice on how to maintain anonymity in subsequent proceedings
- make firearms used in a critical incident safe as soon as practicable and maintain the integrity of the firearm exhibit...."

108. Care must be taken to ensure this information [provided by the Incident Controller/Tactical Commander to the Senior Investigating Officer for post incident briefing] is obtained by the Incident Controller or Tactical Commander in such a way that:

- integrity of the scene is maintained
- accounts given by employees are not cross-contaminated

Initial action at the scene following a critical incident to protect identity

109. The Incident Controller or Tactical Commander must ensure steps are taken to protect the identity of the involved employee. This may include having them removed from the scene as soon as possible. The Incident Controller or Tactical Commander must remind all employees of the need to protect the identity of involved employees.

Seizure of firearms

110. Any firearm(s) used in a critical incident must be made safe as soon as practicable. The integrity of the firearm exhibit must be maintained. The state of the firearm must be verified and recorded by a person other than the person who discharged the firearm. Any actions taken to make the firearm safe or any other dealings with the firearm must also be recorded. The firearm(s) used in the critical incident must be handed to the SIO, or a person appointed by them, as soon as reasonably practicable. ... Where a delay may occur, advice should be sought from the SIO and agreement reached as to how any exhibits will be dealt with.

'Use of force' policy

111. The Police's '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, retrain a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, tasers and firearms.

112. Police policy provides a Tactical Options Framework (TOF) 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 assessment as the TENR (Threat, Exposure, Necessity and Response).

113. 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).

114. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are; cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
115. 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.

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.

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Kenneth Johnston KC.

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

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

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

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

THIS REPORT

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



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