



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

# Unjustified use of force in Christchurch

1. Ms Z complained to us about how Police treated her when she was arrested in Christchurch on 13 February 2021. She says Police unnecessarily released a dog on her after she had already surrendered and after she had told them she was pregnant.
2. On the evening of 13 February, Police planned to arrest Mr Y and Ms Z at a residential property, for alleged burglaries in the South Island. However, before this could happen, a Police dog handler believed he saw Ms Z in a stolen Mazda and initiated a pursuit.
3. During the pursuit, which lasted less than two minutes, Police spiked the Mazda and the officer's patrol car collided with it. Mr Y and Ms Z, who were both in the Mazda, drove to a nearby street, then abandoned the car and fled on foot.
4. The officer tracked Ms Z to a residential property and used his dog to apprehend her. Ms Z received a serious dog bite injury to her leg, which required surgery. Police later found Mr Y at another address.

## The Authority's Findings

### Issue 1: Was the pursuit justified?

Officer A was legally justified in attempting to stop the Mazda, but initiating a pursuit was an inappropriate tactic in the circumstances.

The use of road spikes was appropriate in these circumstances.

The Southern Emergency Communications Centre (SouthComms) correctly applied Police policy and directed the pursuit to be abandoned.

It was reasonable for Officer A to continue following the Mazda after the pursuit was abandoned, given the circumstances.

Officer A breached policy by deliberately driving into Mr Y's car. He then made false statements about the collision.

**Issue 2: Was Officer A's decision to deploy the Police dog justified?**

Officer A's use of the Police dog to track the occupants of the car was justified and lawful.

Officer A's decision to use the Police dog to detain Ms Z during her arrest was not justified and was excessive.

**Issue 3: Did Police provide Ms Z with appropriate medical care?**

Given the circumstances, it was reasonable for officers to take Ms Z immediately to a doctor, rather than providing first aid at the scene.

Officer B, the supervisor, failed to adequately investigate the collision between the Police car and fleeing car.

Officer B submitted a Traffic Crash Report which was factually incorrect. This report supported Mr Y being charged with offences he did not commit.

## Analysis of the Issues

### BACKGROUND

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5. Police officers in the district had all received an intelligence report saying Mr X and Mr Y were sought by Police. They had been identified as the offenders in a series of burglaries in various parts of the South Island, targeting cigarettes. Police had a parole recall warrant for Mr Y. The report also said Police had arrest warrants for Ms Z who was believed to be in Mr X and Mr Y's company. The report noted the three offenders were highly mobile and transient and may be carrying firearms.
6. On 12 February 2021, Officer A (a dog handler) and other officers arrested Mr X at an address in Opawa. He was found to have a pistol and ammunition in his possession. Police had reason to believe they may locate Mr Y and Ms Z at the same address the following evening, 13 February.
7. Officer A says he had been told Mr Y and Ms Z were stealing the cigarettes to repay a major drug debt to a gang. He believed this increased the likelihood they would be armed to protect themselves and that they would be highly motivated to avoid being sent to prison. Given this possibility and the intelligence report, Officer A armed himself with a Glock pistol before heading to the area at about 9.30pm. Officers B (Sergeant) and C (Shift Commander) also drove to the area to assist in the arrest.
8. Police planned to observe the address, then move in to arrest Mr Y and Ms Z upon confirming they were there.

## ISSUE 1: WAS THE PURSUIT JUSTIFIED?

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### Was Officer A justified in attempting to stop the Mazda?

9. Officer A parked in a nearby side street. He was getting his dog out of his patrol car when he believed he saw Ms Z's Mazda drive past him, heading out of the street. He decided to stop her and arrest her before she was able to let Mr Y know that Police were in the area or leave the area herself. He says there was no other traffic in the area.
10. Officer A told SouthComms: *"I'll just try and catch [Ms Z's car] and keep obs [observations] in there until you get staff in there to spike it,"* based on an assumption she may flee. He turned on his flashing lights.
11. About 20 seconds later, the Mazda moved over to the kerb and stopped. Officer A pulled up alongside the driver window and saw that the driver was in fact, Mr Y. He could not see the passenger well enough to confirm it was Ms Z, though assumed it was.
12. Officer A did not communicate that he had identified the driver to be Mr Y, however, from this point on, referred to the driver as *"he"* in radio transmissions.
13. Officer A's decision to stop the Mazda was lawful under section 9 of the Search and Surveillance Act 2012 as Ms Z was wanted on arrest warrants and for recent offending. The Mazda was also believed to be stolen.
14. Once Officer A knew it was Mr Y driving the Mazda, he was also justified in stopping him, given he was wanted for a parole recall, recent offending, and believed to be in a stolen car.

### Was Officer A justified in beginning a pursuit?

15. About ten seconds after stopping, Mr Y accelerated away at speed. Mr Y and Ms Z both say they knew Officer A wanted them to stop and that they could be arrested.
16. Officer A initiated a pursuit, activating his flashing lights and sirens. He told SouthComms *"he's decamping"* and said:

*"At this stage I'm going to follow him. Due to the seriousness of the offender, [sirens] the likelihood that he's armed, that I can continue this at the moment. He's also driving at 60ks in a 50."*
17. Of note, the intelligence report (discussed in paragraph 5) had included a qualification that the information it contained about the three offenders did *not* justify a vehicle pursuit. However, Officer A told us he believed it to be a generic precaution.
18. The overriding principle of the Police's 'Fleeing Driver' policy is that safety takes precedence over the immediate apprehension of an offender. Where the driver is known to Police, the

pursuit is to be abandoned in favour of an investigation if the fleeing driver does not pose an immediate threat and it is likely Police can safely apprehend them later.<sup>1</sup>

19. Accordingly, the SouthComms dispatcher immediately instructed Officer A to abandon the pursuit because Police knew the driver's identity.
20. Officer A should have known that a pursuit was likely to be abandoned for this reason and that initiating a pursuit was therefore an inappropriate tactic.

#### **Did Officer A abandon the pursuit as instructed?**

21. Once a pursuit is abandoned, Police policy requires officers to stop and pull over to the side of the road and advise Comms they have stopped.
22. Officer A says, upon receiving the abandonment instruction:

*"I immediately acknowledged this directive over comms and braked to the speed limit (50kmh), turned my red and blue lights off and intended to pull into the left-hand curb and come to a complete stop."*

23. However, Officer A says he was at a narrow point in the road so, in order to not block the road, he drove forward to where the road widened again.
24. During this time, another officer reported that he had spiked one of the Mazda's tyres.
25. Officer A then saw the Mazda ahead of him, driving into a dead-end street. He followed it at road speed, with no flashing lights.
26. Officer A says he was aware of the policy which instructs officers they must abandon a pursuit if directed to do so and that he intended to pull over and completely stop. However, when he saw the Mazda turn into a dead-end street, he decided to follow it because he knew at least one of its tyres had been successfully spiked and he believed Mr Y may soon abandon it. He thought Mr Y and the passenger may run down a walkway or through a school gateway, and that he could track them with his Police dog.
27. Although we consider this to be a minor breach of policy, we accept Officer A intended to abandon the pursuit and began doing so. We also accept it was reasonable for him to then continue following the Mazda.

#### **Was the use of road spikes appropriate?**

28. We find the use of spikes was appropriate in these circumstances as the driver, Mr Y, was attempting to escape to avoid arrest. He was wanted for serious offending and could continue to offend if not stopped.

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<sup>1</sup> See paragraphs 149 and 150 for relevant policy.

## Did Officer A deliberately drive into the Mazda?

29. Officer A told us he followed the Mazda into the dead-end street and parked across the road to prevent Mr Y and his passenger from escaping in the car.<sup>2</sup> He says Mr Y turned the Mazda around at the bottom of the cul-de-sac and then drove into the front left of his patrol car with their *“front right, round the A-pillar”*. Mr Y then reversed and drove around Officer A’s patrol car to a nearby street.
30. Comms records show Officer A immediately told SouthComms: *“He’s rammed me”*. Officer A says by using the term ‘rammed’ he meant that Mr Y had initiated contact between the two vehicles.
31. In Officer A’s reports and statements, he consistently says that Mr Y drove into his patrol car:
  - Use of force report: Mr Y *“struck the front left side of my van attempting to exit”*;
  - Fleeing driver notification: *“The vehicle deliberately drove into the front of dog van to exit the street”*;
  - Formal statement: Mr Y *“then drove directly into the dog van impacting with the front left side of the van”*; and
  - Updated statement: *“In an attempt to get past the patrol car and out of the street the front right part of [Mr Y’s car] (A pillar area) impacted with the front left part of the dog van”*.
32. Officer A’s documents were used to prosecute Mr Y for the collision.
33. Officer A also made an insurance claim for the damage to the patrol car, which included submitting the use of force report and fleeing driver notification. On the insurance claim form, he said: *“...the offender has intentionally driven into the left front side of the Police wagon”*.
34. However, Mr Y and Ms Z say it was Officer A who drove into their car (the Mazda).
  - Ms Z says they were turning at the end of a street when the patrol car *“rammed”* their car.
  - Mr Y says the patrol car was *“right up [his] ‘arse’ doing 70-80 kmph”*. He entered a street and found it was a dead end. As he started to turn, the patrol car *“rammed”* the driver’s side of his car.
35. An independent witness recorded the incident on his home CCTV. He says he viewed the footage several times and recalls the Mazda and the patrol car travelling at speed down the street. As Mr Y was turning at the end of the cul-de-sac, the patrol car drove into the driver’s side of the Mazda. He recalls Officer A getting out of his car and hearing him say: *“Police, stop!”* The CCTV footage was overwritten before we had a chance to view it.

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<sup>2</sup> Officer A was driving a marked Police Holden Commodore utility vehicle.

36. We located the Mazda (pictured) and noted the only transfer of paint on it was blue and yellow horizontal lines from the patrol car to the driver's door of the vehicle driven by Mr Y. The damage to the drivers' door indicated a large area of the door had been hit with enough force to push the panelling inward. There was no damage forward of the driver's door and no damage across the front of the Mazda.



37. The patrol car's damage was limited to the front left bumper and below the left passenger's side headlight.

38. Overall, the damage was *not* consistent with the collision as described by Officer A. However, it *was* consistent with the accounts of Mr Y, Ms Z, and the independent witness.

39. Given this evidence, we believe it was the front left corner of Officer A's patrol car that collided with the Mazda's driver's door. This leads us to conclude it was Officer A who drove into the Mazda and that he subsequently gave false statements about the collision.

40. We note the airbags did not go off in either Officer A's patrol car or the Mazda, which indicates both vehicles were travelling at less than 8 kph at the time they collided.

41. Officer A maintains he did not drive into the fleeing car. He says: *"I can categorically state that there was no intentional ramming of the offender's vehicle, I was intending to place an obstacle in their way to prevent them fleeing in the vehicle"*.

42. Police do have an option of using their patrol cars to physically stop a fleeing vehicle (a 'non-complaint vehicle stop'). However, Police policy requires the user to be trained in this technique, and an Armed Offenders Squad Commander to authorise its use. In this instance, Officer A was trained in the technique but had no authorisation to use it. Therefore, driving into the Mazda to stop the vehicle was in breach of policy.

#### **Did Officer A present a firearm at Mr Y?**

43. Mr Y says that after the collision, Officer A got out and ran around the back of his patrol car and presented a firearm at him. Officer A says he was wearing a Glock pistol but did not present it. Ms Z and the independent witness did not provide information in their accounts about whether the officer presented a firearm.

44. We have a conflict of accounts that we cannot resolve. We are therefore unable to determine whether Officer A presented a firearm at Mr Y.

## FINDINGS ON ISSUE 1

Officer A was legally justified in attempting to stop the Mazda, but initiating a pursuit was an inappropriate tactic in the circumstances.

The use of spikes was appropriate in these circumstances.

SouthComms correctly applied Police policy and directed the pursuit to be abandoned.

It was reasonable for Officer A to continue following the Mazda after the pursuit was abandoned, given the circumstances.

Officer A breached policy by deliberately driving into Mr Y's car. Officer A then made false statements about the collision.

## ISSUE 2: WAS OFFICER A'S USE OF THE POLICE DOG JUSTIFIED?

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### Was it appropriate to use the Police dog to track Mr Y and Ms Z?

45. Mr Y drove from the street where the collision occurred and abandoned the Mazda in another nearby cul-de-sac. As a result of the collision, Mr Y was unable to open and get out of the driver's door. He and Ms Z both got out of the car through the front passenger door, then ran in different directions through a reserve. Officer A arrived with his Police dog a short time later and did not see Mr Y or Ms Z run from the car.
46. Officer A asked for another armed officer to act as 'cover' for him while he tracked with the Police dog. Officer B arrived about two minutes later, armed with an M4 rifle and a Glock pistol.
47. Officer A says the dog immediately located a strong track from the Mazda to the reserve which ran along the riverbank behind residential properties.
48. The decision to use the Police dog to track Mr Y and Ms Z was reasonable and appropriate.

### What happened during the arrest?

49. Ms Z says she went into a property and tried to get through a high side gate but it was locked. She also tried knocking on a door but got no response. She then hid in a gap about one metre wide, between a boxed Griselinia hedge and neighbouring fence. The hedge was between 60 and 80 centimetres high. The fence was about 1.2 metres high with tall trees behind.
50. After tracking for a short time, Officer A's dog indicated that a person was hiding in some bushes in the back yard of the property.
51. Ms Z and the officers give different accounts of what occurred next.

### What does Ms Z say?

52. Ms Z says she was hiding behind the hedge, on her hands and knees, when she saw Police approaching with torches and the dog. She says she had nowhere to run as she was surrounded

by the fences, and she had no shoes on. Realising there was no point continuing to try to escape, she knelt with her hands raised in the air and told the officers: *"I surrender, I'm pregnant."*<sup>3</sup>

53. Ms Z says the officers came straight up to her, stopping about one or two metres away. She believes they could see her upper torso and her raised hands behind the hedge.
54. Ms Z says the officers asked her three times where Mr Y was. She *"gave them an answer they did not like"*, saying she did not know where Mr Y was. Officer A then set the dog on her.
55. Ms Z says the dog pulled her out from behind the hedge to the grass area:

*"...the dog had me by the leg and was pulling at me which [made] me go to where the dog was because I didn't want him to keep ripping my leg and that's how I came out from behind the hedge 'cos he was just pulling me."*
56. Ms Z says she was crying and pleaded with the officers to get the dog off her, repeating that she did not know where Mr Y was. *"Eventually the dog came off and they handcuffed me and left me face down in the yard."* She believes she was still kneeling when the dog was taken off her.
57. Ms Z told us she is extremely fearful of dogs as she has been seriously bitten by a German shepherd dog (not a Police dog) in two separate incidents in the past. The bites resulted in hospitalisation and surgery to her face, arms, and legs. This fear of dogs, along with the pregnancy, was part of the reason she gave herself up.

#### *What does Officer A say?*

58. Officer A says he used his torch but could not see who was hiding due to the poor visibility and density and height of the hedge. However, because the dog had tracked someone directly from the Mazda to the hedge, he believed it was either Mr Y or Ms Z hiding.
59. Officer A identified himself, saying words to the effect of: *"Police dog handler. Come out or the dog will be used to arrest you."* He waited for about ten seconds then repeated the instruction. He does not believe his dog was barking at the time, so the person hiding would have heard him.
60. Officer A says the person did not answer him or come out. He considered using pepper spray or a Taser, however, did not believe either option would work through the thick hedge. He also believed they would not be appropriate as he could not see the hidden person.
61. Officer A says he could not see what the person in the bush was doing, or what they had with them. He believed going to the bush would expose himself and Officer B *"to unacceptable risk due to the genuine threat of potential firearms"*.
62. After warning the person twice, Officer A instructed the dog to apprehend them. Officer A heard Ms Z scream in pain, and at this point, realised the person was a female.

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<sup>3</sup> We confirmed Ms Z was pregnant at the time of this incident.



63. Officer A approached about four seconds after the dog took hold of Ms Z. He says Ms Z was lying down and the dog was engaged on her lower leg, holding on with a bite. Officer A believes the dog bit Ms Z for about five to ten seconds in total.
64. Officer A says: *"Once we were able to clearly see her hands [Ms Z] was handcuffed and the dog removed."* Ms Z stayed where she was and Officer B dealt with her.

#### *What does Officer B say?*

65. Officer B's account corroborates Officer A's. He was standing on the lawn, to the left of Officer A, and could not see the person who was hiding either.
66. Officer B recalls Officer A instructing the person to come out. Officer B says he also gave a warning himself, saying something like: *"Armed police, make yourself known."* The person did not answer either officer before the dog was released.
67. Officer B told us that following the dog bite, he saw the person come out and he pulled them forward. When asked if Ms Z was standing when she came out from behind the hedge, Officer B said he could not remember. He told us: *"...she's come out with the dog, and I'm guessing [Officer A] was close."*
68. At this point, Officer B realised the person was a female. He told her to show her hands so he could ensure they were clear. Ms Z confirmed she was Ms Z and he placed her under arrest. Officer B says: *"...then I've cuffed the female on the ground."* Ms Z rolled onto her stomach and Officer B left her in this position.
69. It is unclear exactly whether Ms Z was already near to the ground when she came out from behind the hedge or whether Officer B took her to the ground just prior to placing her in handcuffs.
70. Officer B asked Ms Z where Mr Y was and she said she did not know. He radioed for assistance and discussed tracking Mr Y with Officer A.

#### *What does an independent witness say?*

71. The neighbour did not see the dog bite Ms Z, however, witnessed some of what happened once she was on the lawn.
72. As the neighbour went to leave his house he heard a dog barking, a woman screaming, and a male voice. The woman sounded distressed so he looked over a fence. He saw a woman (Ms Z) on her knees on his neighbour's lawn. One officer was standing three or four metres back from the woman. He had his Police dog with him, which was no longer barking. Another officer was standing behind the woman, talking to her. The neighbour listened for a couple of minutes and heard the officer asking the woman where the 'other man' was. She was *"obviously rather agitated and upset"* and kept saying she did not know where he was.

#### *Whose account do we prefer?*

73. We are unable to establish whether the officers' version of events is accurate, or Ms Z's version.

74. Regarding Ms Z's credibility, we considered:
- her offending history, which includes a conviction for giving a false statement in 2010;
  - while she had been attempting to escape when she ran from the Mazda, she then found herself in a position where she had nowhere further to go, other than to come out to where the officers were. Once cornered, with no means of physical escape, it is reasonable to believe she may have surrendered;
  - Ms Z's genuine and deep-seated fear of being attacked and bitten by dogs. We confirmed she suffered significant dog bite injuries in 2010 and 2011. However, we note Ms Z was convicted of making a false oral statement to Police regarding the 2010 bite. She said a rottweiler had bitten her, whereas it had actually been a family German shepherd; and
  - Ms Z voluntarily provided information about the vehicle collision that is consistent with the physical evidence on the vehicles and an independent witness.
75. We have concerns about the credibility of Officer A and Officer B:
- we have no doubt that Officer A collided with the Mazda being driven by Mr Y. We note that Officer A has completed documentation supporting a version of events that we believe is false and that his signed statement used for court proceedings against Mr Y is also false in material details. We are drawn to the conclusion that Officer A is prepared to give false information in order to get himself out of bother; and
  - Officer B conducted an inadequate investigation into the crash and submitted a false traffic crash report (see Issue 4). He also has a previous employment outcome for submitting a false traffic crash report.
76. Ms Z was bitten at about 9.50pm. Although it was dark, there was sufficient lighting for Ms Z to find the door and locked side gate, to find the gap behind the hedge, and to see the dog beside Officer A as he approached. This suggests that, *if* she had been kneeling with her hands raised above the bush, officers may have seen her when they shone their torches towards the bush.
77. We cannot determine whether the dog pulled Ms Z out from behind the hedge onto the grass area, while maintaining hold of her leg. It seems unlikely that this could happen while she remained kneeling, however, we cannot rule it out.
78. Given all parties have credibility issues and a lack of any independent evidence to corroborate either version, we are unable to determine whether Ms Z surrendered before Officer A set the dog onto her. To find against Officer A we would need to determine that he had effectively set his dog on a surrendering, defenceless and pregnant woman as a punishment for not disclosing the whereabouts of Mr Y. We would require more cogent evidence than we have, to do that.

### Did Officer A adhere to Police policy when he released the dog?

79. We accept the dog appeared to have a strong scent of either Mr Y or Ms Z once it began tracking them from where they abandoned the Mazda. However, Officer A had not seen the hidden person. Therefore, he could not be absolutely certain who it was when he released the dog.
80. Police policy states:<sup>4</sup> *“Dog handlers should not release a dog to apprehend a suspect unless they are sure that the dog has sighted the suspect.”*
81. Officer A breached policy by instructing the dog to bite Ms Z before seeing her.

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

82. If Ms Z did surrender, there would be no justification for Officer A setting the dog onto her.
83. We have considered whether Officer A was justified in using his dog on Ms Z, based on his account.<sup>5</sup>
84. The following provisions of the Crimes Act 1961 provide legal justification for using force in certain circumstances:
- Section 39 empowers Police to use *“such force as may be necessary”* to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process.
  - Section 40 empowers Police to use *“such force as may be necessary”* to prevent the escape of someone who takes flight to avoid arrest.
  - Section 48 provides that any person is justified in using *“reasonable”* force in defence of themselves or another.

### Do any of the legal justifications apply?

#### *Was the use of the dog justified under section 39, to effect Ms Z’s arrest?*

85. Officer A told us he was justified in used his dog to effect the arrest of Ms Z under section 39. However, section 39 does not apply as Ms Z was not using any force against either officer to resist being arrested.

#### *Was the use of the dog justified under section 40, to prevent Ms Z from escaping?*

86. In order to determine whether Officer A was justified under section 40, we must first determine whether Officer A believed on reasonable grounds that Ms Z was fleeing to avoid arrest at the time he set the dog onto her.

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<sup>4</sup> See paragraphs 151 to 153 for relevant policy.

<sup>5</sup> See paragraphs 154 to 158 for Police policy on the use of force.

87. We accept that when Ms Z initially ran from the car to the hedge, she was attempting to escape from officers, to avoid arrest.
88. However, once Ms Z was at the hedge, she became cornered. In order to escape she would have had to climb the neighbours fence behind her, or go out the way she came in, onto the grass area where the officers were. From all accounts, it is clear she did not try to do this. There is no indication the dog believed the person hiding was moving from the spot he located them in.
89. Given this, Officer A could not possibly deem Ms Z to be fleeing at the time he instructed the dog to bite her. By his own account, she was stationary, behind the hedge. Therefore, using the dog was not justified under section 40.

*Was the use of the dog justified under section 48, in self-defence or defence of others?*

90. Officer A says he believed the hidden person was either Mr Y or Ms Z (discussed in paragraph 58). He feared that whichever one was hiding could cause himself or Officer B serious injury or death.

What did Officer A believe the circumstances to be?

91. Officer A says he believed:
- Mr Y or Ms Z could have a firearm, given the intelligence information and that he had been involved in the apprehension of Mr X, the day before, when he was found to have a firearm and ammunition in his possession;
  - Mr Y and Ms Z were both motivated to avoid arrest given they needed to be able to continue making money to repay a gang and would want to avoid jail;
  - the hidden person had shown a determination to avoid arrest by any means by being unlawfully at large, fleeing on foot, then hiding and refusing to come out;
  - there was a clear risk to residents in the area given the offenders may be armed and on foot in the darkness attempting to escape from Police attention by using properties to hide;
  - the hidden person knew Police were there because of the verbal warnings and his shining torch: *“if their intentions were innocent or they were not involved they would have given themselves up at the first or second verbal command. The fact that did not occur heightened the threat”*;
  - there were no alternative options as to enter the bush manually would have exposed he and Officer B to an unacceptable risk due to the possibility the hidden person had a firearm;
  - the hidden person’s co-offender could be nearby, and could possibly use a weapon against the officers; and

- he and Officer B were exposed while standing on the grass area of the yard: *“I had to act immediately for my safety and that of my cover man and for us to disengage or leave would have posed a significant risk to our safety due to us both being exposed in that location.”*
92. We accept Officer A was genuinely mindful of the possibility the offenders were armed. He had armed himself prior to attending and requested armed cover before tracking. However, we also note:
- when Officer A first stopped the Mazda, he drove up to the driver’s window, apparently without considering that an occupant may use a firearm against him;
  - he placed himself in a position where he deliberately collided with the Mazda in a residential street, while no other officers were present to assist; and
  - he moved into the exposed area of the back yard rather than staying behind a low fence and hedge that ran along the length of the back yard, which would have provided him with some cover.
93. We believe Officer A has overstated his perception of any risk that Mr Y or Ms Z were actually armed.
94. We note that in a report completed the following day, explaining why he used the dog, Officer A did not mention his fear the co-offender could be nearby nor his fear that he and Officer B were exposed.

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

95. Officer A says the hidden person was not being assaultive prior to him releasing the dog. He had not seen any evidence that the person had a firearm and neither Mr Y nor Ms Z had threatened him with one during the incident.
96. It is unreasonable to set a dog on an unknown person (who cannot escape and is not using force to resist arrest) for no other reason than that they *may* have a firearm, with no good cause to suggest that they actually do.
97. We do not believe that Officer A’s decision to release the dog to bite Ms Z was for the purpose of defending himself and Officer B. We do not accept that he genuinely believed the risk was significant and do not believe he had any reason to believe the person hiding would suddenly fire at them, when they had not shown any capability or intention to in the events leading up to this point.
98. We therefore find that Officer A was not justified in using force against Ms Z in defence of himself or others.
99. The officers knew where Ms Z was and had other officers in the nearby area who could assist. They should have cordoned and contained the area and made further attempts to communicate.

## FINDINGS ON ISSUE 2

Officer A's use of the Police dog to track the occupants of the car was justified and lawful.

Officer A's decision to use the Police dog to arrest Ms Z was not justified and the force used was excessive.

## ISSUE 3: DID POLICE PROVIDE MS Z WITH APPROPRIATE MEDICAL CARE?

100. Ms Z sustained a serious dog bite injury that included multiple punctures and lacerations, blood loss, missing tissue, and nerve damage.
101. Police employees have a legal duty to provide care to any person they take into custody. Their duty begins at the time the person is arrested and continues until they are transferred into the care of someone else or released.
102. Police policy specifically says that following a dog bite incident: *"dog handlers must provide or direct other staff to provide immediate first aid as necessary"*. It requires that everyone who is bitten is provided with appropriate medical care as soon as practical.
103. Ms Z told us the officers left her alone, lying handcuffed and face-down on the ground. She was bleeding badly, in a lot of pain, and it took a long time to get any medical treatment for the injury. She says one officer told her it was *"just a scratch"*, but she was unable to put weight on her leg when she was walked to a patrol car.
104. Officer A says he removed the Police dog from Ms Z but did not inspect the injury at the time. He did not provide her with any medical attention as he was focussed on searching for Mr Y, which he believed to be the priority. He knew Officer B was with Ms Z and would provide first aid if necessary.
105. Officer B placed Ms Z in the handcuffs. He did not look for a bite injury. He says Ms Z was pretty calm and the only thing she said about her leg was that it was numb. He says he reassured her that further Police assistance would arrive soon. Officer B says:

*"Considering a number of factors including the environment, the unknown location of [Mr Y], and being unable to search [Ms Z],<sup>6</sup> I believed the safest course of action was to wait for back up to assist before I moved Ms Z or attended to her leg."*

106. Officers D and E arrived six minutes after requested, to take Ms Z to the Christchurch Central Police Station.
107. Officer D says:

*"I looked at her injury and assessed it to the best of my ability without removing her clothing. My consideration at the time was blood loss. There was no need to*

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<sup>6</sup> Policy requires a female officer conduct searches on female detainees.

*have pressure applied to the area by bandaging, in an attempt to stop blood loss.”*

108. Officer E says Ms Z was “*grimacing in pain but not shouting or screaming*”. He did not remove Ms Z’s jeans as there were only male officers present and he did not want to further aggravate any injury.
109. Officers D and E were aware ambulances are often delayed on Saturday nights. They decided the best course of action was to take Ms Z to the Police doctor who was already at the Police station, 5 km away.
110. The patrol car was brought as close as possible to Ms Z and Officers D and E both assisted Ms Z in walking her to the patrol car as she was not able to put weight on her leg. The officers called the custody unit staff to say the doctor would be needed to check her injury.
111. Ms Z told us: “*...in the back of the Police car there was blood everywhere*”, however, our enquiries found the patrol car did not require cleaning after transporting her.
112. Once at the Police station, the Police doctor immediately examined Ms Z’s injury. The doctor instructed them to take Ms Z to hospital where she was admitted and underwent surgery.
113. Ms Z was not suffering from any significant blood loss and there were no other signs she needed immediate first aid. Given this, we accept it was reasonable for the officers to take her to the doctor rather than try to manage the wound at the scene.
114. Ms Z received an appropriate level of care once she arrived at the Police station and was seen by a doctor.

### FINDING ON ISSUE 3

Given the circumstances, it was reasonable for officers to take Ms Z to immediately to a doctor, rather than providing first aid at the scene.

### ISSUE 4: DID POLICE INVESTIGATE MS Z’S COMPLAINT AND THE VEHICLE COLLISION APPROPRIATELY?

115. During our investigation, we became concerned about the quality of the Police investigation into the matter and determined that we needed to examine this further.<sup>7</sup>

#### Was Officer B’s initial Police investigation into the collision adequate?

116. As the supervisor, Officer B was required to complete a mandatory Traffic Crash Report relating to the collision.
117. Officer B failed to breath test the drivers, examine the scene, examine or adequately photograph the two cars, undertake a reconstruction, or attempt to locate potential witnesses. We note

<sup>7</sup> See paragraphs 161 and 162 for relevant policy.

there were Road Police staff working that evening who could have provided advice on the collision or could have assisted with inquiries, but they were not utilised.

118. Officer B told us he accepted what Officer A had told him and there was no reason for him to question his account.
119. Officer B says he provided Officer F with his mobile phone the day after the collision and instructed her to complete the Traffic Crash Report on it. Officer B told us he was busy and delegated the report to Officer F to complete based on the information he verbally provided to her.
120. Officer B did not check the report for accuracy before submitting it under his name. The report was then initially closed without any internal review by a senior officer.
121. The Traffic Crash Report included numerous inaccuracies as to the location of the collision and the position of the vehicles when they collided. The report was completed to reflect how Officer A described the collision, and not how it actually occurred.
122. Officer B described to us his interpretation of how the damage occurred between the patrol car and the car Mr Y was driving, saying Mr Y was trying to drive around the front of Officer A's vehicle. We find this incredible given he did not investigate the matter and his Traffic Crash Report diagram showed the front right of Mr Y's car colliding with the front right of the patrol car. We simply do not accept his analysis as a plausible explanation based upon the evidence we have gathered and Police's own independent review of the collision evidence (see paragraph 140).
123. We are very concerned that Officer B was not able to determine that Mr Y's car had not rammed the patrol car, given he would have seen the damage between the patrol car and the Mazda.
124. Mr Y was then charged with numerous driving offences, including the alleged collision with Officer A's patrol car. Police also sought reparation from Mr Y for the alleged damage done to the patrol car.
125. Police relied upon Officer B's Traffic Crash Report when preparing the prosecution documents.
126. We find that Officer B failed to adequately investigate the collision and failed to accurately record it in a Traffic Crash Report that would have identified the inconsistencies. We also find his delegating of the reporting to another officer on his own mobility device without checking its accuracy was inappropriate.
127. In addition, we are very concerned that Officer A used Officer B's Traffic Crash Report and other Police generated reports for the insurance claim and made a signed statement that supported Mr Y being charged with offences we reasonably conclude he did not commit.



### What did Officer G's incident investigation find?

128. After Ms Z complained to us, Police assigned Officer G to complete an incident investigation. Officer G was provided with instructions which stated that the incident investigation was not a criminal or employment investigation, but rather, he was to identify any learnings Police could take from the incident. If Officer G identified any actions or behaviour that contravened Police expectations, he was to raise them.
129. Officer G says he did not initially inspect the vehicles due to the limited scope given to him in the incident investigation. However, he reviewed the documents relating to the crash and looked at scene photographs. He says: *"It was clear to me that the damage to the patrol car and target vehicle was not consistent with the information contained in the [Traffic Crash Report] or the fleeing driver report."*
130. Officer G obtained a statement from Ms Z outlining how the Police dog bit her. She also provided Officer G with details alleging that Officer A had rammed them with his patrol car. This allegation included a diagram of how it happened in the cul-de-sac.
131. Officer G says, after taking Ms Z's statement on 29 April 2021, he felt he could no longer continue with an incident investigation, given the clear allegations of wrongdoing against officers, *"partially supported by the evidence."* He believed any further enquiry would have to be done within the scope of a criminal and/or employment investigation. Given this belief, and the limitations of the type of investigation he had been tasked with, Officer G contacted his supervisor and asked Police to change the type of investigation. He told his supervisor he was concerned that the Traffic Crash Report contained inaccuracies that would be used to prosecute Mr Y for driving into Officer A's patrol car. However, Police decided Officer G should continue with the incident investigation.
132. Following our investigator's inspection of the Mazda and patrol car, Officer G examined the Mazda. Again, he unsuccessfully attempted to have the investigation upgraded to allow for more thorough enquiries.
133. In his report, Officer G said neither Officers A, B nor Ms Z's accounts were persuasive. However, he found it more likely the officer's accounts regarding Ms Z's arrest, were correct. He inferred that, to believe Ms Z, would mean that Officers A and B were not telling the truth and had colluded in providing their accounts. He believed it more likely that Ms Z's account was untruthful as he found other aspects of her account, such as her assertions relating to her medical treatment, to lack credibility. Given this, he found the use of the dog to arrest Ms Z was appropriate.
134. We are aware that Officer A and Officer B had shared their accounts prior to being interviewed by us. They both declined to be interviewed by Police, preferring to prepare written accounts. We noted neither could remember the address where Ms Z was arrested. We also believe Officers B's account of how Ms Z was removed from the bushes after being bitten was a deliberate attempt to minimise the severity of the situation Ms Z had experienced.

135. Officer G reported his findings that Officer A should never have begun the pursuit and recommended an employment investigation into Officers A and B regarding the crash.

#### **What did Officer H's criminal investigation find?**

136. It was not until 9 June 2021 that Police agreed to commence a criminal investigation to determine whether there was any criminal liability on the part of Officers A and B. This delay impacted on some of the evidence availability and hampered the criminal investigation conducted by Officer H.
137. Officer H located and spoke with witnesses (including Mr Y), had the patrol car inspected and airbag data downloaded, located information relating to Ms Z's medical treatment, and considered a review of the use of the dog completed by an experienced Police dog handler. He did not believe Ms Z's account about the use of the dog.
138. Officer H recommended the charges against Mr Y, relating to the collision, be withdrawn. He considered there may have been other scenarios which led to the collision. He left the decision on employment matters around this, in respect of both Officers A and B, open for determination.
139. Officer H concluded there was no criminal liability on the part of Officers A or B.

#### **What did Officer I's review of the Traffic Crash Report find?**

140. Police had the Traffic Crash Report reviewed by an independent Police officer from another district, Officer I.
141. Officer I was not provided with all the information Police had available to them or information they could have obtained and provided. While given some photographs, he was not given additional ones showing the damage between the two vehicles (in particular, detailed images of the car and the damage it sustained) and the accounts and diagrams of Mr Y and Ms Z. He also was not given the account of the witness that recorded the collision on his CCTV that indicated Officer A had collided with Mr Y in the cul-de-sac.
142. Despite this, Officer I's review found errors in the accuracy of Officer B's Traffic Crash Report that were completely at odds with the vehicle damage and the independent witness. He found it contained several statements that had no evidential support and a diagram that was clearly incorrect. From Officer I's review on the material provided he was able to determine that the patrol car had not been rammed as described by Officer A.
143. Police subsequently withdrew the charge against Mr Y.

#### **Our conclusion**

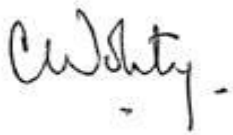
144. The Police investigations into the collision dismissed Ms Z's complaint primarily on her credibility and reliability as a witness. In doing so, the Police investigators placed too much reliance on the accounts of Officers A and B and did not look for basic evidence that would corroborate the accounts provided.

145. Following a legal opinion from the Crown Solicitor's Office which reviewed Officer H's investigation, Police concluded there was insufficient evidence to prosecute the Police staff involved.
146. It is critical investigating officers are able to conduct tasks such as inspecting cars, speaking with witnesses, and examining scenes, in a timely manner. Failure to do this could have led to an injustice to Mr Y.
147. Police conducted an employment investigation for Officer B that resulted in an expectation setting meeting on performance. Police took no action in respect of Officer A.
148. While we had concerns about some aspects of the Police investigations, as discussed above, we are satisfied they sought legal advice and ultimately made an appropriate decision to withdraw the charges against Mr Y.

#### FINDINGS ON ISSUE 4

Officer B, the supervisor, failed to adequately investigate the collision between the Police car and Mr Y's car.

Officer B submitted a Traffic Crash Report which was factually incorrect. This report supported Mr Y being charged with offences he did not commit.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

6 April 2023

**IPCA: 21-6865**

# Appendix

## POLICE POLICY

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### 'Fleeing driver' policy

149. The overriding principle of the policy is that safety takes precedence over the immediate apprehension of an offender. The Police Communications Centre may abandon the pursuit where there is insufficient reason to justify it. The reason for abandonment may be that the identity of the fleeing driver is known and they can be apprehended later. An investigation is preferred over the commencement or continuation of a pursuit.
150. If the Communication Centre directs officers to abandon a pursuit, the pursuing officer must acknowledge the direction to abandon, immediately reduce speed, deactivate warning devices and stop as soon as it is safe to do so. Once stopped, they must advise the pursuit controller they are stationary and state their specific location. They must stop searching for the fleeing driver unless authorised by the pursuit controller.

### 'Use of Police dogs' policy

151. Dog handlers must consider all tactical options when considering the use of force and should not just use the dog as a means of force instead of using more appropriate options.
152. Before releasing a Police dog to bite someone, the person must be warned or challenged to surrender and must be given a reasonable time to comply. Police dog handlers must be alert to the risk of unintended dog bites to third parties and should not release the dog unless they are sure the dog has sighted the suspect.
153. Dog bites can cause serious injuries and dog handlers must identify the full extent of injuries to ensure the appropriate medical treatment is provided. People bitten or injured must be given appropriate medical care as soon as practical. Dog handlers must provide immediate first aid and call for medical support (ambulance or other staff). In the case of a major injury, the person must be seen by a doctor or emergency department as soon as possible.

### 'Use of force' policy

154. 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.
155. Police policy provides a Tactical Options Framework (TOF) for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this assessment as TENR (Threat, Exposure, Necessity and Response).

156. 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; the subject's 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).
157. A key part of an officer's decision about 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 to cooperate 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.
158. 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.

#### **'People in Police custody' policy**

159. When a Police employee has care or charge of a person in detention (or who believes they are unable to leave), they are under a legal duty of care to provide that person with necessities and to take reasonable steps to protect that person from injury (including self-harm or harm from others). This duty starts from the moment of arrest and continues until care of the person is transferred to someone else or the person is released.
160. The Police's 'People in Police custody' policy, and other relevant Police policies and procedures, detail the steps Police employees must take to meet this duty of care. Failure to exercise the duty of care could result in charges or disciplinary action under the Police's Code of Conduct.

#### **'Traffic crash' policy**

161. Police policy requires that all crashes involving Police employees must be appropriately overseen to ensure the investigation will withstand external scrutiny. All drivers involved in a crash must be tested for alcohol or drug impairment where appropriate. Police should also attend any non-injury crash reported to them and investigate and report accordingly. All Traffic Crash Reports must be reviewed for accuracy.
162. Police must also advise the District Police Professional Conduct Manager: Traffic, if the crash involves a Police employee to ensure the investigation is conducted according to policy.



# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

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

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

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

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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

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

## THIS REPORT

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

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