



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Did officer use excessive force in fatally shooting Kaoss Price in New Plymouth?

1. On 16 April 2022, Police fatally shot Kaoss Price after he rammed a Police dog van and attempted to hijack a civilian motor vehicle. Police notified the Authority of this incident as required by section 13 of the Independent Police Conduct Authority Act 1988.¹
2. Just before 9.30pm, Mr Price was driving his car in convoy with a friend, Ms Y, heading north of New Plymouth on State Highway 3. When Police pulled Ms Y over, Mr Price drove away and then returned and sideswiped the dog van, immobilising his own car. Mr Price then ran from his car and attempted to hijack another car.
3. About three minutes and thirty seconds elapsed from the time the officers signalled Ms Y to stop to when Mr Price was fatally shot.
4. During this event, an officer fired their pistol at Mr Price a total of six times: as Mr Price sideswiped the dog van; as he ran from his car; and as he was attempting to hijack a motorist's car. Mr Price was also tasered and bitten by a Police dog.
5. We found that the fatal shot was excessive force on the balance of probabilities, but we do not recommend Police lay criminal charges or commence an employment process against the officer. The reasons for this are outlined in Issue 4, from paragraph 119.

¹ 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 Officers A and B make appropriate decisions at the beginning of their shift?

Officers A and B were justified in arming themselves.

Neither officer advised Police Communications or their supervisor that they were armed, as policy requires.

Issue 2: Did Officer A use excessive force in shooting at Mr Price when he sideswiped the dog van?

Officer A was justified in shooting at Mr Price in defence of themselves and Officer B, by which we mean that in our assessment there are no grounds for initiating criminal proceedings or an employment process.

Issue 3: Did Officer A use excessive force in shooting at Mr Price as he ran from his vehicle?

Officer A was justified in shooting at Mr Price in defence of others, by which we mean that in our assessment there are no grounds for initiating criminal proceedings or an employment process.

Issue 4: Did Officer A use excessive force in shooting Mr Price as he attempted to hijack Mr V's vehicle?

The force Officer A used in shooting and killing Mr Price was excessive. However, there are no grounds for laying criminal charges. While excessive use of force constitutes serious misconduct under the Police Code of Conduct, in the circumstances of this case, we do not recommend Police commence an employment process.

Issue 5: Did the deployment (by Officer A) of a dog and (by Officer B) of a Taser constitute excessive force?

The deployment of both the dog and the Taser was justified, by which we mean that in our assessment there are no grounds for initiating criminal proceedings or an employment process.

Analysis of the Issues

HOW DO WE ASSESS CONDUCT?

6. The Authority's role is to oversee Police. Its jurisdiction is set out most clearly in sections 27 and 28 of the Independent Police Conduct Authority Act 1988. What those provisions say about our role in relation to investigations we undertake and those undertaken by Police is that the Authority:

“... shall form an opinion on whether any decision, recommendation, act, omission, conduct, policy, practice or procedure which was the subject matter of the investigation was contrary to law, unreasonable, unjustified, unfair, or undesirable.”

7. Having formed its opinion, the Authority must convey that – together with reasons – to Police, and may, in doing so, make recommendations to Police, including that disciplinary or criminal proceedings be considered or initiated against any Police employee.
8. In reaching a view as to whether to recommend disciplinary proceedings, the Authority makes its assessment having regard to the civil standard of proof (on the balance of probabilities), whereas, in reaching a view as to whether to recommend criminal proceedings, it does so having regard to the criminal standard (beyond reasonable doubt), and the Solicitor-General’s Prosecution Guidelines, the primary focus of which is the public interest.
9. In a use of force case such as this, very often the central issue is whether an officer who has used force can rely on one of the defences in Part 3 of the Crimes Act 1961, or one of the remaining common law defences such as necessity, to justify his or her actions which might otherwise be unlawful.
10. In our reports, we use the terms ‘justified’, ‘not justified’ and ‘unjustified’. The term *“justified”* is defined in section 2 of the Crimes Act 1961 as meaning *“... not guilty of an offence and not liable to any civil proceeding.”*
11. Although it is not necessarily the case that the term *“justified”* carries the same meaning in the Crimes Act as it does in our legislation, to avoid confusion we employ the Crimes Act definition.
12. When we conclude that a Police officer’s actions are *“justified”* we are concluding that in our assessment they do not constitute an offence or civil wrong (effectively misconduct of one sort or another). However, when we conclude that an officer’s actions are *“not justified”* or *“unjustified”*, we may be finding that in our assessment they constitute either a civil wrong alone, or both an offence and civil wrong. In such cases, we will go on to assess whether or not we recommend that Police consider or initiate disciplinary or criminal proceedings, applying the standards of proof already referred to.

ISSUE 1: DID OFFICERS A AND B MAKE APPROPRIATE DECISIONS AT THE BEGINNING OF THEIR SHIFT?

13. In this section we describe what Police knew about Mr Price on 16 April 2022, and the decisions made by the officers who confronted Mr Price prior to starting their shift. We assess whether these decisions were reasonable and justified.

What did Police know about Mr Price?

14. At the time, Kaoss Price was 22 and a patched Nomad gang member who was well known to Police in the Central Police District.

15. Mr Price had over 30 criminal convictions for a range of offences including theft, car conversion, assault, burglary and driving offences. He had alerts in the Police database for carrying knives and firearms, and for escaping custody.
16. In July 2021, Mr Price was the target of a Police operation after he committed a range of offences, including robbery, petrol theft and failing to stop for Police. He was charged, convicted and imprisoned. He was released in early March 2022. After his release, he received a distinctive gang-related tattoo on the lower half of his face. Police intelligence noted Mr Price's new tattoo after seeing a photo uploaded to a Facebook page on 9 March 2022.
17. Police perception was that Mr Price started re-offending soon after his release. In early April 2022, Police received intelligence that he possessed a firearm. Between 10 and 13 April 2022, Police suspected Mr Price had stolen a ute and was involved in two failing to stop incidents involving a BMW.

What interactions did Officers A and B have with Mr Price in the days prior to the shooting?

18. On the morning of 13 April 2022, Officer A (a dog handler with Armed Offenders Squad (AOS) training) and Officer B (a frontline AOS-qualified officer) were working together and accessed intelligence information that Mr Price was believed to be driving the stolen ute.
19. At about 3.30pm on 13 April 2022, Officers A and B saw the BMW connected to the two failing to stop incidents parked in Waitara. With another Police unit, they blocked the car. Officer A then spotted Mr Price drive out of a nearby driveway in the stolen ute. Officer A drove after Mr Price and signalled him to stop, but Mr Price fled at speed.
20. Officers searching the impounded BMW found four firearms, including a loaded shotgun. This information was passed to Officers A and B.
21. Later that afternoon, Police were called to deal with a suspicious man on a property in Bell Block. While tracking the man, Police found a hunting knife and a cap similar to that worn by Mr Price while driving the stolen ute earlier in the day.
22. On 14 April 2022, Police circulated information by way of District intelligence notifications about Mr Price's activities and his likely access to firearms and knives.
23. The same day, Mr Price was seen driving a black Volkswagen Golf (VW). This particular VW was well known to Police as it had been used by gang-associated offenders in the recent past, and Police suspected it was being used by a suspected armed offender as well as Mr Price.
24. At midday, Mr Price was seen driving the VW in Ōkato. A short time later, the owner of a Subaru reported to Police that Mr Price had punched him in the face and head and stolen his car.
25. Police saw the Subaru being driven erratically and dangerously several times during the afternoon. At about 3.30pm, an officer spotted the Subaru being driven at high speed in Ōkato. The Subaru crashed into the front fence of a house, and the driver and passenger fled on foot.

Officers A and B helped search for them, but only the passenger was found and arrested. Police obtained a warrant to arrest Mr Price.

26. On 15 April 2022, armed Police, including Officers A and B, searched Mr Price's father's house for Mr Price, but did not locate him.
27. On 15 and 16 April 2022, Police circulated updated intelligence information about Mr Price, including his tendency to flee from Police and his associated safety alerts (including access to firearms) amongst front line staff. Officers A and B read this information.

How did Officers A and B deploy on 16 April 2022 and what tactical decisions did they make?

28. At 6pm on 16 April 2022, Officers A and B deployed together as a Tactical Dog Team (TDT) in Officer A's Holden Equinox SUV dog van. Central Police District had started trialling TDTs in December 2021/January 2022. These teams were made up of a Police dog handler and an AOS-qualified officer, working together as a unit.
29. The purpose of the TDT was to provide extra tactical and safety support to Police dog handlers and frontline officers as they tracked and apprehended offenders, as well as extra tactical capability during emergencies.
30. The officers were not routinely armed as part of their role, but had access to M4 Bushmaster rifles, Glock pistols and a 40mm sponge round weapon secured in the specially configured Police dog van.
31. On 16 April, both officers wore Tasers, and independently decided to carry their pistols in holsters at the start of their shift.

Were the officers justified in arming themselves?

32. Police policy permits an officer to carry a firearm if their subjective and ongoing assessment (Perceived Cumulative Assessment or PCA) of the immediate operating environment is in, or likely to escalate to be in, the 'grievous bodily harm or death range.' That is, the officer assesses that they are likely to face a situation where they could be seriously hurt or killed.²
33. Policy gives the example that an officer may decide to arm themselves if a suspect is known to be in the area, has not been contained, is believed to be armed or have access to weapons, and presents a risk of killing or seriously harming members of the public or Police.
34. Officer A says they decided to arm themselves because the daily intelligence briefing noted there were three high-risk offenders in the area that Police were looking for, one of these being Mr Price. (Of the other two, one was thought to be armed and connected to a shooting and the other was a senior gang member who had specifically threatened Officer A in the past.)

² The PCA is an officer's subjective assessment, and continuous reassessment, of an incident using the TENR threat assessment model, based on information known about the situation and the subject's behaviour. There are five categories in the PCA – cooperative, passive resistance, active resistance, assaultive, grievous bodily harm (GBH) or death.

35. Officer A's past and recent interactions with Mr Price also contributed to their decision. Officer A helped arrest Mr Price in November 2020 following a pursuit. Officer A and another officer chased Mr Price on foot after he crashed his car, and arrested and handcuffed him. Officer A described Mr Price as *"extremely aggressive"*.
36. Officer B told us their decision to carry a pistol was specifically due to the threat Mr Price posed. His offending had allegedly escalated over the past few days to aggravated robbery, he had been carrying a hunting knife, and firearms had been found in the BMW linked to him (see paragraph 20).
37. For these reasons, we consider it was appropriate for the officers to arm themselves. Mr Price's offending was becoming more frequent, serious and violent. It was reasonable for Police to assume he was armed, based on information they had; and that he knew Police were looking for him, based on the search carried out at his father's house. The TDT officers' role was to provide emergency support to frontline Police (see paragraph 29), and therefore it was likely that they would be called to assist if a situation involving Mr Price developed.

Did the officers meet other policy requirements when arming themselves?

38. When deciding to carry a firearm, Police policy requires officers to advise their immediate supervisor and the Police Emergency Communications Centre (Comms) as soon as practicable. Neither officer informed Comms or their supervisor that they were carrying their firearms, although Officer A used the 'Responder' app on their mobility device to record that they had access to a firearm at the beginning of the shift.³
39. Officers are also required to wear approved ballistic armour if deploying to an incident where they believe firearms are, or could be, present.
40. Officer A was wearing stab resistant body armour (SRBA) but was not wearing hard armour plate (HAP) protection over their SRBA.⁴ Officer B was wearing the body armour system (BAS), an updated version of SRBA, with front and back pockets allowing for the insertion of ballistic plates. Officer B had only inserted the front ballistic plate, as the additional weight of the rear ballistic plate restricts movement.
41. The officers had armed themselves as a precautionary measure. While it is generally safer to wear full ballistic protection while armed, it is also heavy and cumbersome to wear, which can impact an officer's agility. We do not criticise the officers for not wearing full ballistic protection in the circumstances. They could add the required ballistic protection if called to a firearms incident.

³ A 'mobility device' is either an iPad or an iPhone that Police officers can use to access Police databases.

⁴ 'HAP' is a metal plate to be worn over Stab Resistant Body Armour which provides additional protection of vital organs during incidents involving firearms.

FINDINGS ON ISSUE 1

Officers A and B were justified in arming themselves.

Neither officer advised Police Communications or their supervisor that they were armed, as policy requires.

We make no criticism of the officers for not wearing full ballistic protection at the beginning of their shift, as it could be added if required.

ISSUE 2: DID OFFICER A USE EXCESSIVE FORCE IN SHOOTING AT MR PRICE WHEN HE SIDESWIPE THE DOG VAN?

42. In this section we describe what happened when Officer A shot at Mr Price the first time, as he sideswiped the dog van. We then assess whether Officer A's actions were justified.

What happened?

43. Just before 9.30pm on 16 April 2022, Officers A and B were parked in a layby beside the northbound lane of State Highway 3, just north of Bell Block, waiting for a suspected drunk driver who was reportedly heading towards them. The officers were not specifically searching for Mr Price. It was a clear, still night with a full moon.

44. Two cars passed the officers, heading north towards Waitara. One of the cars was a white BMW (driven by Ms Y), followed very closely by a dark coloured VW (driven by Mr Price). It appeared to Officers A and B that the VW was tailgating the BMW. Neither officer could identify the drivers initially, but both officers recognised the VW by its shape and registration number as being associated with Mr Price. Officer A also recognised the white BMW as connected to an imprisoned gang associate.

45. Officer A pulled out and followed the VW within the speed limit (80kph), without activating emergency lights. Mr Price turned off the VW's headlights, pulled onto the wrong side of the road and accelerated past the BMW. Officers A and B lost sight of the VW as it disappeared into the distance. They continued to follow the BMW.

46. About a kilometre further along State Highway 3, past Airport Drive, the BMW's headlights illuminated the VW parked on the left side of the road, partially in the northbound lane with its headlights off. Officer A slowed the dog van, and Officer B reached towards their pistol out of caution.

47. The BMW crossed the centre line and passed the VW. Immediately, Mr Price pulled out in front of the dog van and stopped, blocking the lane. Officer A braked hard to avoid a collision. Officer A says they saw the VW's reverse lights activate and feared it was about to reverse into the dog van. Officer A went to drive around the VW.

48. There are differing accounts from Officers A and B, and Ms Y, of what happened next. However, all agree that Mr Price pulled out onto the road in front of the dog van, forcing Officer A to take evasive action. Mr Price's subsequent driving put oncoming traffic at risk. Their accounts are as follows:

- Officer A says that, when trying to drive around the VW, Mr Price accelerated forwards and the dog van was forced over the centre line on to the wrong side of the road. The VW's driver's side window was down and Officer A looked over and recognised Mr Price driving. There was no front passenger. The VW and the dog van drove in parallel for approximately 5-6 seconds, then Officer A saw the lights of oncoming traffic approaching over the brow of the hill. Officer A braked heavily and steered back into the northbound lane. Mr Price accelerated away at approximately 150kph.
 - Officer B has a similar recollection, but says that, after Officer A braked to avoid a collision, they did not pass the VW or cross the centre line. Officer B did not see the VW's driver and could not see through the windows because they were tinted. Officer B says the VW drove forwards in a 'zig-zagging' motion, as if trying to 'ram' the dog van or bait Police into a pursuit. The driver of the VW then accelerated away on the wrong side of the road down the hill.
 - Ms Y says she saw (in her rear-vision mirror) Mr Price pull out and try to cut the dog van off, then goad Police into chasing him. She saw the dog van swerve to avoid collision, but it remained in the correct lane. The VW (in the incorrect lane) and dog van drove in parallel down the hill.
49. Mr Price accelerated past the BMW and out of sight. Officers A and B decided not to pursue the VW but to stop the BMW to determine the connection between the BMW's driver (who they had not yet identified) and Mr Price.
50. Officer A radioed Comms about what had happened and their intentions. Officer A then activated the dog van's emergency lights and Ms Y pulled onto the left side of the road at the bottom of the hill. There are no street lights along this section of road.
51. Officer A pulled in behind and slightly to the right of the BMW in order to see the driver's side of the car clearly. Officer A lowered the window, unbuckled their driver's seatbelt and kept the emergency lights activated.
52. Officer B got out of the dog van, switched on a torch, approached the driver's side of the BMW and spoke to Ms Y.

What happened immediately before Officer A fired at Mr Price in the VW?

53. While sitting in the driver's seat, Officer A says they heard a vehicle under heavy acceleration. Officer A looked ahead and saw the VW approaching at approximately 150kph on the wrong side of the road with no headlights on. Officer A says Officer B's safety was at risk and yelled: *"He's coming back!"*
54. Officer B also says they saw the VW approaching at high speed and ran back towards the dog van. The VW swerved right as if lining up the dog van for a collision. Officer B got into the dog van and shut the passenger door.
55. At the last moment, the VW swerved left to avoid colliding with the dog van. Officer A says they felt the dog van shudder as the VW passed at high speed *"wing mirror to wing mirror."* Officer

A did not see anyone else in the VW as it came past, but noted it passed very quickly and they only had the dog van's headlights and BMW's headlights to see by.

56. Ms Y also says Mr Price drove very close to her BMW and the dog van at high speed. She commented that, had Officer B still been standing talking to her through the window, the officer would have been hit.
57. Officer B got out of the passenger seat to get a better view of the VW and saw Mr Price conduct a U-turn approximately 150 metres behind their position, stopping oncoming traffic, then accelerate back towards them. Officer B quickly got back into the dog van, buckled the seatbelt, and put their head down in a brace position, expecting the vehicle to be rammed.
58. Officer A also saw the U-turn manoeuvre in the dog van's side mirror. They say they heard revving and screeching. Officer A told us that they felt fearful and thought Mr Price was "hunting" them, intending to harm them. Officer A advised Comms: "*...it's just going back and past, trying to hit us now....*"
59. When the VW was about 25 metres or 3 seconds away, Officer A turned in the driver's seat and saw the VW approaching the driver's side of the dog van at a 45-degree angle.
60. Officer A removed their pistol from its holster. Both officers felt the VW hit the side of the dog van. The impact shunted the dog van to the left.⁵ As the VW scraped along the driver's side of the dog van, Officer A says they fired two shots through the open driver's side window at Mr Price, although Officer A could not actually see Mr Price through the tinted passenger windows.⁶ A subsequent examination found one shot passed through the front passenger side window and another passed through the rear passenger side window.⁷ Officer A's pistol then jammed, and Officer A cleared the stoppage.⁸
61. Officer B heard two shots but did not see who had fired the shots as their head was down. Ms Y says she heard three shots as the VW sideswiped the dog van. This discrepancy, and why we do not consider it to be significant to the assessment of the justification for the force used, is discussed below at paragraphs 97-102.
62. After the sideswipe, the VW veered sharply right and stopped approximately 6.5 metres away from the driver's side of the dog van, partially blocking the southbound lane.

⁵ A Police Serious Crash Unit Analyst could not establish the VW's speed prior to impacting the dog van. They determined that the VW was travelling between 46km/h to 54km/h when fully braking after the collision.

⁶ Officer A says they fired two shots at this point when interviewed by Police on 28 April 2022, and the Authority on 18 May 2022.

⁷ The Institute of Environmental Science and Research (ESR) concluded that the bullet that was fired through the front passenger window exited out of the open driver's door window. The core of the bullet that was fired through the rear passenger window entered the instrument panel. There was also an entry and exit bullet hole through Mr Price's right jacket sleeve, which probably came from a bullet fragment from one of these two shots.

⁸ Officer A cleared the stoppage by ejecting the magazine from the pistol and removing the jumbled empty bullet casing and live round. Officer A put the magazine back in and flipped the top slide forward so the pistol was ready to fire again.

Did Officer A use excessive force in firing at Mr Price in the VW?

63. Officer A says they fired at Mr Price to defend themselves and Officer B because, in Officer A's view, they were both about to be seriously injured or killed as a result of Mr Price's actions.
64. Officer A's actions in shooting at Mr Price were contrary to law unless a legal justification applies.
65. Section 48 of the Crimes Act 1961 provides that any person is justified in using "reasonable" force in defence of themselves or another.⁹ To rely on a defence under section 48, Officer A's actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:
 - a) What were the circumstances as Officer A believed them to be? (a subjective test)
 - b) Was Officer A's use of force against Mr Price for the purpose of defending themselves or another? (a subjective test)
 - c) Was Officer A's use of force against Mr Price reasonable in the circumstances as Officer A believed them to be? (an objective test)

What did Officer A believe the circumstances to be?

66. Officer A told us Mr Price was the sole occupant of the VW, and was deliberately accelerating towards the dog van with the apparent intention of ramming it, seriously harming or killing both officers. Officer A says they were most at risk in the driver's seat, as the VW appeared to be aiming towards the driver's side of the dog van. Officer A would have limited protection from the side structure of the dog van. If both officers avoided serious injury, Officer A feared the dog van could be too damaged to be drivable, and consequently they would be unable to get away quickly from Mr Price.
67. Officer A says Mr Price seemed to be focussed on harming Police rather than fleeing from them. His behaviour was highly aggressive and inexplicable, as neither officer had done anything to provoke him or try to stop him from driving away. Mr Price deliberately performed a dangerous high-speed pass while Officer B was on the side of the road and exposed. Officer A says they felt Mr Price's aggression was escalating and he was "hunting" them.
68. After turning and seeing the VW only about 25 metres away, Officer A estimated that the impact would occur within three seconds. Officer A believed it highly likely Mr Price was going to ram the dog van rather than veer off to miss them, and that he would continue to target them until he achieved whatever ends he had in mind. Officer A says:

"This is [the] second, third, this is the like, the fourth time he's come back to us. Um, so the threat has got bigger and bigger and bigger like, it's, it's more and more and more the threat has, has gone up. Um. I don't know what his intentions were, but I felt his actions were, were something of he's gonna be, he's wanting to cause, cause injuries and high, high injuries or death, [grievous bodily harm] to me. I don't, I don't know why he's, he's

⁹ Section 48 of the Crimes Act 1961 is set out in the Appendix.

coming back at me to do this. Um, he's already had a go at [Officer B] out of the vehicle.

Um, and now he's having a go at me on the driver's side. Um, and I, I can't predict what his, what his actions are going to be. Um, but I, I, I felt that was, I needed to act then to protect myself."

69. Officer A says both officers wanted to “*get out of there*”, but there was no time. Officer A briefly considered whether they could pull the dog van out onto the road and accelerate away from the VW, but judged there was not enough time to complete the manoeuvre as they would first need to reverse away from the BMW. Officer A recalls feeling “*trapped*” at this point and had no way to avoid the collision. Officer A drew their pistol as the VW was approaching and fired as it was scraping alongside the dog van.
70. Officer A says they intended to “*shoot [Mr Price], to disable the threat*” because Mr Price was using his car as a “*weapon*” and the threat Mr Price posed was not yet over.
71. We accept that Officer A genuinely believed that Mr Price intended to ram the dog van, putting both officers at high risk of serious or fatal injuries. Officer B also says they feared for their life. Ms Y confirms that Mr Price drove the VW in the manner Officer A describes.
72. We accept Officer A perceived the threat was imminent and highly likely to occur in the circumstances, as the VW was accelerating towards them, and the dark conditions made speed and distance difficult to judge.
73. We also accept that Officer A perceived the threat as continuous and ongoing. Officer A’s anticipation of the impending collision, the impact and the sideswipe happened within seconds, giving little time to process what was happening.
74. We accept Officer A did not perceive the seriousness of the threat had lessened because the VW sideswiped rather than drove directly into the side of the dog van. The impact itself was a clear escalation of the threat, and it is entirely plausible that Officer A believed Mr Price was going to continue using his vehicle against them. In forming this view, we note Officer A already believed Mr Price was “*unpredictable and dangerous*” and capable of violent behaviour, based on personal interactions and Police intelligence information.
75. Having said this, Officer A must have perceived that the threat of a subsequent ramming was at least several seconds away, as Mr Price would need to reposition his car to drive it back into the dog van with force.
76. Finally, Officer A thought that Mr Price was the only person in the VW, having had two opportunities to see into the VW as it passed by (see paragraphs 48 and 55). Both were fleeting glances, through the open driver’s window and the windscreen. The other car windows were closed and tinted.
77. We accept that Officer A formed an impression that Mr Price was alone in the VW, but this was based on fleeting glances in very poor light conditions. On this basis, we take the view that

Officer A could only have thought it more likely than not that Mr Price was the only occupant. In our assessment, Officer A could not have been sure of this.

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

78. It is clear from the evidence outlined above that Officer A fired the pistol to defend themselves and Officer B.

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

79. Section 48 requires us to consider whether Officer A's use of force was reasonable in the circumstances as Officer A believed them to be. We have accepted Officer A believed:

- Mr Price intended to kill or seriously harm them, but that Officer A, in the driver's seat, was most vulnerable.
- Both officers were facing an ongoing threat. Mr Price had deliberately driven into them and was scraping along the side of the dog van, and a subsequent impact was highly likely to occur within seconds, based on Mr Price's pattern of behaviour.
- Officer A could not move the dog van quickly as it was first necessary to reverse before pulling out onto the road.
- Mr Price was probably the only occupant of the VW.

80. Force is reasonable if it is proportionate to the threat, taking into account the consequences if the risk materialises, the imminence of that risk and the likelihood of it occurring. We also need to consider the nature and seriousness of the likely harm resulting from Officer A's use of force to avert the risk.

81. We accept that Officer A had only seconds to decide how to act.

82. The speed at which events unfolded meant Officer A must have fired their pistol at Mr Price within a second of feeling the impact and while still processing what was happening. We conclude that Officer A was reacting to the threat of the incoming and ongoing impact when firing at Mr Price. Officer A would not have had time to reassess and alter their response once the impact occurred if they believed that to be necessary.

83. We conclude that it was proportionate and reasonable to use potentially fatal force in response to the threat Officer A perceived, and Officer A had no other less forceful options to defend themselves or Officer B. Arguably, the shot Officer A fired was a futile attempt to prevent the impact, but it was an entirely human response to the imminent threat. However, we do record that it was highly risky to fire into the car through opaque windows, without being certain that Mr Price was the only occupant.

84. Given this conclusion, we do not need to consider whether Officer A was justified in firing at Mr Price to prevent a likely subsequent ramming. However, we do note that, had this eventuated,

Officer A would have had more time – if not a great deal more time - to consider a less forceful option, such as reversing rapidly to get out of the way.

What do we conclude?

85. We have concluded that Officer A did not use excessive force in firing at Mr Price.

FINDING ON ISSUE 2

Officer A was justified in shooting at Mr Price in defence of themselves and Officer B, by which we mean that in our assessment there are no grounds for initiating criminal proceedings or an employment process.

ISSUE 3: DID OFFICER A USE EXCESSIVE FORCE IN SHOOTING AT MR PRICE AS HE RAN FROM HIS VEHICLE?

86. In this section we describe what happened when Officer A fired at Mr Price as he ran from the stationary VW, after sideswiping the dog van. We also establish how many shots Officer A fired at Mr Price while seated in the dog van, given the discrepancy in witness statements. We then assess whether Officer A's actions were justified.

What happened?

87. After the sideswipe, Mr Price initially remained in the stationary VW. Officers A and B say they could hear the engine revving, and gears grinding and clunking. They both say they thought Mr Price was attempting to put it into reverse, possibly to ram the dog van again. What they did not know was that the VW was in fact immobile because its steering tie rod was damaged in the impact.
88. Officer A says they saw Mr Price get out of the VW through the driver's window *"headfirst and just sort of like crawled out and did a roll."* He moved *"awkwardly"* as if he was *"potentially trying to conceal something that was on him"*. Later inspection of the VW showed the driver's door could not be opened from the inside.
89. As Mr Price was exiting the VW, Officer B was in the process of getting out of the dog van and moving towards the front of the dog van, with their hand on their holstered pistol.
90. Officer A says they yelled to Mr Price to stay where he was and show his hands. Once Mr Price was out of the VW, Officer A says Mr Price reached quickly back inside the window with his right arm. Officer A was concerned that Mr Price was reaching for a firearm or other weapon as Police information indicated:
- he could be armed (see paragraph 17); and
 - the VW was also being used by another suspected armed offender who may have left a firearm behind (see paragraph 23).
91. Officer A says Mr Price then ran around the front of the VW and towards a civilian car that had come to a stop in the southbound lane. This was one of several cars that came to a stop because

of the VW now obstructing the southbound lane. Officer A could see Mr Price's left arm but not his right, and he was carrying it awkwardly as if holding something. Officer A says: "I've yelled out, 'armed police, stop where you are' and he's continued to run towards [the car]".

92. Officer A told us it was not safe to get out of the dog van due to the risk that Mr Price was armed. Officer A fired two or three shots from a seated position towards Mr Price as he ran across the southbound lane. Officer A says they fired in order to prevent Mr Price from hijacking the civilian car and harming the occupants. None of the shots hit Mr Price.
93. Officer B heard Officer A fire two shots while positioned at the front of the dog van before seeing Mr Price running across the road.

What did other motorists see and hear?

94. Mr R was driving his Mitsubishi in the northbound lane towards Waitara. He recalls seeing the dog van with emergency lights activated on the left side of the road. When he saw this, he pulled over and stopped on the left side of the road.
95. Mr S was driving in the southbound lane towards New Plymouth and saw the stationary dog van ahead of him on the northbound side of the road with its emergency lights activated. He also saw the VW parked diagonally across the southbound lane ahead of him. He then heard a loud gunshot.

What do we conclude Officer A saw?

96. It is difficult accurately to determine Mr Price's movements immediately before and after Officer A fired at him. It is clear though that Mr Price was running in the direction of a number of civilian vehicles that had come to a stop.

How many shots did Officer A fire at Mr Price from the driver's seat of the dog van?

97. There is a discrepancy in the evidence as to whether Officer A fired two or three shots at Mr Price in the VW when he sideswiped the dog van and similarly when Mr Price was running away from the VW.
98. During the subsequent scene examination, Police found four casings from Officer A's pistol on the ground beside the driver's side of the dog van. Another casing and a live (unfired) round were found on the driver's seat.
99. This means that Officer A fired five shots from the driver's seat of the dog van. The single casing and the live round on the driver's seat most likely dropped there as Officer A cleared the stoppage when the pistol jammed.
100. The presence of five casings is conclusive evidence that Officer A fired a total of five shots during the two separate volleys (while the VW was sideswiping the dog van, and when Mr Price was running across the road). During the Police interview Officer A conceded, while believing they fired two shots during each volley, they could have fired a group of three shots at either of these

points. When speaking to the Authority a month later, Officer A says they fired two shots at the sideswiping VW, and three shots as Mr Price ran away.

101. For our purposes, it does not make any real difference whether Officer A fired two shots then three shots, or the other way around. We are satisfied that the shots in each volley were fired with the same purpose and under comparable circumstances and conditions. Each volley can be assessed as a single use of force.
102. Therefore, we have assessed Officer A's use of force on the basis of their evidence that they fired two shots at Mr Price when the VW sideswiped the dog van and three shots towards Mr Price as he was running from the VW.

Did Officer A use excessive force in shooting at Mr Price as he ran from the VW?

103. As described above, Officer A's actions in shooting at Mr Price are unlawful unless a legal justification applies. Officer A says they fired at Mr Price in defence of other motorists, particularly the occupant/s of the car stopped in the southbound lane. Consequently, we will assess Officer A's actions against section 48 of the Crimes Act.

What did Officer A believe the circumstances to be?

104. Officer A told the Authority and Police that when the VW stopped, and Mr Price got out, they feared that Mr Price was still intending seriously to harm both officers. Mr Price's awkward movements indicated Mr Price might have some sort of weapon concealed in his clothing. Officer A recalls seeing Mr Price deliberately reach back into the VW but could not see his hands. Officer A thought Mr Price could have picked up a firearm and now posed a direct threat:

"... I feared he was reaching for something to harm me with like a firearm. I believed it was highly likely he could have a firearm in the VW vehicle as it was also linked to [a specific offender], who was believed to be in possession of a .22 firearm, which is the intel I read prior to starting my shift. Also because of information I had on April 2022 of [Mr Price] having commandeered a firearm after it had been discharged at a residential address in Waitara. Because of this I did not feel safe to exit my patrol vehicle at this point."

105. As described above, Officer A says Mr Price then ran around the front of the VW towards a car that was stationary in the southbound lane, and appeared to be carrying something in his right hand. Officer A states Mr Price ignored the repeated warnings to stop for armed Police.
106. Officer A says that they also feared Mr Price was going to hijack the car, kidnap the occupants and injure them if Police did not intervene:

"I continued to challenge him yelling at him stop, something like stop, fuckin' stop, armed Police. I then fired two further shots at him from the driver's seat of my patrol vehicle as he approaching ... the one I think is the yellow vehicle...."

“These shots were aimed at the left side of his torso, as he was running side to me, so his torso. I wanted to stop [Mr Price] as I feared he was going to hijack this vehicle and put the driver, passengers and other members of the public at serious risk. Given his extreme high-risk actions over the past couple of minutes, I did not want him in control of another vehicle which he could use as a weapon against me, Officer B or members of the public.”

107. We accept that Officer A genuinely believed that Mr Price presented a serious threat to the occupants of the stationary car. His behaviour to this point had been extremely dangerous, and he was running towards the car in question. It was reasonable for Officer A to believe that Mr Price was intent on securing the car by one means or another and that this presented a real threat to the occupants.
108. Officer A says they perceived a risk of serious injury or death to themselves from being shot if they got out of the dog van at the point that Mr Price was exiting the VW and starting to run away.
109. We accept Officer A’s stated perception at the time. Regardless of whether Officer A saw Mr Price reach back into the VW after exiting, we conclude that there was a reasonable likelihood that there was a firearm in the VW, given Mr Price’s gang association and criminal history involving possession of firearms, Police information that he potentially had access to a firearm, and the fact Police knew the VW had been used by other offenders, including one thought to be armed.
110. We conclude there was a reasonable likelihood that Mr Price would take the opportunity to arm himself when exiting the VW and, given his aggressive and irrational behaviour towards Officers A and B, there was a reasonable likelihood he would be willing to use it to avoid arrest and try to escape.

Was Officer A’s use of force for the purpose of defending themselves or another?

111. We are satisfied that Officer A fired at Mr Price to defend the occupants of the stationary car from the threat of Mr Price hijacking a car and injuring them in the process. We also accept Officer A was responding to the threat Officer A perceived that both officers faced.

Was Officer A’s use of force against Mr Price reasonable in the circumstances as Officer A believed them to be?

112. As discussed, we accept Officer A perceived that they, Officer B and the people in the stationary car faced a threat of death or serious injury, and that this risk was reasonably likely to materialise.
113. Officer A recalls feeling there were no other options to avert the threat. Officer A believed it necessary initially to remain in the dog van for safety, and consequently had to wait to get out and deploy the dog. Officer A tried shouting instructions at Mr Price to stop and warned him they were armed, but Mr Price would not heed these instructions. The only practical tactical option Officer A had was their pistol.
114. Mr Price was not visibly presenting a firearm at anyone. However, he was now running in the direction of the stationary car containing at least one occupant. This was not an imminent threat,

as Mr Price still had to cover the distance to this car. However, the further Mr Price ran in that direction, the less likely it was that either Officer A or B could effectively intervene to protect the car's occupant.

115. We therefore accept that Officer A was justified in firing at Mr Price while he was within range, in order to avert the multiple threats Officer A believed Mr Price posed.
116. This finding is highly circumstance-specific and made with the appreciation that Officer A was making a largely intuitive decision in extreme conditions. Officer A had just survived what Officer A believed was an attempt to cause fatal injuries, and was fearful and in shock. It would be unrealistic to expect Officer A to have calmly made a highly considered set of judgments in these conditions. Officer A's decision to use force needs to be reasonable, not perfect, in the circumstances.
117. However, we record that we are unlikely to have found Officer A's decision to shoot at Mr Price justified if there had been a risk of inadvertently hitting civilians. We are satisfied that there was a very low risk that Officer A's shots would hit an innocent bystander due to the rural environment, and late hour.

What do we conclude?

118. We have concluded that Officer A did not use excessive force in firing at Mr Price as he ran from his vehicle.

FINDING ON ISSUE 3

Officer A was justified in shooting at Mr Price in defence of others, by which we mean that in our assessment there are no grounds for initiating criminal proceedings or an employment process.

ISSUE 4: DID OFFICER A USE EXCESSIVE FORCE IN SHOOTING MR PRICE AS HE ATTEMPTED TO HIJACK MR V'S VEHICLE?

119. In this section we describe what happened when Mr Price ran up the road and attempted to hijack a car approximately 145 metres from the VW. We then assess whether Officer A's actions were justified.

What happened?

120. Officer B saw Mr Price run from the VW towards Mr R's Mitsubishi parked on the side of the northbound lane. Officer B yelled: "*Stop, armed Police!*" and then saw Mr Price put one hand on the car's roof and tug at the driver's door five or six times. Mr R says Mr Price reached inside the open window and shook him several times.
121. Officer B could see from Mr Price's hand positions he was not holding a firearm, but assessed he could still have a concealed weapon. Officer B started running towards Mr Price along the left-side of the road and pressed their Officer Safety Alarm to alert Comms urgent assistance was needed.

122. While Mr Price was attempting to hijack the Mitsubishi, Officer A got out of the dog van, re-holstered their pistol and retrieved the Police dog.
123. Mr Price abandoned the Mitsubishi and ran along the centre of the road in a northerly direction, towards the other cars stopped in the southbound lane.
124. Officer A started running after Mr Price with the dog off the lead and directed it to find Mr Price. Officer A says Mr Price was approximately “150-200 metres” ahead and trying the door handles of stationary cars. Mr Price’s left hand was waving awkwardly, and Officer A still could not see Mr Price’s right hand.
125. Officer B was aware that Officer A and the Police dog were running behind, so stopped and stood still to avoid being mistakenly targeted by the Police dog. Officer A and the dog then ran past Officer B.
126. Officer B says they then lost sight of Officer A and the dog as both chased after Mr Price in a northerly direction.

What happened when Mr Price tried to gain control of Mr V’s car?

127. Mr Price approached two stationary cars in the southbound lane before reaching Mr V’s car. Mr S was driving the first car, and Ms T had stopped her car behind him:
 - Mr S says he saw Mr Price appear in front of his car. He was bent over and appeared injured, and his hands were empty. Mr S says he “freaked out” and when Mr Price was approximately one metre away, he accelerated forward and swerved to avoid him.
 - Ms T was driving towards New Plymouth when she saw the dog van’s emergency lights ahead. She stopped behind Mr S in the southbound lane. She noticed Mr Price running towards her and thought he might be a Police officer, so she wound down her driver’s window to see if he wanted assistance. Mr Price leant into her window and calmly asked if she could give him a ride. She realised something was wrong. She did not reply to Mr Price but drove her car forward to distance herself from him.
128. Mr Price then ran to the next stationary car, a blue Hyundai Lantra station wagon driven by Mr V. Ms W, his partner, was in the front passenger’s seat. Moments earlier, Mr V had wound down his driver’s window as he slowed on seeing the dog van’s emergency lights flashing in the distance ahead.
129. There are several accounts of what happened next, set out in detail below. However, the sequence of events in summary is as follows:
 - Mr Price entered the Hyundai through the open driver’s window, pulled himself into a seated position in the driver’s seat beside Mr V, and attempted to take control of the steering wheel and accelerator pedal. Mr V attempted to counter this by applying the brake pedal.

- Officer A arrived at the Hyundai and challenged Mr Price to stop and get out of the car. Mr Price ignored these instructions.
- Officer A shot Mr Price in the chest.
- Within seconds, Officer B arrived and tasered Mr Price and the Police dog bit Mr Price's right arm.
- Officer B removed Mr Price from the car and gave him first aid.

What do the Hyundai's occupants say happened?

130. Mr V says Mr Price firstly ran to the right rear door and tried to open it, but it was locked. He then moved to the driver's door and jumped headfirst through the open window. As he did so, Mr Price said: *"Bro, it's Kaoss, I'll give you \$500 bucks if you keep driving."*
131. Mr V tried to push Mr Price away, but Mr Price pulled himself inside the car and sat in the driver's seat next to the driver's door and attempted to take control of the car. Mr V was pushed onto the centre console and wrestled with Mr Price. Ms W yelled at Mr Price from the passenger's seat.
132. Mr Price's hands were on the steering wheel. Mr Price's feet pushed heavily on the accelerator. Mr V pushed hard on the brake pedal while also trying to apply the handbrake and put the gear stick into the park position. Mr V says Mr Price tried to pull his foot off the brake pedal. This struggle lasted about five seconds.
133. The combination of the accelerator and the brake pedals being applied at the same time caused the Hyundai to lurch forward a few meters. It came to a stop near the middle of the road. Here, Mr V managed to put the car in park while Mr Price continued to apply heavy acceleration.
134. Mr V says that, once Mr Price was inside the car, *"he was basically sitting on my lap and trying to take over the driver's seat ... but I was doing everything in my power to stop that from happening."*
135. Mr V recalls seeing a torch light on the front bonnet of his car while he was fighting for control. He heard two separate sounds less than a second apart, like breaking glass. He felt Mr Price tense up in the seat next to him and saw two *"strings"* come through the driver's window.

What does Officer A say happened?

136. After running past Officer B, Officer A saw Mr Price *"aggressively pulling"* on Mr V's car door. Officer A saw Mr Price put one hand on the roof of the car, and the other on the door handle, and started yelling at Mr Price to stop. The Police dog was ahead, and Officer A commanded it to 'rouse', which is a command to find and subdue an offender.
137. Officer A was about *"50-75 metres"* from Mr V's car when they saw Mr Price dive through the driver's window. Officer A used a torch to illuminate Mr V's car ahead. The headlights of stationary cars also helped to illuminate the car.

138. Officer A heard the Hyundai start revving “hard out” and saw it moving slightly forward, as if the brake and accelerator were being applied simultaneously. Officer A continued to yell at Mr Price to get out of the car. Officer A recalls being aware that Officer B was running about 10-20 metres behind Officer A’s position, also yelling at Mr Price (in fact, Officer B was still positioned near a garden centre entrance at this point).
139. At about 3-4 metres from the car, Officer A says they could see through the windscreen that Mr Price was on top of Mr V with his arm against Mr V’s throat, pushing Mr V’s upper body towards the front passenger. Mr Price’s right hand was on the steering wheel. Both Mr V and Ms W looked extremely scared and were screaming. Mr Price had “a look of rage on his face.” Officer A says they could not see anyone in the back of the car.
140. Officer A told us they could hear the Hyundai revving: “... like the highest a car could rev”. The Hyundai was moving as if Mr Price and Mr V were fighting to control the foot pedals. Officer A believed Mr Price was “taking control of the vehicle” and was going to use the car as a “weapon” and drive into both officers. In the process, Mr Price was putting the two occupants of the car in extreme danger, and Officer A could not let that happen:

“This intent and threat to the driver and passenger is at the most high level, and puts their lives in extreme danger. The threat towards myself and [Officer B] was also just as high, as we were now on the road and in front of the vehicle Mr Price was now attempting to gain control of.”

141. By this time, the Police dog had gone around to the back of the vehicle. Officer A pulled the Glock pistol from its holster, switched on the inbuilt torch and repeatedly yelled: “Armed Police, stop, take your foot off the accelerator!”
142. Officer A then saw Mr Price drop his right hand from the steering wheel down to his right-hand side and thought Mr Price might have been reaching for a weapon:

“Once I had complete view of [Mr Price] on top of the driver of the vehicle, I sighted him make a quick sudden movement down to his right, which was out of my view. I now put his threat level at death or [serious injury] just towards me, and with him not listening to clear instructions, I feared he was about to use a weapon to inflict serious harm to me.”

143. Officer A says they had to act immediately and did not have time to wait for Officer B to arrive. Officer A quickly assessed available options:
- Officer A considered using a Taser, but decided this would not incapacitate Mr Price in time to prevent Officer A from being shot, if Mr Price presented a firearm.
 - Officer A also thought that firing a Taser at Mr Price while he was struggling against Mr V in the driver’s seat was extremely risky and highly unlikely to be effective. For a Taser to induce involuntary muscle contraction (the effect referred to as ‘neuromuscular incapacitation’), both Taser probes must embed in the target’s muscles. The fact that Mr Price was at “close range” and Mr Price and Mr V were struggling against each other in

the same small, confined space lessened the likelihood the tactic would be effective in Officer A's view.

- Irrespective of this, Officer A says they did not want to use a Taser in the circumstances as the effect of the electric current could cause Mr Price's leg muscles to contract and jam his foot down on the accelerator. Mr V and Mr Price were still wrestling for control of the car, and it was possible that it would lurch forward and run down Officer B, who Officer A believed was close behind, or endanger Mr V and Ms W, who could be harmed or killed if the Hyundai crashed into one of the cars ahead.
- Officer A considered opening the driver's door and commanding the Police dog to bite Mr Price. However, given that Mr Price was sitting on Mr V, it was possible the dog would accidentally bite one of Mr V's limbs, compromising his ability to hold down the brake pedal.
- Moving closer to the car and opening the door was not an option as it would have exposed Officer A to any weapon Mr Price had.
- Officer A did not consider pepper spray would be sufficiently effective against Mr Price and thought it could also affect Mr V and cause him to lift his foot off the brake.

144. Officer A concluded that the situation was "*critical*", in terms of immediate risk to themselves and the occupants of the car, who Officer A viewed as "*hostages*". Officer A thought they had one opportunity to stop Mr Price and could not afford to take a non-lethal option for fear it would be ineffective. Officer A fired at Mr Price's chest, from a distance of approximately three metres and at an angle of 45 degrees to the driver's door.

145. Officer A says they considered the risk of inadvertently hitting Mr V or Ms W when firing, but Officer A trusted their training, equipment and the fact they had a "*clear line of sight*" to the target. Officer A was confident they would shoot accurately from approximately three metres distance. Although Mr Price was partially sitting on Mr V, he was also pushing Mr V away from him, towards the space behind the front passenger seat. Officer A also says they were aware of their surroundings and could not see anyone in the back seat of the Hyundai.

146. Officer A recalls stepping forward and to the left after firing, and continued to challenge Mr Price. Officer A could still hear the Hyundai's engine revving.

147. Mr Price convulsed, causing his right arm to flop out of the driver's window and hang outside the driver's door. Mr Price subsequently died.

How many shots did Officer A fire at Mr Price?

148. Officer A recalled firing twice into Mr Price's chest when interviewed by Police in April 2022. However, Officer A told us they fired a single shot when interviewed by the Authority in May 2022.

149. Conversely, Officer B heard a single shot and Ms Y recalls hearing three shots.

150. We are satisfied from the post-mortem evidence¹⁰ and the scene examination that Officer A fired a single shot. One bullet cartridge was found under the driver's side of the Hyundai and one projectile was found in the car.

In shooting Mr Price as he tried to hijack Mr V's car, did Officer A use excessive use force?

151. Officer A says they fired at Mr Price in defence of themselves, Officer B, and the occupants of the Hyundai. Consequently, we will assess Officer A's actions against section 48 of the Crimes Act.

What did Officer A believe the circumstances to be?

152. Officer A describes perceiving two main areas of threat and risk.

153. Firstly, Officer A says they believed Mr Price posed a significant risk of causing serious harm or death to Mr V and Ms W, Officer B, themselves, and other road users if he was successful in gaining control of the car, which they thought was likely to happen at any moment.

154. Officer A says this belief was formed by what was happening right in front of them, as Mr Price was clearly attempting to take control of the car and appeared to be pressing down hard on the accelerator. It was also influenced by Officer A's experience of Mr Price's driving that night, his aggression and repetitive targeting of Police, and Officer A's knowledge of Mr Price's capabilities and past behaviour. Mr Price was clearly desperate to get away, and to take Mr V's car. Both officers were at risk of being struck should this occur, either through Mr Price's reckless driving in dark conditions, or through intentional behaviour. Officer A says they believed lives were at risk, and had never been in a comparable situation before.

155. Officer A also says they believed Mr Price had dropped his right hand out of sight to access a concealed firearm and was about to shoot them.

156. With regards to this threat, our view is that it was a remote possibility at best. Officer A had seen Mr Price place both hands on the car, prior to entering the car through the window and engaging in a physical scuffle with Mr V.

157. Further, Mr Price had not fired or presented a firearm at Police while they were chasing him.

158. We therefore conclude that Officer A must have known that the risk of Mr Price having a firearm was remote.

159. We consider that the risk to Mr V and Ms W, and to Officer A and Officer B (who we accept Officer A believed to be running directly towards the car) in the event that Mr Price gained control of the car was much more serious.

160. We accept that Officer A genuinely believed (and not without justification) that if Mr Price were to secure control of the vehicle there were real risks for:

¹⁰ A post-mortem examination of Mr Price's body found one bullet entry hole on the right side of his chest. The bullet exited out of the back of his left shoulder. This was the cause of death.

- Mr V and Ms W;
- themselves and Officer B;
- others in the vicinity; and
- any other motorists that Mr Price might encounter.

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

161. Officer A is clear that they fired at Mr Price to defend themselves, Officer B and Mr V and Ms W. There is no evidence to negate this assertion, and we accept Officer A's evidence in this regard.

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

162. We have concluded that Officer A could only have perceived a low risk that Mr Price was armed. This perceived risk cannot justify the decision to shoot Mr Price at close range, with the almost certain outcome that Mr Price would be killed.

163. We accept that, had Mr Price gained control of the car, this would have given rise to a different level of threat. We accept Officer A perceived this was likely to happen within seconds, giving rise to the risks already identified.

164. We agree effective action was necessary to avert the threat, and that Officer A's firearm was a swift and 'effective' available tactical option. However, the reasonableness assessment also requires consideration of the full consequences of the use of force, including the potential risk to innocent bystanders.

165. We consider the risk that Mr V and Ms W could have been injured or killed was unacceptably high.

166. Mr Price was sitting partially on Mr V's body, in a confined space. Mr Price and Mr V were moving and fighting for control of the car, which was lurching forward. Officer A was operating in difficult light conditions and could not be certain that the back seats were not occupied.

167. Officer A is a highly skilled and experienced Police officer. However, Officer A was in a heightened state, having been rammed by Mr Price, loosed five shots at Mr Price, and sprinted approximately 145 metres after him in an attempt to protect members of the public from a serious threat. Handguns are notoriously difficult to fire accurately in the best of conditions. There was a real and, in our view, unacceptable risk that Officer A could miss or that a projectile could pass through the target or ricochet, killing or injuring others in the car.

168. Indeed, we now know that the projectile did not function as it was designed to do and passed through Mr Price's left shoulder. ESR analysis suggests the bullet hit the left rear passenger door and bounced across the back seat.

169. Having regard to all of these considerations, we have concluded, by a fine margin, that Officer A's shooting of Mr Price was unjustified, as Officer A could have used a Taser. In their

submissions, Officer A disagreed that this was a realistic or effective option to rely on. We accept of course that Officer A made a reasoned, albeit split-second tactical assessment. Officer A expressed a high degree of confidence in their ability to shoot Mr Price without injuring Mr V and Mr W in difficult circumstances. It seems implausible that Officer A lacked similar confidence in their ability accurately to target Mr Price with the Taser. Mr Price's body was on top of Mr V in the driver's seat, offering a larger target area, and Officer A, at three metres from Mr Price, was operating well within the optimum operating distance for a Taser (see paragraph 195).

170. We accept that it was not guaranteed that the Taser would be effective, and Officer A might have had to reassess options, even although this may have exposed the civilians and Officer B to risk for a greater period of time. However, our view remains that this would have been justified when balanced against the risk to Mr V and Ms W of the use of the firearm.
171. For clarity, our finding that Officer A used excessive force in firing at Mr Price is made on the balance of probabilities. In other words, we do not think, on the civil standard of proof, that Officer A could rely on section 48 to justify their actions.
172. That said, we do not consider that the evidence is sufficiently compelling to establish beyond reasonable doubt that Officer A could not rely on section 48 to justify their decision to shoot Mr Price. In short, in our view, there is no reasonable prospect of convicting Officer A of culpable homicide, and we do not recommend Police lay any charges.
173. Use of excessive force constitutes serious misconduct under the Police Code of Conduct. We are mindful that this particular force had fatal consequences.
174. In such cases we may recommend Police undertake an employment process. In this case, we do not make such a recommendation because of the length of time that has elapsed since the incident, and the fact that Officer A has already been told by Police this will not occur. In our view, it would be contrary to natural justice for Police to initiate an employment process.

FINDING ON ISSUE 4

The force Officer A used in shooting and killing Mr Price was excessive. However, there are no grounds for laying criminal charges. While excessive use of force constitutes serious misconduct under the Police Code of Conduct, in the circumstances of this case, we do not recommend Police commence an employment process.

ISSUE 5: DID THE DEPLOYMENT (BY OFFICER A) OF A DOG AND (BY OFFICER B) OF A TASER CONSTITUTE EXCESSIVE FORCE?

175. In this section we describe the use of Taser and a Police dog as tactical options after Mr Price was shot, and assess whether the officers' actions were justified.

What happened?

176. Officer B says they heard a single gunshot but was unsure who had fired. Officer B then heard Officer A yell: "Get out of the car!" Officer B drew their Taser while running towards Officer A's torchlight, aware Officer A was armed with a pistol, and Mr Price posed a threat:

“... [Mr Price is] in the assaultive range.¹¹ If, if he, if he gets that car moving he’s in the death, death or [grievous bodily harm] range, cos he’s already proven that he’s, he’s tried to kill us with his car.”

177. Officer B further explained the choice of tactical appointment:

“Once ah, once the probes are in, you’ve got that control if the cables stay in. Once he’s been tasered we still have control, we can get that car stopped. It gives us five seconds to get those keys out. Or if we need another five seconds to do something.”

178. Officer B also explained that it was possible to drop the Taser on the ground and draw their pistol in under two seconds if necessary.

179. Officer B activated the Taser while running and brought it up in the aim position. Officer B did not know if the Hyundai was occupied, but was seriously concerned for the lives of any occupants and other road users should Mr Price mobilise the car.

180. When Officer B reached the driver’s side mirror of the Hyundai they saw Mr Price, illuminated by Officer A’s torchlight, in the driver’s seat with his head back. Officer B identified him by his facial tattoo. Although having heard a gunshot, Officer B says they was unaware that Mr Price had been shot. Mr Price’s arms were not visible, and it appeared that he was forcing his leg down on the accelerator to get maximum acceleration. Officer B did not see anyone else in the Hyundai at this point, although they registered Officer A’s presence to their left. Officer B says they believed Mr Price was trying to flee and fired the Taser at his chest from approximately half a metre away.

181. At about this time, the Police dog bit Mr Price’s right arm as it had fallen outside the driver’s window, but Officer B says they did not become aware of this until after firing the Taser. At that point, Officer B also realised there were other people in the Hyundai beside Mr Price.

182. Officer B noticed Mr Price did not respond as expected to the Taser discharge. He appeared to be struggling to breathe and Officer B realised then that he had been shot.

183. Officer A removed the dog from Mr Price’s arm, and Officer B pulled Mr Price out of the car and started to give first aid. Ms Y arrived, having driven her BMW forwards from where she had originally stopped, and Officer B told her to move away.

184. Officer A took the dog back to the dog van. While walking back, Officer A advised the Police shift commander what had happened and requested an ambulance.

185. Officer B checked Mr Price’s body for wounds and gave CPR until the ambulance arrived.¹² An ambulance officer assessed Mr Price and established he had died. Officer B directed the first

¹¹ According to Police policy, ‘assaultive’ means someone who displays intent to cause harm, through body language or physical action.

¹² In addition to the fatal gunshot wound, the post-mortem examination of Mr Price found two wounds on his chest consistent with Taser probe barbs. Mr Price also had injuries on his right arm consistent with a dog bite.

Police officers to arrive to check on Mr V and Ms W, and to ensure that none of the civilian vehicles left the scene.

186. Officers A and B were taken from the scene to a Police station to complete critical incident procedures, including handing over their equipment and being tested for drug and alcohol consumption (returning negative results).

What does Ms Y say happened?

187. Ms Y drove north towards the Hyundai after hearing three shots (as previously discussed, we are satisfied that Officer A fired a single shot). She says she saw Officers A and B beside the Hyundai, and the Police dog biting Mr Price's arm. She then saw Officer B taser Mr Price through the open driver's window.
188. Officer A told her to leave and removed the Police dog from Mr Price and led it down the road in the direction of the dog van. She saw Officer B perform CPR on Mr Price.

What does the Taser footage show?

189. A camera (TaserCam) is mounted below the barrel of the Taser and starts recording a few seconds after the Taser is switched on. In this case, the TaserCam footage lasts one minute and 10 seconds. It has an audio component, although the sound quality in this recording is poor:
- As Officer B approaches Mr Price in the Hyundai, the barrel of Officer A's pistol is visible in the left of the frame, pointing downwards towards Mr Price in the driver's seat. Mr Price is illuminated from a light source under the barrel of the pistol. Mr Price's arm is hanging outside the car window against the closed car door.
 - Two seconds into the footage, Officer B fires the Taser at Mr Price's chest. A person in a blue top is visible in the car to Mr Price's left.
 - A second later Mr Price's head falls back, so his chin is pointing upwards. Mr Price appears to convulse as beeping signals the imminent end of the Taser cycle.
 - Panting and yelling are audible. The words are not easily discernible, but it sounds like a direction to get out of the car.
 - Twelve seconds into the footage, Mr Price's right arm appears to be jerked behind him. The car door remains closed, and Officer B continues to point the Taser at Mr Price, as the two red laser dots remain on his torso. Mr Price is not resisting. A male voice asks: *"Why are you doing this?"* A female voice, Ms Y, starts challenging Police.
 - At 30 seconds into the footage, someone opens the car door. At 31 seconds a dog starts barking repeatedly. Officer A repeatedly instructs someone to: *"Go on! Get out of here!"* Ms Y argues.
 - At 34 seconds, Mr Price is the only person left in the Hyundai.

- At 37 seconds, Mr Price’s right hand and ripped lower sleeve are briefly visible. The Police dog is not biting it.
- At 41 seconds, Mr Price is lying on the ground beside the car. He is not moving. Officer A continues to instruct Ms Y to go away.
- At 59 seconds, the Police dog stops barking. From this point onwards, two voices appear to be speaking to Mr Price. Mr Price remains on the ground, bleeding and not moving.

What do we conclude happened?

190. Having interviewed Officer B and reviewed the evidence, we accept Officer B’s account of events.
191. The main unresolved difference between Officer B’s and Ms Y’s accounts is whether the Police dog bit Mr Price’s arm before Officer B fired the Taser (as Ms Y recalls).
192. We have considered officers’ and witness accounts, together with the TaserCam footage and still images that record the seconds after Mr Price was shot. We are satisfied that Mr Price was shot first, then he was tasered and bitten by the Police dog. It is not possible to determine from the Taser footage whether the Police dog bit Mr Price’s arm before or after Officer B fired the Taser. It is possible the two events happened at around the same time. Regardless, we accept Officer B’s evidence that they were unaware the dog was about to bite or was already biting Mr Price’s arm when they fired the Taser. It was very dark, and Officer B was focused on Mr Price illuminated in the front seat.

Did Officer B use excessive force in firing the Taser at Mr Price?

193. Officer B gave two reasons for deploying the Taser:
- to stop Mr Price from escaping in Mr V’s Hyundai; and
 - to prevent Mr Price from posing a serious risk to potential occupants and motorists in the course of his escape.
194. Section 40 of the Crimes Act, which empowers Police to use “*such force as may be necessary*” to prevent the escape of someone who takes to flight in order to avoid arrest,¹³ and section 48 of the Crimes Act (self-defence or defence of another) are both relevant as possible legal justifications.
195. Police policy states that officers may use a Taser when they assess the subject “*poses an imminent threat of physical harm to any person.*” The officer should issue a warning before firing the Taser unless this is impracticable or unsafe. The optimum operating distance for a Taser is between 2 and 4.5 metres.

¹³ Section 40 of the Crimes Act 1961 is set out in the Appendix.

196. Policy directs officers not to “use the Taser on a subject in a vehicle or in control of machinery if there is a risk of the vehicle or machinery going out of control and injuring the subject, occupants or other persons.”

Did Officer B use excessive force in firing the Taser to prevent Mr Price escaping?

197. Under section 40, the Authority must determine:

- a) whether the officer believed that the person was fleeing to avoid or escape arrest (a subjective test); and if so
- b) whether the officer’s use of force to prevent the escape was reasonable and proportionate (an objective test).

Did Officer B believe that Mr Price was fleeing to avoid arrest?

198. It was clear to both officers that Mr Price was attempting to commandeer a car in order to flee from Police. He would have known he was going to be arrested for his actions.

Was Officer B’s use of a Taser reasonable in the circumstances?

199. This question requires us to consider the following factors:

- a) the seriousness of the offence which the officer reasonably suspected Mr Price to have committed;
- b) the consequences that the officer reasonably believed to be likely to occur if they did not prevent Mr Price from escaping, including:
 - (i) the effect of an escape on the likelihood of Mr Price being brought to justice (for example, loss of evidence or difficulties in catching Mr Price later); and
 - (ii) the nature and degree of risk of further offending that Mr Price posed.

200. Mr Price had committed several serious and violent offences that evening, as described above. He was now in another car which did not belong to him. Although Officer B did not see other people in the Hyundai when firing the Taser, it was highly probable that the car was still occupied by a driver who would be at serious risk of harm should Mr Price succeed in driving the car away. Officer B had observed Mr Price’s dangerous and reckless driving that evening and had every reason to believe this behaviour would continue.

201. Had Mr Price gained control of the car and fled, this would almost certainly put other motorists on State Highway 3 at risk. The people in cars stopped immediately in front of him were at risk of harm if Mr Price drove away at speed and hit them. Additionally, Mr Price had previously driven on the wrong side of the road without headlights, posing a threat to other road users in the darkness.

202. Police policy is that officers should not use a Taser against someone in control of a vehicle for safety reasons. However, this was an emergency, and, from Officer B’s perspective, should the

brakes fail or be deactivated, Mr Price posed a threat to Mr V and Ms W and others. By the time Officer B discharged the Taser, both officers were out of harm's way. In our assessment, discharging the Taser, with the possibility that it would cause neuromuscular incapacitation in Mr Price's legs did not appreciably increase the risk that others were exposed to. It was necessary to stop Mr Price driving away with the occupants, and therefore the use of the Taser was not excessive.

203. Similarly, given the urgency of the situation, it was reasonable that Officer B did not issue a warning before firing the Taser, and that they fired it from closer range than is recommended.

204. We will now also consider Officer B's justification under section 48.

205. As described above, we accept that Officer B believed:

- Mr Price was revving a car, trying to take control of it;
- he was trying to drive away;
- he posed a serious threat of harm to potential occupants and other road users, particularly those directly ahead, if he was successful;
- he had already tried to harm Police that evening; and
- a shot had been fired, so the risk level was extremely high.

206. We accept that Officer B fired the Taser in part to protect any occupants of the car, and other road users.

207. For the reasons set out in paragraphs 199-203, our conclusion is that Officer B's use of the Taser was reasonable and proportionate, and therefore justified. By this we mean that in our assessment there are no grounds for initiating criminal proceedings or an employment process.

Did Officer A use excessive force in deploying the Police dog?

208. Officer A directed the Police dog to chase after Mr Price, as he ran in a northerly direction on State Highway 3. Officer A says the purpose of doing so was to protect the occupants of cars in the vicinity.

209. This was an appropriate action, as Mr Price posed a threat of harm to Police and the public. At that time, he was actively looking for a car to hijack.

210. Officer A commanded the Police dog to 'rouse' or subdue Mr Price once they had passed Officer B. Mr Price was attempting to get into Mr V's car and posed a significant threat to the occupants. The dog was the appropriate tactical option to reach the car quickly and stop Mr Price from getting into it. Unfortunately, this tactic was not successful.

211. The dog bit Mr Price's arm when it flopped outside the car window after Mr Price had been shot. We consider it likely the dog bit Mr Price's arm instinctively, as it had been commanded to find an offender and Officer A's challenges would have heightened its trained response.
212. There is no indication that Officer A directed the dog to bite Mr Price knowing he was being tasered.
213. We are satisfied that Officer A was justified in deploying the Police dog under section 48 of the Crimes Act, to protect the occupants of the Hyundai from Mr Price's attempt to hijack it. By this we mean that in our assessment there are no grounds for initiating criminal proceedings or an employment process.

FINDING ON ISSUE 5

The deployment of both the dog and the Taser was justified. By this we mean that in our assessment there are no grounds for initiating criminal proceedings or an employment process.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

21 November 2024

IPCA: 22-13297

Appendix – Laws and Policies

CRIMES ACT 1961

Section 40 – Preventing escape or rescue

“(1) Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification, or protection, as the case may be, shall extend and apply to the use of such force as may be necessary—

(a) to prevent the escape of that other person if he or she takes to flight in order to avoid arrest; or

(b) to prevent the escape or rescue of that other person after his or her arrest—

unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner:

provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this subsection shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

(2) Where any prisoner of a prison is attempting to escape from lawful custody, or is fleeing after having escaped therefrom, every constable, and every person called upon by a constable to assist him or her, is justified in using such force as may be necessary to prevent the escape of or to recapture the prisoner, unless in any such case the escape can be prevented or the recapture effected by reasonable means in a less violent manner.”

Section 48 - Self-defence and defence of another

“Every one is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”

USE OF FORCE POLICY

214. The Police ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.

215. 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.
216. 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).
217. Wherever possible and appropriate, officers should use tactical communication throughout an incident, alone or with any other tactical options. Tactical communication is crucial to safely deescalating an incident with uncooperative subjects. Tactical communication should be attempted in every incident where Police action is necessary in response to uncooperative subjects, including those that may require force to be used.
218. 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.
219. 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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