



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

Use of force on a woman in Matau justified

Summary of the Incident

1. At about 5.30am on 18 April 2021, Police were called out to rural Taranaki after Matau residents became concerned for the welfare of Ms Z. Police detained Ms Z under the Mental Health (Compulsory Assessment and Treatment) Act 1991 (the Act) and took her, handcuffed, to Taranaki Base Hospital. The officers helped the mental health team transfer her to the mental health unit, Te Puna Waiora (TPW).
2. Ms Z complained to us about the way Police handled the incident. She says:
 - Police did not engage appropriately with her as someone experiencing a mental health crisis;
 - the officers used excessive force when they detained her, causing a ruptured ACL;¹
 - she was inappropriately restrained during the drive to the hospital; and
 - the officers deliberately took a slow route to the hospital, adding about 30-45 minutes to the trip.

The Authority's Findings

Issue 1: Was Ms Z detained lawfully?

Police acted lawfully in detaining Ms Z and taking her for assessment.

The officers did not deliberately take a long route back to the hospital.

Issue 2: Was the Police use of force against Ms Z justified and appropriate?

The officers' use of force against Ms Z was justified and appropriate.

¹ The anterior cruciate ligament (ACL) runs diagonally in the middle of the knee and helps control its forward front and back motion.

Issue 3: Did Police comply with policy and best practice in their interactions with Ms Z?

The officers met legislative requirements under the New Zealand Bill of Rights Act 1990.

The officers did not meet legislative reporting requirements or reporting requirements under Police policy after using force.

The officers followed Police policy during their interactions with Ms Z but could have done more to reassure and calm her.

Analysis of the Issues

ISSUE 1: WAS MS Z DETAINED LAWFULLY?

3. Ms Z has bipolar disorder. She doesn't live in Matau, but her family has a farm there. When she experiences a manic episode, she often goes to the farm in accordance with her own mental health action plan.
4. In the early hours of 18 April 2021, Matau residents observed Ms Z behaving strangely in public dressed only in her underwear. Ms Z entered a house at about 3am, waking the occupants. She exposed herself to them and made unusual comments and statements. The occupants provided Ms Z with some clothing, and she left their address.
5. Another local resident, Mr Y, phoned Police after seeing Ms Z walking barefoot along the road at about 5.30 am. Officer A and Officer B were sent to find her.
6. Mr Y and his wife encouraged Ms Z to accompany them back to their house, where they called Ms Z's father. Ms Z says she then became suspicious of Mr and Mrs Y and left their home, intending to go back to her family's farm.
7. Police arrived at about 8.40am and say Ms Z initially appeared excited to see them. Without being asked she got into the back seat of their patrol car. The officers did not talk to her initially but spoke with Mr Y to establish what had happened. Ms Z remembers becoming anxious and suspicious of Police and started banging on the door for attention.
8. Mr X, another local resident, offered a karakia for Ms Z.² The officers allowed her to get out of the car so he could give the karakia. This calmed Ms Z temporarily, but her behaviour subsequently became elevated again and she started yelling.
9. Members of the public were present during this event. All persons we interviewed stated they believed Ms Z needed mental health support as she was clearly unwell.
10. One of the officers advised her that she was going to be detained under the Mental Health (Compulsory Assessment and Treatment) Act 1991 (the Act) and be assessed.

² A prayer, chant or incantation usually given in Te Reo Māori to ensure a favourable outcome or invoke protection.

11. The Act provides that if a person is found in a public place and acting in a manner which indicates they may be mentally disordered, Police may detain that person to take them for an assessment.³
12. Ms Z questions the Police decision to take her to the mental health unit, TPW. She had her own self-care plan which involved staying at her family farm and taking her medication. She says because her father was on the way, Police should have waited for him to arrive.
13. Police decided to detain Ms Z under section 109(1) of the Act because she had placed herself at risk of hypothermia or being hit by a car, and they considered this was likely to continue. Officer A says he told Ms Z she was being detained and when she refused to get back in their patrol car, the officers restrained her using handcuffs and placed her inside. Once she was safely in the car, Officer B provided her with her rights.⁴
14. Officer B told us that even if her father had arrived, Ms Z was not in any condition to be left with him, as they considered she needed professional medical help.
15. We are satisfied Ms Z was found “*at large*” in a public place for the purposes of section 109(1) of the Act and that her detainment was in her best interests as well as the interests of the public to alleviate the risks referred to above.

Did the officers deliberately take a long route to the hospital?

16. Ms Z says the officers took a slow route to the hospital which added approximately 30-45 minutes to the drive. She says this added to her fear that the officers intended to harm her.
17. Ms Z says she wondered why the officers had taken the route up towards Pohokura Saddle instead of turning into Matau Road, but that Google Maps does send people that way sometimes and she is aware of ambulances doing the same thing.
18. Officer A says he did not realise there was an alternative route and returned the way he came, believing that to be the most appropriate way to leave the location. He says he thought Matau Road led to a dead end, so he did not think to ask a local resident for directions, but he would have driven the other way if he knew he could.
19. At times the officers were driving under emergency lights due to Ms Z’s behaviour in the patrol car. There is no evidence they wanted to prolong the trip.
20. We do not believe the officers intentionally took a slower route back to the hospital and detained Ms Z unnecessarily.
21. On their return to Taranaki, the officers followed the local process required of them under the Act by taking Ms Z directly to the Emergency Department at Taranaki Base Hospital where they

³ See section 109 at paragraph 73 below.

⁴ See section 23 of the New Zealand Bill of Rights Act 1990 setting out the rights of persons detained at paragraph 77 below.

arranged for a mental health practitioner to attend to her. They then assisted hospital staff in transporting her to TPW.

FINDINGS ON ISSUE 1

Police acted lawfully in detaining Ms Z and taking her for assessment.

The officers did not deliberately take a longer trip back to Taranaki.

ISSUE 2: WAS THE POLICE USE OF FORCE AGAINST MS Z JUSTIFIED AND APPROPRIATE?

What force did the officers use?

22. Ms Z complained she was suddenly grabbed by Police and the officers used excessive force while trying to get her into the patrol car at Matau. Ms Z says she felt *“an excruciating pain”*, heard a pop and felt her left knee collapse under her.
23. During her stay at TPW, Ms Z received some medical treatment for her knee injury, but it was not formally diagnosed as an ACL rupture and partial MCL tear until 18 June 2021.⁵ Ms Z underwent surgery for this injury on 16 December 2021.
24. Mr X and Mr Y witnessed the interaction between Ms Z and Police. They agree Ms Z was trying to throw herself to the ground. However, Mr X says Police grabbed Ms Z before he had finished his karakia then *“spear tackled”* her.
25. Conversely, Mr Y says he thought the force the officers used was appropriate and controlled. He describes Ms Z letting her legs buckle and becoming a dead weight. The officers then *“had to sort of almost carry her either side”* to get her into the patrol car. Mr Y says he did not see either officer tackle Ms Z.
26. The officers say Ms Z started screaming and yelling shortly after Mr X finished his karakia and *“flopped onto the ground”*.
27. Officer A remembers instructing Officer B to put handcuffs on Ms Z. Officer B says he thought handcuffs were the best way to prevent her lashing out so they could transport her safely. The officers disagree on whether Officer B put the handcuffs on Ms Z before or after she tried to flop onto the ground.
28. The officers describe Ms Z digging her heels in and leaning back against them, not wanting to get in the car. He says they only used the force required to control Ms Z and she was not spear tackled.
29. The officers put Ms Z into the back seat of the patrol car. She lay on her side and refused to either sit up or move her legs to allow the door to close.

⁵ The medial collateral ligament (MCL) is located on the inner side of the knee and helps control the side-to-side motion of the knee.

30. Officer B remembers trying to pull Ms Z further across the back seat from the rear driver's side door. Officer A initially tried to close the rear passenger door by pushing on it, but says he was wary of hurting her. He then put one hand on the back of her knee and pushed her feet with his thighs to bend her knees.
31. Officer A remembers hearing Ms Z's knee click and Ms Z cried out in pain, which he says sounded different to the way she had been yelling and screaming while they carried her. Officer B did not hear Ms Z's knee click, but he heard her cry out. He says he did not know at the time why she cried out.
32. Officer B sat in the back seat of the patrol vehicle with Ms Z to his left while Officer A drove the patrol car.
33. Officer B says Ms Z refused to sit up, preventing him putting the seatbelt on her. Ms Z says the seatbelt was fastened around her neck.
34. Ms Z remembers trying to kick Officer A while he drove. Few Police cars are fitted with dividers, so this created risk for all those in the car.⁶ The officers say she did kick Officer A several minutes into the drive so Officer A asked Officer B to restrain Ms Z for safety reasons.
35. Officer B placed one arm under her legs and the other over them to prevent her kicking out again. Ms Z says she remembers her feet being held over Officer B's right shoulder which she describes as *"extremely uncomfortable, undignified and painful"*.

Did the officers cause Ms Z's knee injury?

36. Both Ms Z and Officer A heard a popping or clicking sound from Ms Z's knee. The officers think Ms Z might have mentioned her knee during the drive.
37. Officer A remembers Ms Z limping into the Emergency Department. He told the on-duty nurse that Ms Z was injured and needed to be checked. He says the nurse attended to Ms Z in the room she was in.
38. Officer A accepts his actions may have caused the injury to Ms Z. He says Ms Z was able to kick out while in the patrol car but cannot recall which leg she used. The officer pointed out Ms Z was able to walk on her leg from the patrol car into the hospital.
39. Ms Z recalls her knee collapsing under her several times while in the hospital, but Officer B says she was able to kneel while in the Emergency Department. Her knee was not examined in the Emergency Department and Ms Z says her knee was swollen when she arrived at TPW.
40. We reviewed Ms Z's medical notes from her admission and note Ms Z had been assessed as being aggressive with a history of violence. On 19 April 2021, TPW staff noted she was

⁶ Police are gradually phasing out their old fleet of patrol cars and replacing them with newer models which have Perspex dividers fitted.

experiencing knee pain on movement, but she was able to mobilise and weight bear. While at TPW, she kicked the door several times, injuring her right big toe.

41. Her left knee was examined by X-ray on 21 April 2021 and no fracture was observed so she was referred to physiotherapy. Eight days later, Ms Z's right toe was examined and this revealed a fracture and dislocation. Ms Z underwent surgery for the injury to her right toe on 10 May 2021 which resulted in her fully weight bearing on her injured left leg.
42. Ms Z's father, Mr W, says she complained of knee pain throughout her stay, which her medical notes confirm. After her release, Ms Z says she continued to experience knee pain and was referred for an MRI by her doctor. She was diagnosed with a complete ACL tear on 18 June 2021.
43. We understand ACL tears are often accompanied by an audible popping sound and instant pain. A common mechanism of injury for an ACL tear is twisting of the knee under force. Our research indicates it is possible for a partial ACL tear to become a complete rupture when the knee is put under additional stress.
44. We are unable to rule out the possibility that Ms Z's injury occurred before her interaction with the officers or during her stay in the hospital. It is also possible the officers' actions caused a less severe injury which then worsened during Ms Z's stay at TPW due to several falls and her elevated behaviour, or that an injury was exacerbated by additional weight bearing after her broken toe and surgery.
45. If the officers' actions did cause the injury, our view is it was an unintended and regrettable consequence of their attempt to get her in the patrol car.

Was the force reasonable, lawful, and necessary?

46. Section 122B of the Act allows a person exercising specified powers in an emergency to use such force as is reasonably necessary in the circumstances.⁷ The specified powers include the section 109(1) power to take a person for mental health assessment. Force is only to be used if the power could not be reasonably executed in a less violent manner.
47. Officer B says he tried to talk calmly to Ms Z, telling her she was not in any trouble and making other reassuring statements. Officer A also suggested he could have asked Mr X to try to calm Ms Z again but did not want to ask a member of the public to expose themselves to risk.
48. Ms Z and Mr W both believe Police should have waited for Mr W to arrive. Mr W says he might have been able to convince her to go with the officers.
49. Officer A does not remember whether he considered this possibility or whether he knew how far away Mr W was, but he did acknowledge he knew Mr W was on his way. He says he would not have left Ms Z in her father's care, as he would be worried she might wander off again.

⁷ See section 122B at paragraph 74 below.

50. Mr W has also provided an account where Ms Z became so elevated family were not able to help and she needed professional medical care. We know that on assessment at the Emergency Department, Ms Z was assessed as needing care and she was referred to TPW where she received medical treatment until 12 May.
51. We find Ms Z's behaviour escalated before Police started using force. Further, Ms Z was not spear tackled as Mr X alleged but threw herself to the ground. Ms Z herself did not complain that she was spear tackled. We find it likely that Mr X observed Ms Z collapse to the ground and mistakenly perceived this as a spear tackle.
52. We consider the officers' use of force was necessary as there was a risk Ms Z might try to run away from them, and she was not in a mental state where she could be reasoned with. Once Ms Z had been handcuffed, the safest option for her and for the officers was to put her in the patrol car.
53. While we consider Ms Z's knee injury may have been caused by the officers' actions, it was not caused by unreasonable or unnecessary force.
54. Officer B could have considered other methods of restraint when Ms Z kicked Officer A, such as pulling the passenger seat back to pin her legs or pressing her against the door. However, Ms Z was refusing to sit up, which would have made it difficult for Officer B to properly restrain her using either of these methods. We also note partitions were not fitted to this patrol car. We find that Officer B's restraint of Ms Z was a justified and appropriate use of force.

FINDING ON ISSUE 2

The officers' use of force against Ms Z was justified and appropriate.

ISSUE 3: DID POLICE COMPLY WITH POLICY AND BEST PRACTICE IN THEIR INTERACTIONS WITH MS Z?

Did Police follow the requirements of the New Zealand Bill of Rights Act 1990 (NZBORA)?

55. Officer A recalls invoking section 109 of the Act and telling Ms Z she was being detained. He says it was difficult to communicate Ms Z's detention to her as she was screaming and yelling.
56. Ms Z remembers the officers telling her they wanted to take her to TPW.
57. Officer B says once he was in the car, he advised her she was detained under section 109 of the Act and cautioned her. Section 23 of the NZBORA provides that anyone who is arrested or detained under any enactment must be informed of the reason for that arrest or detention as well as the right to consult a lawyer without delay.
58. The officers appropriately informed Ms Z of the reason for her arrest and read her rights.

Did Police follow reporting requirements?

59. When force is used under section 122B of the Act, the circumstances of that use of force must be recorded and a copy of the record given to the Director of Area Mental Health Services as soon as practicable.
60. Police policy states that after using force under section 122B officers are to submit a Tactical Options Report (TOR).⁸ Police then notify such uses of force to the Director annually in accordance with their memorandum of understanding with the Ministry of Health.
61. The officers say that on arrival at the Emergency Department they told the receiving nurse Ms Z may have an injury, and medical notes from TPW indicate that she was experiencing knee pain.
62. However, there is no record in Ms Z's file of the officers having formally reported the use of force under the Act. Both officers have told us they were unaware of this legislative requirement.
63. The officers say they did not fill out a TOR as they believed only trifling force had been used. However, by Officer A's account he knew she may have been injured when they arrived at the Emergency Department due to having heard her knee "click" and observing her limping.
64. The officers failed to report the use of force against Ms Z. Officer A told us he acknowledges this was a shortcoming in his handling of the matter and accepts he should have completed a TOR.

Did the officers follow Police policy on people with mental impairments in their interactions with Ms Z?

65. Ms Z says the officers did not talk to her when she first got into the patrol car, and this led to her growing suspicion they were not there to help her. Ms Z believes if the officers had spoken to her when she first got into the car, this might have helped to de-escalate her behaviour.
66. Police policy recommends officers adopt a calm demeanour, minimise distractions, give clear directions, attempt to gain the person's trust, and then slowly escalate their techniques if required.
67. Officer A had met Ms Z in 2018 during a previous manic episode. Ms Z believes he could have used this to gain her trust. Officer B remembers speaking calmly to Ms Z, but not until after the officers had restrained her.
68. Mr Y remembers the officers trying to reason with her. We accept the officers tried to gain Ms Z's trust by allowing her out of the patrol car for the karakia.

⁸ A Tactical Options Report is an electronic notification officers make when they use certain force or tactical options. See paragraph 83.

69. Neither officer spoke to Ms Z in the car on the way to the hospital. Engaging directly with Ms Z early on might have established a more positive relationship which could have minimised the need for force. However, the officers could not have been expected to predict the change in her attitude towards them.
70. Given Ms Z's behaviour in the patrol car, it would have been difficult for the officers to predict how she would interpret their actions or words. While engaging with Ms Z might have reduced her fear, they intended to harm her, the officers did not have this insight into her beliefs at the time.
71. We consider the officers engaged appropriately and followed policy during their interactions with Ms Z. However, attempting to reassure Ms Z while transporting her to hospital may have had a beneficial effect on her behaviour and state of mind.

FINDINGS ON ISSUE 3

The officers met legislative requirements under the New Zealand Bill of Rights Act 1990.

The officers did not meet legislative reporting requirements or reporting requirements under Police policy after using force.

The officers followed Police policy during their interactions with Ms Z.

Subsequent Police Action

72. Police have added a detailed intervention plan to Ms Z's file. In any future dealings with Ms Z, officers will have access to a document listing her likely behaviours and possible reactions to authority as well as key contacts who should be alerted to any future incidents. This is good practice for Police in relation to people who they know have mental health issues.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

26 January 2023

IPCA: 21-7636

Appendix – Laws and Policies

LAW

Mental Health (Compulsory Assessment and Treatment) Act 1991

Power to take a person for assessment

73. Section 109 of the Act establishes Police powers in relation to people in a public place who appear to be mentally disordered. Subsection (1) says:

“If any person is found wandering at large in any public place and acting in a manner that gives rise to a reasonable belief that he or she may be mentally disordered, any constable may, if he or she thinks that it would be desirable in the interests of the person or of the public to do so,—

(a) take that person to a Police station, hospital, or surgery, or to some other appropriate place; and

(b) arrange for a mental health practitioner to examine the person at that place as soon as practicable.”

Use of force

74. Section 122B provides for use of force under the Act. Subsection (1) says:

“A person exercising a power specified in subsection (2) may, if he or she is exercising the power in an emergency, use such force as is reasonably necessary in the circumstances.”

75. Subsection 2 specifies that force may be used to exercise Police powers under s 109(1).

76. If force is used under s 122B, the circumstances in which the force was used must be recorded and a copy of the record given to the Director of Area Mental Health Services as soon as practicable.

New Zealand Bill of Rights Act

77. Section 23 sets out the rights of persons arrested or detained. Subsection 1 says:

“Everyone who is arrested or who is detained under any enactment—

(a) shall be informed at the time of the arrest or detention of the reason for it; and

(b) shall have the right to consult and instruct a lawyer without delay and to be informed of that right...”

'Use of force' policy

78. Police 'Use of force' policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), pepper spray, batons, Police dogs, Tasers, and firearms.
79. 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.
80. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of 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).
81. 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 activity); actively resisting (pull, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat or 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.
82. 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.
83. Police are required to complete a TOR after using a certain level of force. The report includes the officer's TENR assessment and PCA, each tactical option used, and a description of the force used and the reasons for using it.

People with mental impairments

84. Police policy sets out an initial procedure that should be followed when dealing with a person with a mental impairment, including:

- seeking help from the person's doctor, family, friends, and associates;
- where possible having someone the person trusts as a support person;
- trying to establish whether the person is physically ill or injured; and
- if necessary asking health professionals for any helpful information about the person and their disorder.

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 Colin Doherty.

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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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