



## The Authority's Findings

### Issue 1: Did Police comply with fleeing driver policy?

Officers A and B were justified in signalling the car to stop, and their actions were in accordance with Police policy.

### Issue 2: Was Officer C justified in using a Police dog to apprehend Mr X?

The use of the Police dog to bite Mr X was justified.

## Analysis of the Issues

### ISSUE 1: DID POLICE COMPLY WITH FLEEING DRIVER POLICY?

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6. On 4 January 2023, Officers A and B were patrolling in a marked patrol car. At 1:25am, an alarm monitoring company called Police and reported an alarm activation at a pharmacy in the Te Awamutu Mega Centre.
7. Officer A says they were approaching the pharmacy when she saw a car on the far side of the carpark. She told us *"It didn't have its lights on and it quickly, like, darted out towards the entry to the carpark where we had come from."* The officers suspected that the occupant(s) of the car were connected to a burglary at the pharmacy.
8. Mr Y was driving the car. Mr X was in the front passenger seat. Officer A activated the police car's lights and siren, signalling Mr Y to stop. Mr Y drove out of the carpark onto the wrong side of the road and accelerated away from Police.
9. Mr Y says he *"took off"* from Police because he did not want his parents to find out he had taken their car for a joy ride.
10. Officer B advised the Northern Communications Centre (Comms) dispatcher they were following a car that was failing to stop. Officer A elected not to pursue the car and advised Comms of her decision. They deactivated their lights and siren, pulled over and stopped on the side of Cambridge Road, a few hundred metres from the carpark exit.
11. Officer A told us she abandoned the pursuit because the occupants of the car did not pose any immediate risk to the public. Her decision is in line with Police fleeing driver policy (as set out in paragraph 68).
12. On a nearby street, Officers A and B approached a group of people and asked if they had seen a car come past them. They were told it had driven past them and its wheels were sparking.
13. Officer A says they rounded a bend on Park Road and saw a car's tail lights in the distance. They caught up to the car and radioed Comms advising they were behind the car which appeared to be driving on one of its rims. Officer A told us the car was travelling at about 30kph.

14. Officer B told us it looked like the car was coming to a stop. Officer A again activated the lights and siren. The car pulled over to the side of the road.
15. Mr X says they stopped for Police and Mr Y was filming on his phone. He told us they waited for the Police officer to get out of the patrol car and then *“gapped it”*.
16. Officer A says she got out of the patrol car and as she approached the car, she saw the front seat passenger (Mr X) had his arm out the window and appeared to be filming on a phone. She told us *“they shouted something and boosted off again”*.
17. Officer B advised Comms, *“It’s taken off again.”* The officers did not pursue and radioed that the rear tyre appeared to be sparking, the car was going slow, and they didn’t think it would get very far. The Comms dispatcher advised the officers they could follow at road speed. <sup>2</sup>
18. Police policy<sup>3</sup> in force at the time was that after a pursuit has been abandoned, permission must be obtained from the pursuit controller<sup>4</sup> before subsequently signalling for the driver of the fleeing vehicle to stop. On this occasion, the officers did not obtain permission. However, our view is that it was reasonable for them to have signalled for the car to stop, given there were sparks and smoke coming from one of the tyres, and there was potential risk to its occupants.

#### FINDINGS ON ISSUE 1

Officers A and B were justified in signaling the car to stop.

The officers did not seek permission before signaling the car to stop for a second time. However, it was reasonable for them to do so in the circumstances.

#### ISSUE 2: WAS OFFICER C JUSTIFIED IN USING A POLICE DOG TO APPREHEND MR X?

19. The officers spotted the car struggling to get up a hill on a nearby rural road. Officer B told us *“all of a sudden I just saw this big red glow and I remember seeing two figures jump out of the vehicle...they kind of took off into the distance”*. The red glow was flames coming from the underside of the car.
20. The car rolled off the road and into a ditch. Officer A told Comms the car was on fire and requested Fire Service attendance.
21. The Hamilton Tactical Dog Team made up of Officer C (a Police dog handler) and his partner Officer D (a constable) came over the radio and advised Officers A and B they were heading their way. Officer C asked Comms if the vehicle was stolen and Comms advised it wasn’t reported stolen and they would try to contact the registered owner.

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<sup>2</sup> ‘Road speed’ is a term used by Police to describe driving at a speed at or below the posted speed limit.

<sup>3</sup> Fleeing driver policy

<sup>4</sup> The pursuit controller supervises the pursuit and co-ordinates the overall response, including the appropriate tactical options. In most cases, the pursuit controller role is taken on by the shift commander in the Communications Centre.

22. Officer A or Officer B radioed the car was “2 or 3 up” meaning 2 or 3 occupants had been inside the car.
23. Officer B waited near the abandoned car while Officer A patrolled the area in the car. Officer B says she heard voices coming from trees or bushes on the other side of the road, approximately 20 metres from where she was. She radioed Police Comms and advised of this.
24. Officer E, a Police sergeant, came over the radio and said he was going to the pharmacy to determine whether it had been broken into.
25. Officer C asked Comms again if they had spoken to the registered owner of the car and Comms advised their call to the registered owner’s cell phone had gone to voice message.
26. Officer C asked Officer E if he had managed to identify if there had been a confirmed break to the Pharmacy. Officer E advised he was still trying to locate the pharmacy and Officer C said, “*You’ve got about 3 kilometres of driving left, please, thank you.*”
27. About two minutes later, Officers C and D arrived at the abandoned car. Officer C spoke to Officer B who indicated where she had last seen the car occupants running. Officer C used his Police dog to track over farmland to a fence of a rural property.
28. Officer C says he climbed over the fence into the property and his dog tracked in an anti-clockwise direction around the nearby house. Officer C believed whoever he was tracking may have tried two house windows and a garage door to see if they were insecure because of the indication given by his dog. The dog continued tracking through the property, across a lawn to a tennis court. It was dark apart from a small amount of ambient lighting.
29. Officer C told us he heard quick footsteps which sounded like someone running and saw two people running away from him across the tennis court. Officer D, who was a few metres behind Officer C, says she saw two figures running away.
30. Officer C says he shouted a clear challenge identifying himself as a Police dog handler and if they failed to surrender the dog would be sent to apprehend them. This is required under Police policy, set out at paragraph 72. He says he gave them an opportunity to stop and surrender, however they kept running, and he released his dog.
31. Officer C says, “*I had no knowledge that the offenders were running towards a fence, or in fact anything beyond them.*” He told us it wasn’t until after the arrest process that he looked around and became aware the tennis court area was fenced.
32. Mr Y says they were on a tennis court when he heard what he thought was a “house dog” bark. He then heard the footsteps of a dog running toward him and Mr X. Mr Y says Police did not give any warning before the dog was released. He says they ran from the dog, and he tried to climb over a fence. He told us Mr X froze and was bitten by the dog. Mr Y says, “*We were in a corner. We were completely fenced in; it was around the whole place.*”

33. Mr X says they were hiding behind a fence when Mr Y told him he had seen a Police dog and they can sniff them out. Mr X told us, *"We were hiding behind a fence, then ran, I think it was like a tennis court or something like that, then we tried to climb the fence, but I couldn't, then I slipped."* Mr X told us the Police dog jumped on him and bit his leg. Mr X believed there were two Police dogs involved.
34. We accept Mr X and Mr Y were running away, and it was while they were doing so that Officer C released the dog. On the evidence we are satisfied that Officer C gave a warning before the dog was released. Officer D, who was behind Officer C, told us she heard the warning. We acknowledge this was a high stress situation for Mr X and Mr Y, and they may not have heard or understood the warning.

### What happened after the dog bite?

35. Officer C says he and Officer D sprinted over to Mr X and Mr Y and he attempted to handcuff Mr X but was unable to do so *"due to him quickly and violently moving around on the ground"*.
36. Mr X told us the Police dog was biting him for five minutes and Officer C was telling him to stop resisting and asking where his friends were.
37. Officer D says she told Mr Y he was under arrest and for him to get onto the ground. Mr Y says he was lying face down and an officer had her boot on his back while she was handcuffing him. Officer D says she told Mr Y to put his hands behind his back and accepted she could have been kneeling on his knees or something to stop him from getting up and running away. We accept some pressure was placed on Mr Y's legs or back during his arrest. We are satisfied this was reasonable in the circumstances.
38. Officer D told us she then took the handcuffs from Officer C, handcuffed Mr X, and said *"cuffs on."* She says Constable C then said *"yeah, dog's coming off."* Officer C told us *"Everything happens fast"* and the dog was on Mr X for the time it took to carry out the arrest process.
39. Mr Y says the Police left the dog on Mr X and were asking, *"Where are the others?"* Officer C believed there was a third offender (see paragraph 22).
40. We acknowledge Mr X's sense of time would have been affected by the dog biting him and the pain he says he was in. On balance, we accept the arrest process was carried out efficiently and the dog was removed from Mr X as soon as he was handcuffed.
41. While Officers C and D were apprehending Mr X and Mr Y, Officer E was trying to contact them over the Police radio. After getting no response Officer E radioed Comms and advised there was no evidence of a burglary at the pharmacy. Both Officers C and D told us they did not hear Officer E trying to get hold of them over the radio. We accept Officers C and D were unaware that Officer E was attempting to contact them.
42. Officer C says Officer D escorted Mr X and Mr Y from the tennis court as he used his dog to search for a third offender. While he was doing this, he found out there had been no break-in at the pharmacy and no one else was involved.

43. Officer A arrived and parked the patrol car on the driveway beside the tennis court. Mr X and Mr Y were taken to the patrol car and sat on the driveway on opposite sides of the car. Officer C radioed to Comms that Mr X had a dog bite and needed medical attention. Comms advised the nearest ambulance was in Otorohanga.
44. Officer C says he reassured Mr X, who he said apologised for running and accepted that he should have stopped when he was told to do so.
45. Officers F and G arrived very shortly after Officer A and provided first aid treatment to the wound on Mr X's leg. Officer C radioed Comms that Police would take Mr X directly to Waikato Hospital. Officer F sat with Mr X in the back seat of the patrol car while Officer E drove them to hospital. They drove to hospital with the emergency lights on.

#### **Was Officer C justified in releasing his dog to prevent Mr X's escape?**

46. Officer C relies on section 40 of the Crimes Act 1961, which empowers Police to use such force as may be necessary to prevent the escape of someone who takes flight, to avoid arrest.
47. In assessing whether Officer C's use of the dog is justified under section 40, the Authority must determine:
  - a) whether the officer believed on reasonable grounds that Mr X was fleeing to avoid or escape arrest; and if so
  - b) whether the officer's use of force was proportionate and reasonable to prevent the escape.

#### *Did Officer C believe on reasonable grounds that Mr X was fleeing to avoid arrest?*

48. Officer C believed Mr X and Mr Y were fleeing arrest for the following reasons:
  - They failed to stop for Officers A and B; and
  - Mr Y later stopped for Officers A and B, waited for Officer A to get out of the patrol car, then fled; and
  - When Mr X and Mr Y got out of the vehicle, they ran from Officers A and B; and
  - Mr X and Mr Y fled across farmland away from Police; and
  - Mr X and Mr Y failed to respond to Officer C's commands for them to stop.
49. Based on these undisputed facts, we accept Officer C had reasonable grounds to believe that Mr X and Mr Y were fleeing to avoid arrest.

*Was Officer C's use of force to prevent Mr X's escape reasonable and proportionate?*

50. We assessed whether Officer C's use of force to prevent the escape of Mr X was reasonable and proportionate in the light of the following three factors:
- a) the seriousness of the offence which Mr X was reasonably suspected to have committed;
  - b) the effect of an escape on the likelihood of Mr X being brought to justice (e.g., loss of evidence or difficulties in identifying the person and/or effecting apprehension at a later date); and
  - c) the likelihood and degree of risk Mr X posed if escape was not prevented.

*Seriousness of offence*

51. Officer C told us he believed their offending was extremely serious. He says *"they are carrying out a burglary, they are in a vehicle that was at the time believed to be stolen, they're driving on a public road dangerously, exit a vehicle that is on fire. They continue to run to avoid arrest."*
52. Having regard for all relevant circumstances we accept that Police, and Officer C, had reasonable cause to suspect that both Mr X and Mr Y had been engaged in comparatively serious offending. Accordingly, we have concluded that it was appropriate for Officer C to use the dog to track Mr X and Mr Y, and release the dog to bite either Mr X or Mr Y.

*The likelihood and degree of the risk Mr X and Mr Y posed if escape is not prevented*

53. Officer C did not know the age or identity of the people he was tracking. He says because they had stolen a car and committed a burglary, they would be in possession of tools they could use as opportunist weapons. He further says that if they had broken into a pharmacy, they were likely trying to steal controlled drugs, and if they were under the influence of drugs, they would pose a significant risk to himself and Officer D. Whilst there was of course speculation, our view is that they were not unreasonable ones in the circumstances.
54. Officer C told us tracking over farmland at night is notorious for contamination and loss of the track due to animals, electric fences, and waterways. Officer D told us the dog was set on a track, had tracked through farmland, was moving quickly with his nose to the ground indicating he was *"pretty hot"* on the offenders. We accept there are difficulties associated with tracking over farmland at night. That said, the fact is that the dog had successfully tracked and located Mr X and Mr Y.
55. As part of our investigation, we visited the rural property. The tennis court is fenced, apart from an 8 – 10 metre opening on one side, and a gate at the opposite end to which Mr X and Mr Y were running. The fence Mr X and Mr Y had run toward was almost completely obscured by overgrown trees and bushes.
56. There are conflicting accounts about the fence around the tennis court. Mr Y says he and Mr X were completely fenced in. Mr X says he was trying to climb the fence and Officer C says he had no knowledge they were running toward a fence.

57. Officer C says he released the dog because he believed that otherwise, Mr X and Mr Y would escape, avoid arrest, re-offend, and victimise other people. He told us he did not have any option other than to deploy the dog. Officer C was plainly inferring he won't, but all things considered, that was not an unreasonable position for him to take.
58. It appears to us that Officer C had alternatives. He could have continued to use the dog to track Mr X and Mr Y, while he or Officer D radioed Officer E to get a further report from him. There were other Police officers nearby and we are satisfied the likelihood of Mr X and Mr Y escaping was low. However, as already indicated, we are not prepared to conclude that Officer C's actions were unjustified.

### Conclusion

59. On balance, we have concluded that the use of the Police dog to catch Mr X was justified and did not amount to any excessive force.

### Did Police make unprofessional comments to Mr X and decline his request for a wheelchair?

60. Mr X says the Police Officers who took him to hospital told him the dog that bit him is the nastiest dog of them all, with the sharpest teeth. Mr X told us he felt sad by the comments made to him.
61. In response, Officer F told us they had a general conversation with Mr X and provided reassurance to him on the way to hospital. He denied making any comments about German Shepherds having sharp teeth. Officer G says potentially such a comment was made, but "*certainly not by myself*". He told us there was a bit of banter with Mr X and every so often they checked to see how he was doing.
62. When they arrived at hospital, Officer G parked in the ambulance bay. Mr X says he asked the officers if he could use a wheelchair and he was told he could not.
63. Officer F told us "*I think he (Mr X) did need a bit of support. I can't remember whether I held his hand.*" Neither officer could remember Mr X asking for a wheelchair.
64. On balance, it is likely comments were made to Mr X about German Shepherds having sharp teeth and Mr X's request for a wheelchair was declined, though we didn't find that any such comments were made with any ill-will.

### Officer C and Police submissions

65. In the process of finalising this report, Officer C and Police provided their submissions to us in response to our interim findings. After carefully considering their submissions, we accepted that the use of the Police dog to catch Mr X was justified.



## FINDING ON ISSUE 2

The use of the dog to bite Mr X was justified in the circumstances.



**Judge Kenneth Johnston KC**

Chair  
Independent Police Conduct Authority

23 November 2023

**IPCA: 23-16323**

## Appendix – Laws and Policies

### SECTION 40, CRIMES ACT 1961

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66. Section 40 of the Crimes Act 1961 says:

**“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.”

### ‘FLEEING DRIVER’ POLICY

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67. The overriding principle of the Police fleeing driver policy is: *“Safety of the public, vehicle occupant(s) and Police staff takes precedence over the immediate apprehension of a fleeing driver.”*

68. A pursuit is only justified when the threat posed by the vehicle occupant(s) prior to signalling the driver to stop, and the necessity to immediately apprehend the driver and/or passengers(s), outweighs the risk of harm created by the pursuit. A decision not to pursue or to abandon a pursuit will be supported.

69. Policy dictates there will be very few circumstances where subsequent pursuits with a vehicle or driver involved in a previously abandoned pursuit will be permitted. In such cases, an officer must obtain permission from the pursuit controller before signalling the vehicle to stop.

### ‘USE OF FORCE AND POLICE DOGS’ POLICY

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70. Dog handlers are personally responsible for force used by the dog. The law sees little difference between dogs, when used as a means of force, and other methods and implements used by Police, for example firearms, TASER, and batons. Dog handlers must believe the use of force is justified, and that the force used is as minimal as possible in the circumstances.

71. Dog handlers must consider all tactical options when considering the use of force. Just because the dog handler has a Police dog with them, does not mean they should use the dog as a means of force instead of a more appropriate option.
72. Dog handlers must issue a warning to surrender before instructing a dog to bite a person, unless it is unsafe or impracticable to do so.
73. Dog handlers must stop the dog from biting as soon as possible after the dog has apprehended a suspect or bitten any person.
74. Policy dictates that all people bitten by Police dogs are to receive appropriate medical treatment. Following a dog bite dog handlers must provide or direct other staff to provide immediate first aid as necessary in the circumstances and call for medical support to the scene if necessary.

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## About the Authority



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### 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.

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### 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.

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### 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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