

Complaint of excessive force following arrest in Whakatane

INTRODUCTION

1. At about 5.40pm on Friday 11 September 2015, Police arrested Mr X, who had failed to stop. During the arrest, Mr X was sprayed with pepper spray (also known as oleoresin capsicum or 'OC' spray)¹. Some of the pepper spray made contact with Mr X's ten year old daughter, who was in the back seat of the truck.
2. On 28 September 2015, Ms Y, the mother of the girl who witnessed the arrest, made a complaint to the Authority stating that Police deliberately pepper sprayed Mr X, their daughter and herself in the face. Ms Y also complained that Police failed to take her complaint about how her family was treated.
3. The Authority notified Police of the complaint and advised that the matter would be investigated by the Authority pursuant to section 17(1)(a) of the Independent Authority Act 1988. This report sets out the results of that investigation and the Authority's findings.
4. The Authority concluded its investigation in September 2016, but delayed the release of its public report due to ongoing court proceedings.

BACKGROUND

5. At about 5.40pm on Friday 11 September 2015, Mr X, Ms Y and their daughter were travelling home in their Toyota Hilux (the 'Hilux') following a rugby league game, in Awatapu, Whakatane. Ms Y was in the front passenger seat, and their daughter was seated in the left rear passenger seat. As Mr X, the driver, turned off Awatapu Drive into Paul Street, he noticed a marked Police car parked on the right side of the road, and two Police officers talking to a group of men.

¹ See paragraphs 148-160 for Police policy on 'Use of force' and 'OC spray'.

6. Mr X told the Authority that he immediately recognised Officer A as one of the Police officers standing on the side of the road, and said that he had an immediate *“gut instinct that [Officer A] was going to chase [him]”*.
7. Officers A and B were in Awatapu responding to a call from a Youth Aid Officer, who was searching for a runaway child. At about 5.40pm, the officers were parked on the right side of the road, near the entrance of Paul Street, talking to a group of Black Power members. As the officers finished their conversation with the men and got into their Police car, Officer A saw a Hilux drive past them.
8. Officer A told the Authority that the Hilux originally caught his eye because it was *“old and dirty ... and a high pro-target vehicle for our area because it’s the most commonly stolen vehicle in Whakatane.”* Also catching his eye was the driver, who Officer A said had a bandana over his head, and his arm propped against the steering wheel. Officer A said he thought this was *“odd”*, so he told Officer B to pull the Hilux over.
9. Officer B, the driver of the Police car, performed a U-turn and followed the Hilux down Paul Street. As the Hilux reached the intersection of Paul Street and Hotene Street, Officer A activated the Police car’s red and blue flashing lights to signal the driver to stop.
10. Mr X told the Authority that, although he saw the red and blue flashing lights of the Police car behind him, he believed that they were for *“emergency purposes”* only. As a result, when Mr X turned onto Hotene Street, he pulled over to the side, but did not stop, and put his arm out the driver’s window. Mr X then waved to the officers to signal that they should over take him and continue on to their emergency.
11. Mr X continued driving slowly along Hotene Street, a dead-end street approximately 100 metres in length, and turned around at the centre traffic island, before driving back toward Paul Street. By this stage, Officer A, who had since activated the Police car’s sirens, reached for the loudspeaker and called out for the driver to pull over and stop.
12. Mr X told the Authority that although he heard Officer A over the loudspeaker he turned back into Paul Street for two reasons: firstly, because he had originally forgotten to stop at an associate’s house, which was located on Paul Street; and secondly, because he had seen a number of people standing around on Paul Street, and he wanted there to be witnesses, for his safety, when he stopped his car.
13. Officer A said he used the loudspeaker for a second time, and the driver of the Hilux pulled over and stopped outside an empty section on Paul Street. Officer A said he believed this location was significant, as there used to be a Black Power house on the section and he believed that it was still a gang hangout.
14. Mr X, Ms Y, independent witnesses and Police have different views of the force used during Mr X’s arrest on Paul Street. The different versions are set out below.

Use of force of Paul Street

Mr X's version of events

15. Mr X told the Authority that when he stopped at the side of the road, he left the engine running and wound his truck window down only two to three inches. Mr X explained that he does this whenever he speaks to Police *"because they get angry when you try and explain things."*
16. When Officer A approached him at the window, he immediately asked Mr X for his name. Mr X said he told Officer A that he did not have a name, only a title. Officer A ignored Mr X and asked him again for his name and also his driver licence. In response, Mr X said he asked Officer A what obligation he had to provide his name. Mr X said Officer A told him that he was required to provide his name under the Land Transport Act 1998. However, instead of giving his name, Mr X said he asked Officer A if he was under oath and for him to produce the *"lawful documentation that gives [him] the right to do this."*
17. Mr X explained to the Authority that he does not believe that Police have the authority to ask for his name. In addition, Mr X said that he believes that he does not need to provide Police with his driver licence, because he is not driving for the purpose of earning a wage and it is his understanding that is what a driver's licence is for.
18. When Mr X refused to provide his name, Officer A went back to his Police car which was parked behind the Hilux. Officer A returned to the Hilux moments later and Mr X said he immediately *"forced"* his right arm into the gap in the driver's window. As Mr X was telling Officer A, *"I do not consent to this sir, I do not consent"*, Officer B arrived and also put his left arm through the gap in the window.
19. Mr X said that Officer B then used his Police baton to smash the driver's window, freeing the officers' arms. When the glass broke, Officer A punched him in the face with a closed fist, using his right hand, and said, *"get out of the car you fat black cunt."*
20. When he did not move, Mr X said the officers unlocked the truck door, pulled it open, and grabbed him by the hood of his sweatshirt. Mr X said the officers were yelling at him, *"get out of the vehicle, get out of the vehicle."*
21. While this was happening, Mr X said he tried to remain in his seat, holding his arms down by his side, saying, *"I do not consent sir, please stop, please stop"*. Mr X told the Authority that by this stage, he *"feared for [his] life"*.
22. When the officers were unable to pull him out of the truck, Mr X said Officer B started *"jabbing"* his thighs with the Police baton. When this had no effect, Officer B then grabbed Mr X's right hand, locked a handcuff around his wrist, and started to pull on it.
23. At this point, Mr X said he must have stood on the accelerator as the engine began revving. When this occurred, Officer A pulled out his pepper spray and squirted three or four bursts of spray into the truck.

24. Mr X told the Authority that he did not hear Officer A warn him about the spray, or tell him that he was under arrest. Instead, Mr X said Officer A just *"let rip"* through the open door. Mr X said the initial spray missed his face and hit the hood of his sweatshirt. When Officer A sprayed again, the spray hit Mr X's daughter in the backseat.
25. Mr X told the Authority, *"I've never heard my daughter scream like that. And that's when I just hit [Officer A] in the face"* with an uppercut punch.
26. Mr X said that when he realised he had punched Officer A, he tried to comply with the officers by getting out of his truck. However, the officers kept swearing at him and continued to physically pull him out of the truck, so that he ended up falling out onto the road. Mr X said he asked the officers to tell him what to do, but they kept yelling at him *"you're under arrest"* and to *"get down"*.
27. Once he was on the ground, Mr X said Officer B jumped on his back and pushed his knee onto his head, forcing his face onto the ground. His left hand was then forced behind him, along with his right hand. Mr X said this caused him a lot of pain as he had previously had a shoulder reconstruction on his left arm. However, when he asked Officer B to relieve the pressure, Officer B would not listen to him.
28. Mr X told the Authority that while this was happening, Officers C and D arrived and stood around him to keep the crowd of locals back. Mr X said the entire time he was on the ground, he was yelling out to the witnesses on the street to ask them to film what Officer B was doing to him.
29. After a while, Mr X said both his hands were handcuffed behind his back and Officers B and C attempted to pull him to his feet. However, because he was also trying to stand, his legs dragged and it caused his pants to fall down. Mr X said that Ms Y tried to come over and pull his pants up, telling the officers to think about his dignity, but Officer C told her to get back as she was *"obstructing"* them.
30. Mr X said that once he was back on his feet, one of the officers pulled his pants up and he was placed in the back seat of the Police car and driven to Whakatane Police Station.

Ms Y's version of events

31. Ms Y told the Authority that when Mr X pulled over and stopped on Paul Street, he wound his window down approximately five to six inches to allow enough room to talk to the Police. Ms Y said Mr X regularly does this for his own safety.
32. When Officer A approached Mr X at the window, Mr X immediately asked Officer A why he had been pulled over. Officer A ignored Mr X's question and instead asked Mr X for his name. Ms Y said Officer A and Mr X talked back and forth for about five minutes, with Officer A repeatedly asking Mr X for his name, and Mr X replying that he did not have a name, only a title. When Officer A did not get the answer he wanted, he left their truck and went back to his Police car.

33. A short time later, Officers A and B approached the Hilux, and Officer A asked Mr X again for his name. Ms Y told the Authority that *"it really was crazy ... it all started out from just name and address"*, and when the officers were getting nowhere with their questions it *"very quickly, just erupted into craziness."*
34. Ms Y said Officer A suddenly put his right arm through the gap in the window and tried to unlock the truck door. When Officer A could not reach the lock, Officer B then put his left arm through the window. While this was happening, Ms Y said Mr X was holding his hand over the lock, telling the officers *"I do not consent to this, you've got to stop, you've got to stop."*
35. Ms Y said the officers ignored Mr X, and Officer A moved his arm so that he could reach the car keys. As he was doing this, Ms Y saw Officer B grab his Police baton with his right hand and smash the window.
36. When the glass broke, the officers told Mr X to get out of the truck, however Mr X refused and said, *"no, I'm not getting out, I need to stay safe"*. Ms Y said, *"then everything was very quick, [Officer A] comes and punches him through the window, punches him in the face"*, and yells at Mr X to get out of the truck.
37. When Mr X did not get out of the truck, Officer B unlocked the door and began to pull on Mr X's arm through the open door. At the same time, Officer A leant over Mr X and began pulling at the neckline of his sweatshirt, yelling, *"get out of the truck you fat black cunt"*. Ms Y said that when she heard Officer A say this, she yelled at Officer A that he was being racist.
38. Ms Y told the Authority that she could not recall how long the struggle went on for, but after a while, Officer B grabbed his baton again and started to strike Mr X on his right thigh. Ms Y estimated that Officer B struck Mr X approximately seven times. While Officer B was striking Mr X, Ms Y said she was telling the officers to stop, saying, *"no sir, stop sir, you can't do this."*
39. When it became apparent that the strikes were not having the effect the officers wanted, Ms Y said she saw Officer A pull out his pepper spray and spray Mr X twice. Although the spray was directed towards Mr X's face, given the way his head was angled, the spray missed Mr X's face and instead hit the hood of his sweatshirt.
40. Ms Y said she then saw Officer A look behind Mr X, toward the backseat where their young daughter was sitting, and deliberately spray her in the face. When their daughter started screaming, Ms Y said she turned her head to look behind her and as she did so, Officer A sprayed her in the side of the face.
41. Ms Y told the Authority that she did not hear Officer A warn Mr X that he was going to deploy his pepper spray.
42. When Mr X realised that their daughter has been sprayed, Ms Y said he became very angry and punched the closest officer, Officer B, in the face. Shortly after this, Mr X was dragged out of the truck.

43. In order to see what was happening, Ms Y said that she climbed over the driver's seat, pulled the keys out of the ignition, and got out of the Hilux. When she was outside, she said she saw Mr X on the ground, with Officer B on his back pushing his head onto the road.
44. Ms Y said that Mr X was not struggling with Officer B and he was yelling out, *"this is how they protect you whanau, this is how the Police look after us"*.
45. Ms Y told the Authority that while this was happening, she got out her cell phone to record the officer's actions. As she did so, Mr X's pants fell down. When she went to pull his pants up, Officer C came over and told her to step back. Ms Y said that when she argued back, Officer C told her, *"if [Mr X] does not co-operate we're going to Taser him."*
46. Ms Y said she could not understand why Mr X would be Tasered. However, very quickly afterward, Mr X was placed into the backseat of the Police car and driven to Whakatane Police Station.

Officer A's version of events

47. Officer A told the Authority that as he approached the Hilux he could see that the driver's window was wound down about six to seven inches and that the vehicle engine was still running.
48. When he got to the window, Officer A said he asked Mr X for his licence, however, Mr X immediately became agitated and confrontational, asking, *"why did you pull me over"* and *"what crimes have I committed, I have no contract ... I don't have to tell you my name"*.
49. Officer A said he asked Mr X again for his licence, and Mr X replied that he did not have one. At that point, Officer A said he asked Mr X for his name, saying, *"you are required to give me your name and date of birth ... it is an offence to refuse to do so."* As he was telling Mr X this, Officer A said he could see a female in the front passenger seat and a younger person, possibly a teenager, in the backseat.
50. Officer A said Mr X refused to provide his name and kept talking over the top of him, repeatedly telling him that he did not have the power to demand anything. He said Mr X did not give him the opportunity to speak at all, and he did not know how to respond as he had never dealt with anyone arguing over *"sovereignties"* before.
51. While Mr X was talking, Officer A said he saw Mr X shifting his weight in his seat. Officer A told the Authority that it looked like Mr X was pumping the clutch, as though he was about to put the Hilux in gear. At that point, Officer A said he also noticed the window creep up and when he saw Mr X look toward the gear stick, he believed that Mr X was preparing to drive away. As a result, Officer A said he made the decision to reach into the truck and unlock the door.
52. As Officer A put his hand through the truck window, he told Mr X that he was under arrest. Almost simultaneously, Mr X grabbed Officer A's wrist and pinned it to the sill of the door. Officer A said he tried to pull his arm out as he became very conscious of the fact that the truck was still on, but he could not shift his arm out from under Mr X's hold.

53. Officer A said he became increasingly concerned, given his belief that Mr X had shown an interest in driving off, so he yelled out to Officer B, who had remained in the Police car, to come and help him.
54. As Officer B came over to assist, Officer A said he turned side-on to the window so that he was facing towards the rear of the truck, and began pulling back on the glass with all his weight. Officer B then came to his front, facing the Hilux, and also started pulling back on the window.
55. Officer A denied seeing Officer B break the window with a baton and said that due to the pressure of their combined weight, the window glass shattered and he was able to bring his hand back out.
56. As soon as Officer A did this, Officer B unlocked the truck door, and opened it. Officer A said he then went straight for the car keys and removed them before placing them on the roof.
57. Officer A said Officer B then leaned in the truck and attempted to apply handcuffs to Mr X's left wrist. At the same time, Officer A said he decided to target Mr X's legs and pull them out of the Hilux, as they were easily accessible given the height of the truck.
58. As he has reached for Mr X's legs, Officer A said he saw Mr X grab hold of the open handcuff and try to pull the cuffs from Officer B's hand. Due to the struggle between Mr X and Officer B, Officer A said he stopped pulling at Mr X's legs and stepped back to allow Officer B to have more room.
59. While Officer B struggled with Mr X, Officer A said he became concerned about Mr X potentially using the open cuff as a weapon. However, before he could assist Officer B, Officer A said he saw Mr X punch Officer B "*directly on the nose*" with his left hand, causing Officer B to rock back.
60. Officer B, still holding one end of the handcuffs in his left hand, then grabbed his baton with his right hand and struck Mr X once in the thigh. Officer A said this strike had "*absolutely no visible effect*" on Mr X's behaviour. Instead, Mr X "*wound up and punched [Officer B] a second time ... square in the face again.*"
61. Officer A said that, at this point, he believed that without intervention there was a "*significant risk*" that Officer B was going to get hurt. As a result, Officer A decided to deploy his pepper spray.²
62. Officer A told the Authority that he initially considered using his baton to strike Mr X but he determined that it would be too impractical because he was right-handed and pushed up against the car door, and would have to deliver an overhand strike into the truck. A back-hand strike would be equally impractical as Officer A would have struck Officer B on the way through. Lastly, Officer A said he recalled that Officer B's earlier strike to Mr X had no positive impact on Mr X's behaviour.

² At the time, Officer A was using Sabre Red Spray which was being trialled in the Bay of Plenty area. Although it is still pepper spray, it is six times the strength of normal pepper spray.

63. Officer A said he also considered using empty-hand tactics, however, he ruled this out due to the physical size of Mr X and the potential that Mr X could use the open handcuff as a weapon.
64. Finally, Officer A said he considered using his Taser. However due to his proximity to Officer B and Mr X, and the potential risk it could cause Officer B if the Taser misfired, Officer A determined that the best course of action was using pepper spray.
65. Officer A took hold of his pepper spray and stepped back in order to minimise the chance that the spray would overshoot and go into the back of the truck. Then extending his right arm in front of him, Officer A said he yelled “*spray*”, and then sprayed an initial short burst towards Mr X’s face. Officer A said that because Mr X had his face down, the spray only hit him on the side of the face and shoulder. When he realised that the spray had not been effective, Officer A said he stepped in and gave another short burst towards Mr X’s face.
66. Officer A said that the effect of the spray was immediate. Having sprayed Mr X in the face, Officer A said Mr X let go of the handcuff and they were able to pull him from the truck. Mr X then knelt down and lay on the ground.
67. Once Mr X was out of the truck, Officer A said he left Officer B and went to the left rear passenger side of the Hilux as he heard screaming coming from the backseat. When he opened the car door, he saw a young girl affected by the pepper spray. Officer A said he helped her out of the truck and she walked off towards the empty section.
68. Officer A told the Authority that his main priority was to try and alleviate the girl’s pain, so he yelled out to one of the residents to get some water. One of the residents brought out a saucepan full of water and Officer A said he tried to help the girl rinse her eyes, but she kept moving around making it difficult. At that point, Officer A said he tried to get on the Police radio to call for an ambulance, but the young girl was taken away from him by one of the witnesses.
69. As he was walking back to his Police car, Officer A said he crossed paths with Ms Y who he could see was also “*blinking profusely*” from the pepper spray. Officer A told the Authority that he believes that the Hilux became contaminated with the pepper spray after he had sprayed Mr X, and that was how the daughter and Ms Y came to be affected.
70. When asked by the Authority if he yelled the words “*get out, you black fat cunt*”, Officer A denied saying it and said he did not swear or shout at Mr X. Officer A also said that he did not hear Officer B yell those words either.

Officer B’s version of events

71. Officer B told the Authority that while Officer A approached the Hilux to speak with the driver, he stayed in the Police car and radioed the Police Northern Communication’s Centre (NorthComms) to advise them that they had pulled over a vehicle on Paul Street.

72. As Officer B was conducting a check on the Hilux to find out who the possible driver was, Officer B said he looked up and saw Officer A with his hands inside the truck, struggling to pull them out. Officer B told the Authority that it looked as though *“something was stopping his hands from coming out.”*
73. Officer B said he immediately got out of the Police car and approached Officer A, who he could see had both arms trapped in a four inch gap in the window. As he reached the Hilux, Officer B said he heard Officer A tell the driver that he was under arrest for failing to provide his details. In reply, Officer B said the driver *“ranted and raved about whether or not we’re under oath ... he’s under duress and is this lawful”*.
74. Officer B, who was now standing behind Officer A at the rear of the driver’s door, said he could see that the door was locked and decided to put his hand inside the window in an attempt to unlock it.
75. As he put his hand in the window, Officer B said Mr X grabbed his arm and began to pull on it, while simultaneously trying to swipe Officer A’s hands away. When Mr X grabbed his hand, Officer B started to pull back on his arm.
76. Officer B denied smashing the window with a baton and said that the window gave way as a result of the three arms in the window and Mr X pulling on them.
77. With the window broken, Officer B said he was able to unlock the truck door and open the door from the inside. When he opened the door, Officer B said he became aware of the front passenger filming them. Officer B told the Authority that at that stage he did not see the back seat passenger because Mr X and Ms Y had claimed all of his attention.
78. At the same time, Officer B said Mr X continued to yell at them, claiming that he was under duress and asking if they were under oath. Officer B said that they asked Mr X to get out of the truck, but he refused. At that point, Officer B said he noticed that the truck was still on and Mr X was revving the engine.
79. Officer B said Mr X continued to rev the engine and he became concerned that Mr X would take off and injure himself, Officer A or other members of the public. As a result, Officer B said he started to lean into the truck in an attempt to grab Mr X’s shoulders and pull him out. However, as Officer B put his hands in the open door, Mr X *“pushed my hands away, struck out at me and attempted to avoid me grabbing him and subsequently arresting him.”*
80. Officer B told the Authority that he then took his handcuffs out with the idea that he could handcuff one of Mr X’s arms and then use the handcuff to pull him out of the truck. As Officer B got one handcuff around Mr X’s wrist, Mr X grabbed the second cuff and pulled it away from Officer B, holding it open, *“creating a claw-like weapon”*. Officer B said he was fearful that the open cuff could be used against them so he reached out and held onto the *“other end”*.
81. As soon as he grabbed the handcuff, Officer B said Mr X punched him in the face, using his right hand in a backward *“hammer punch”* movement. Officer B said the punch connected directly with his nose, causing it to bleed.

82. Following the punch, Officer B said that he considered Mr X to be “*assaultive*” (see paragraph 157), so he said he drew his baton, and while still holding onto the handcuff, extended the baton and attempted to hit Mr X on his thigh. However, due to Officer A being in the doorway and pulling on Mr X’s legs, the thigh strike was not successful.
83. With the strike being unsuccessful, Officer B bent down to put his baton back in his belt. As he has done so, Officer B said Mr X punched him again, using the same backhand striking motion, hitting his lip and nose area.
84. At this point, Officer B said Officer A yelled “*spray*” and Mr X was sprayed in the face with pepper spray. Officer B said Mr X became compliant and he was able to grab his arms and shoulder and pull him forwards so he rolled out of the Hilux onto his feet. Officer B then continued to direct Mr X forward and onto the ground.
85. Officer B said he attempted to pull Mr X’s hands behind his back as he was going to the ground, but Mr X resisted and when he landed on the ground he tucked his hands into his chest area.
86. Officer B told the Authority that because Mr X was lying on his stomach, he decided to keep him there until Police had some control over the scene as, by this stage, a crowd of locals had formed. Due to Officer A leaving to assist the back seat passenger, Officer B said he called out to Officer C for help as he was also conducting a traffic stop on Paul Street.
87. As Officer C stood next to him to maintain crowd control, Officer B said he kept his knee on the top of Mr X’s back to ensure that he was not able to get up.
88. While this was happening, Officer B said Ms Y kept walking up to him with her cell phone out, filming him, and yelling about Police being unlawful. Officer B said Ms Y was “*aggravating the situation ... being obstructive ... essentially inciting [Mr X] resisting*”. As a result, Officer C advised Ms Y to move back. However, Ms Y kept trying to come close, and at one point, Officer B said he had to push her back to ensure his safety.
89. After a while Mr X, who had been trying to push himself up with his arms, managed to roll over onto his back, allowing his arms to be free. At that point, Officer D arrived on Paul Street and Officer C called him over for assistance. Officer B said that, with the help of Officer D, he then rolled Mr X back onto his stomach and handcuffed Mr X with his hands behind his back.
90. Due to Mr X’s size, Officer B said he also had to use Officer C’s handcuffs and link the two sets of cuffs together. Officer B said this was also done to help prevent any injury to Mr X’s shoulders.
91. Once Mr X was handcuffed, Officer’s B and C walked Mr X to the back of the Police car. As they were doing so, Officer B said Mr X’s pants began to fall down. This caused Mr X and Ms Y to yell that his pants were falling down. Officer C then pulled Mr X’s pants back up, and Mr X was placed in the backseat of the Police car.

92. While Mr X was in the back of the Police car, Officer B said he advised Mr X of his rights. Officers A and B then drove Mr X to Whakatane Police station for processing.
93. During the five minute drive to the Police station, Officer B said Mr X told him that Police would be liable for the damage done to the Hilux. Officer B replied that Police did not have to pay for the damage, however, he agreed to make a note of it in his report and said it would be up to his supervisors to decide.

Independent witness's version of events

95. Mr Z is a resident of Paul Street and witnessed the events.
96. Mr Z told the Authority that he was mowing his front lawn when he saw a Hilux get pulled over by the Police opposite his house. When the Hilux stopped, Mr Z said Officer A walked up to Mr X and told him to get out of the truck. Mr Z said Mr X questioned the officer, and Officer A repeated *"just get out of the car"*.
97. When Mr X did not get out of the truck, Mr Z said Officer A put his arm through the gap in the driver's window to try and take the car keys, however, Officer A's arm became stuck. Shortly after, Mr Z said Officer B arrived and saw that Officer A was not able to remove his arm from the window. Officer B then pulled out his baton and *"just started whacking [the Hilux] with that stick to smash the window"*.
98. Once the window was broken, Officer B reached into the truck and tried to pull Mr X out through the open window. Mr Z said that this was unsuccessful because of Mr X's size.
99. Mr Z told the Authority that when the officers were unable to pull Mr X out of the truck, Officer A pulled out his pepper spray and *"waved"* it about in the truck, *"he didn't even aim for the driver"*. Mr Z said the next thing he heard was screaming, and Mr X began yelling *"hey, hey my daughter"*. Mr X then *"flung his arms up"*, hitting one of the officers in the nose.
100. Shortly after, Mr Z said Mr X was pulled out of the truck and taken to the ground, where he was then handcuffed.

Cell phone footage

101. Analysis of the recorded cell phone footage taken immediately after Mr X was pulled from the Hilux, shows Mr X on the ground near the rear of his truck. Mr X is seen lying on his stomach, holding his hands together in front of him. Officer B can be seen kneeling with one knee on Mr X's back, while Officer A walks off to assist the young girl who has been sprayed with pepper spray. Officer C arrives and can be seen standing in front of Officer B and Mr X.
102. Ms Y is seated in the driver's seat of the Hilux and it is evident that the driver's window has been broken, as glass can be seen shattered on the road.
103. In the background, Mr X can be heard yelling and swearing, *"you've fucking sprayed my daughter you fuck-face"*. As the camera pans out, local residents can be seen watching the incident and recording what is happening on their cell phones.

104. As Ms Y exits the Hilux, Mr X continues to swear at Officer B, who has remained kneeling on his back and can now be seen also holding Mr X's left arm, which is handcuffed. Ms Y approaches Mr X and Officer B, yelling "*dignity*", and tries to pull up Mr X's pants. When Officer C tells her to move back, Ms Y and Mr X both yell at the officers. Officer C then pulls up Mr X's pants.
105. Also seen in the background is Officer A with the young girl, walking up a driveway towards a group of residents.
106. When the camera returns to Mr X, Mr X can be heard swearing at Police and saying to the witnesses, "*keep filming these fucking unlawful fucking pigs.*" Mr X is then heard yelling at Officer B that he has an injured shoulder.
107. Shortly after, Mr X rolls onto his back and Officer B moves his knee to Mr X's chest and takes hold of both of Mr X's arms. Mr X continues to yell at Officer B as Officer D arrives. On arrival, Officer D immediately approaches Officer B and together they roll Mr X onto his stomach and handcuff him.
108. As this is happening, the residents can be heard yelling at the officers about their actions. At the same time, Officer C can be seen standing in front of Mr X, blocking anyone from getting closer.
109. As Officer A and another officer approach Mr X, a female is seen holding the young daughter's hand and asking Ms Y, "*is this your daughter, can I take her to hospital?*"
110. Ms Y is seen speaking with the female, however she stops when she sees Mr X getting picked up by the Police. As Mr X gets up off the ground, his pants fall down again. Although Ms Y tries to get to Mr X, Officer D picks up Mr X's pants and together, with Officer B, walked him to the Police car.
111. The entire length of time, from when Mr X is on the ground to when he is placed in the backseat of the Police car, is approximately three minutes and thirty seconds.

Failure to take Ms Y's complaint

112. Later that day at about 9pm, Ms Y went to the Whakatane Police station front counter. When she arrived, Ms Y spoke to an officer, and asked what time Mr X would be released from Police custody. After Ms Y was told that that Mr X would be released shortly, Ms Y said she then asked if there was a procedure she had to follow in order to lay a complaint about Police actions. The officer told Ms Y to wait a moment, and he left the front counter. When the officer returned, he was accompanied by Officer A.
113. Ms Y and Officers A and B have different versions of their interactions at the Whakatane Police Station front counter.

Ms Y's version of events

114. Ms Y told the Authority that Officer A immediately said *"oh look, fuck, I'm so sorry about what happened to your daughter ... if you're here to make a complaint, I'm sorry about it."* Ms Y confirmed that she was there to make a complaint and asked what the proper procedure was and if she was required to fill out a form.
115. Ms Y said Officer A told her that he would print off a form for her, and he promptly left the front counter and did not return. Ms Y said she stayed at the front counter for about 45 minutes and she was not spoken to by any other officer in relation to her wish to lay a complaint.
116. As Ms Y was leaving Whakatane Police station, she said the first officer returned and told her that Police would be coming by her house later that evening to take photos of the damage done to the Hilux. Ms Y told the officer that Police could come by the next day, however, she said he was adamant that the photos needed to be taken that night.

Officer A's version of events

117. Officer A told the Authority that while Mr X was still in custody, Ms Y came to Whakatane Police Station to ask when he was going to be released. Officer A said he told Ms Y that Mr X would be released as soon as possible. Officer A then enquired about how her daughter was doing, as he wanted to check that she was okay.
118. Officer A said Ms Y replied *"don't worry, we'll have you for this"*. Officer A told the Authority that he took this to mean that Ms Y was going to complain about his actions, so he told her that she's *"more than welcome to complain."* However, Officer A said that Ms Y did not say anything further and there was no suggestion that she wanted to make a complaint or that she intended to in the future. As a result, Officer A made no arrangements for anybody to take her complaint.
119. A few days after the incident, Officer A said Mr X came to Whakatane Police Station and told him that he wanted to make a complaint. Officer A told Mr X that he could either speak with a sergeant or he could contact the Independent Police Conduct Authority (IPCA) directly.
120. Officer A said that Mr X did not want to talk with a sergeant, so he printed him a copy of the IPCA complaint procedure and circled their contact number.

Officer B's version of events

121. Officer B told the Authority that while Mr X was being processed at the Whakatane Police station, he spoke with Ms Y at the front counter. When asked if Ms Y told him that she wanted to make a complaint, Officer B said that he could not recall if he spoke with her or another female who had come into the station to lay a complaint. However, Officer B said that he could *"recall vaguely"* explaining to somebody that because he was the arresting officer he could not take a complaint against himself, and due to the other officers being busy with Mr X, she would have to make a complaint to the supervisor.

122. Officer B said he spoke with someone later in the evening about the complaint and believes it would have been either the watch-house keeper or supervisor. However, he could not recall who it was.
123. While Ms Y was at the front counter, Officer B said he also spoke with her about photographing the damage done to the Hilux. When Officer B realised that Ms Y had not driven the Hilux to the Police station, he said he asked her if she would be able to park the truck on the road edge so that Police would not have to come onto their property to photograph it.
124. Officer B told the Authority that he suggested this location as it was a “*place of neutral ground*” and he thought it would be best if Police stayed off Mr X’s property to avoid any further aggravation.

Impoundment of the Hilux

125. During Ms Y’s interview with the Authority, Ms Y complained that Police deceived her into leaving the Hilux parked on the street, which enabled Police to impound it.
126. Ms Y, and Officers A, B and E, have different versions of how the Hilux was impounded.

Ms Y’s version of events

127. Later that evening, Ms Y said she received a phone call from the same officer that she originally spoke to at the Whakatane front counter, who requested that they leave the Hilux parked on Hotene Street. Ms Y told the Authority that the officer’s reasoning for this was that Mr X “*may not want [Police] on his property*”.
128. At 10pm, Ms Y said that she and Mr X parked the Hilux on Hotene Street, where they then waited for Police to arrive. By 10.45pm, no Police had arrived, so Ms Y said she called the officer to find out what was happening. The officer told Ms Y that Police would be there shortly.
129. Sometime after 11pm, Ms Y said two to three Police cars arrived, and up to seven Police officers got out. Ms Y said Mr X asked the officers what was happening and they were told that Police were here to seize the truck.
130. Ms Y said she questioned the officers over this as she had only been told by Police to move the truck in order make it easier for them to take photos of the damage. The officer replied that the Hilux was to be impounded, and it was soon taken away by a tow truck.
131. On 15 September 2015, Mr X and Ms Y filed an appeal with Police against the seizure and impoundment of the Hilux. The appeal was declined due to Mr X being the driver of the Hilux when he failed to stop for Police.

Officer A's version of events

132. Officer A told the Authority that while he was at the Whakatane Police station processing Mr X, there was a discussion between four Police officers, including Officer E, the night-shift sergeant, about whether it was necessary or prudent to seize and impound Mr X's truck. Due to the Hilux being the vehicle involved in the failing to stop, the decision was made that it was required to be impounded for 28 days. Officer A said he believed that the impoundment was a "*statutory requirement*", however the ultimate decision to impound the Hilux was made by Officer E.
133. Sometime prior to 10pm, Officers A, B and E, and three other Police officers arrived at Hotene Street to seize the Hilux.
134. When asked by the Authority if he knew why the Hilux was parked on the street, Officer A said that it was his understanding that Officer B told Ms Y that Police needed to photograph the truck. If the truck was parked on the street it could be done with the least inconvenience to the family.
135. Officer A said he had purposely removed himself from being involved with the impoundment and engaging with Mr X or Ms Y, as he felt quite affected by what had gone on earlier in the day. However, he believed Police were simply trying to "*minimise any further chance of that situation continuing.*"

Officer B's version of events

136. After Ms Y left the Police station, Officer B said he had a discussion with a few officers about what appropriate charges should be laid against Mr X. As part of that discussion, it was decided that Police would impound the Hilux as it was a consequence of Mr X being charged with failing to stop.
137. Later that evening, Officers A and B travelled to Hotene Street together, along with another marked Police car and Officer E. Officer B said that it was prudent to take extra staff to Hotene Street as he believed that they would face some resistance from Mr X given the events from earlier in the day.
138. As they arrived at Hotene Street, Officer B said he saw the Hilux parked on the side of the road, with Mr X, Ms Y and a second male standing beside it.
139. Officer B told the Authority that he photographed the damage to the Hilux and then advised Mr X that because he was charged with failing to stop, the truck would be towed. Officer B said Mr X reacted by yelling further abuse towards Police.
140. The vehicle seizure and impoundment notice, signed by Officer B, states that the Hilux was seized at 11.32pm.

Officer E's version of events

141. Officer E told the Authority that the normal Police practice was to impound a vehicle at the time of the incident. However, in this case Officer E said he allowed Ms Y to drive her daughter to the hospital herself as Ms Y did not want to be taken in a Police car.
142. After Mr X was processed at Whakatane Police Station, either Officer A or Officer B approached Officer E and advised him that the Hilux would be parked on the road later that evening for Police to photograph the window damage. In reply, Officer E said he told the officer that it would also be a good time to impound the vehicle.
143. When Police arrived at Hotene Street, Officer E said he spoke with Mr X and Ms Y and told them that the Hilux would be impounded. He said Mr X was not happy with that decision and Officer E then explained the process behind why they had to impound it.
144. When asked by the Authority if he was aware of Police misleading Ms Y into parking the Hilux on the street, Officer E said, *"I don't think I had any involvement with arranging for the car to be parked on the street, but had I known about it, I probably would have impounded it anyway."*

District Court Hearing 5 May 2016 and subsequent appeal

145. Mr X pleaded not guilty to one charge of failing to stop, one charge of failing to provide details and two charges of aggravated assault.
146. On 5 May 2016, following a defended hearing, the Opotiki District Court found that Police were entitled to stop Mr X under the Land Transport Act 1988 and that he committed offences by failing to stop and failing to provide his details. Mr X was acquitted on both charges of aggravated assault. Mr X appealed the convictions for failing to stop and failing to provide details. On 11 October 2016, his appeal was dismissed.
147. The Authority has decided not to comment on the Court findings. As a result, the Authority has considered four issues as part of its investigation. The issues identified by the Authority are:
 - Was the Police interaction with Mr X, when he initially stopped the car, appropriate?
 - Was the force used by Police excessive?
 - Should the Police have taken Ms Y's complaint at the Police station?
 - Was the process of impoundment of the Hilux lawful?

Use of force by Police

148. Section 39 of the Crimes Act 1961 provides for a Police officer to use reasonable force in the execution of his or her duties such as arrests. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*
149. Section 40 of the Crimes Act 1961 provides that a Police officer may use necessary force in order to prevent a person from fleeing to avoid arrest, unless the escape can be prevented by reasonable means in a less violent manner.
150. Section 48 of the Crimes Act 1961 states: *“Everyone is justified in using, in defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”*
151. Section 62 of the Crimes Act 1961 makes a Police officer criminally responsible for any excessive use of force.

General guidelines on use of force

152. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
153. 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) operational threat assessment.
154. Police define TENR as:
- ‘Threat’ is about how serious the situation is (or could be), and the present or potential danger the situation, environment, or suspect presents to themselves, other members of the public or Police. Police must assess the threat posed by the suspect, based on all available information including what they see and hear, and what is known about the suspect.
 - ‘Exposure’ is about the potential harm to Police employees, Police operations, Police reputation and to others. Exposure can be mitigated through assessment and planning.
 - ‘Necessity’ is the assessment to determine if there is a need for the operation or intervention to proceed now, later or not at all.

- ‘Response’ means the proportionate and timely execution of Police duties aided by the appropriate use of tactics and tactical options.
155. The overriding principle when applying TENR is ‘safety is success’. 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.
156. An officer must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer’s Perceived Cumulative Assessment (PCA).
157. A key part of an officer’s decision to decide when, how, and at what level to use force depends on the actions, or potential actions, of the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from police policy.

OC Spray

158. Police policy states that officers should only use OC spray when exercising their statutory powers and/or carrying out their lawful duties. This includes situations where officers are executing or attempting to execute an arrest, warrant, process or sentence.
159. Before using OC spray, unless impractical, officers must:
- *“warn the person that non-compliance will result in them being sprayed*
 - *give the person a reasonable opportunity to comply before being sprayed*
 - *warn other people nearby that a spray may be used.”*
160. If officers use OC spray on a person, they must:
- *“Minimise any residual effects caused by the spray by providing proper decontamination and proper aftercare as in the ‘OC Spray Training Manual’*
 - *ensure the person’s face is not covered and they are not left lying face down with their hands constrained behind their back. This may lead to positional asphyxia, where the position of the body interferes with breathing ...*

- *accompany and monitor the person for at least 45 minutes or until the symptoms or effects are no longer apparent.*

Receiving a complaint

161. The Police Investigations of Complaints and Notifiable Incidents policy states that if a complaint is made orally, the Police employee receiving the complaint must: *“summarise it in writing or ask the complainant to do so, and get the complainant to sign it as soon as practical.”*
162. The Police employee must then refer it as soon as possible to their supervisor.

Impoundment of vehicle

163. Section 96(1AB) of the Land Transport Act 1998 provides that a Police officer may seize and impound a vehicle for 28 days if the officer believes on reasonable grounds that a person driving the vehicle has failed to stop as signalled, requested, or required under section 114(1) or (2).

THE AUTHORITY’S FINDINGS

Was the Police interaction with Mr X, when he initially stopped the car, appropriate?

164. Mr X and Ms Y both told the Authority that when they pulled over, Mr X partially wound his window down due to past encounters with Police. When Officer A approached the Hilux, he immediately asked Mr X for his name and ignored him when Mr X told him he had a title, but not a name. Mr X acknowledged that he refused to provide Officer A with his name or his driver licence because he believes Police are not entitled to it (see paragraph 170). As a result, Mr X responded to Officer A by questioning his authority and asking for the *“lawful documentation that gives him the right to do so.”*
165. Mr X and Ms Y say that when Officer A did not get the information he wanted, he left the Hilux and went to his Police car. When he returned to the Hilux, the situation *“erupted into craziness”* and Officer A, without warning, thrust his arm into the driver’s window. Ms Y told the Authority that the situation *“really was crazy ... [as] it all started out from just name and address”*.
166. Officer A said that when he approached the Hilux, Mr X was immediately confrontational and agitated, and refused to provide his personal details. Officer A said he struggled to speak at times as Mr X talked over him, and although he warned Mr X that it was an offence not to provide his details, Mr X kept raising sovereignty issues, and telling him he did not have the power to demand anything. When Officer A saw Mr X begin to shift around in his seat, he believed Mr X was about to drive off. As a result, Officer A decided to put his arm in the open window, unlock the door, and prevent Mr X from leaving the scene.

167. It is evident from all accounts that Mr X refused to provide Officer A with his name and driver licence details. Mr X's view that he was exempt from giving his name to Police and possessing a driver licence was incorrect. As a driver, Mr X was subject to the law under the Land Transport Act 1998. Under this Act, Officer A was legally entitled to this information and was justified in asking for it. Mr X must therefore take his share of the responsibility for contributing to the situation by refusing Officer A's legitimate request.

168. However, in the Authority's view, when the officers stopped Mr X, and Officer A was confronted by someone who refused to give his name and address, his actions became driven by his belief that Mr X was going to drive off and he therefore needed to arrest him. There was no attempt by Officer A to communicate with Mr X as to why he did not stop, to communicate with the other passengers, to step away and seek assistance from other officers or de-escalate the situation by taking note of Mr X's licence plate number and conducting other checks to try and establish his identity. There was no reason to suspect that Mr X had committed any offences other than failing to stop (which in this instance involved a small pursuit covering 300 metres, at a low speed). Without having any other suspicion that the truck was stolen or that it had been used in the commission of any offences, Officer A should have considered whether it was reasonable and necessary to put his arm through the window to prevent Mr X from driving off. The way in which Officer A responded to Mr X's refusal to provide his name was not a proportionate response when applying the TENR operational threat assessment (refer to paragraphs 154-155) and inevitably led to the use of force to effect an arrest.

FINDING

Officer A was legally entitled to request Mr X's name and driver licence details. However, Officer A's interaction with Mr X was not appropriate and unnecessarily escalated the situation.

Was the force used by Police excessive?

169. Mr X and Ms Y both complained to the Authority that:

- Officer A punched Mr X in the face and called him a *"fat black cunt"*;
- Officer B struck Mr X multiple times with a baton on his thigh, causing Mr X to *"fear for his life"*; and
- Officer A deliberately squirted three or four bursts of pepper spray into the truck without warning, missing Mr X and hitting Ms Y and their daughter.

170. The independent witness, Mr Z, saw Officer A's interaction with Mr X and described Officer A as *"waving"* his pepper spray in the truck.

171. In contrast, the officers make no reference to punching Mr X in their statements to Police or the Authority, and deny racially swearing at Mr X. When they opened the driver's door, the officers say they focused on trying to remove Mr X from the truck. As part of that attempt,

Officer B tried to handcuff Mr X. However, Mr X grabbed one end of the handcuff and held it open like a “*claw-like weapon*”. Both officers told the Authority that they were fearful that Mr X could potentially use the open cuff against them as a weapon.

172. The officers said that when Officer B went to grab the handcuff, Mr X punched him in the face, causing his nose to bleed. As a result, Officer B perceived Mr X to be “*assaultive*” so he drew his baton and attempted to strike Mr X on his thigh. This tactic was unsuccessful and Mr X was able to punch Officer B again.
173. It is evident that there is a conflict of accounts regarding the complaint that Officer A punched Mr X in the face. There is also a clear conflict as to the extent to which a baton was used to strike Mr X in the thigh. Due to the conflicting accounts and in the absence of independent witnesses or medical evidence, the Authority is unable to determine, on the balance of probabilities, what force was used by Police on Mr X as he was seated in the Hilux and whether it was reasonable.

Spray

174. Officer A stated that he deployed his pepper spray in response to Mr X punching Officer B for the second time, as he believed that without his intervention, Officer B was at “*significant risk*” of getting hurt. Officer A said he considered other tactical options available to him prior to deploying his spray, which included using his baton, empty-hand tactics, and his Taser. However, due to his proximity to Officer B and Mr X, Officer A believed that these were not practical options. Officer A told the Authority that the use of pepper spray was effective as Mr X let go of the handcuff and the officers were then able to pull Mr X out of the truck.
175. Officers A and B told the Authority that Mr X was warned about the spray prior to Officer A using his pepper spray (see paragraph 65); however, Mr X and Ms Y deny hearing any warning.
176. Officer A said he was also aware that there were other passengers in the truck as he had seen a younger person, possibly a teenager, in the backseat. As a result, when Officer A used his pepper spray, he said he stepped back in order to minimise the chance that the spray would overshoot and go into the back of the truck. However, Officer A believes that the Hilux became contaminated with the pepper spray after he had sprayed Mr X, and that was how the daughter and Ms Y came to be affected.
177. As discussed in paragraphs 152-157, all officers receive training about the appropriate use of force when responding to an incident. The TENR operational threat assessment is a tool designed to help officers make better decisions by having officers assess the threat, manage the exposure, consider the necessity of intervention and ensure any response is proportionate and based on a risk assessment of threat, exposure and necessity.
178. In this instance, Officer A believed that Officer B was at risk of further assault by Mr X. Officer A’s belief was supported by the fact that he had personally been subjected to an assault by Mr X when his arm had been pinned inside the Hilux. Officer A said that in that instance, Mr X’s “*assaultive behaviour was overcome*” only when Officer B provided assistance. As a result, Officer A deployed his pepper spray to prevent this further assault on Officer B. When making

his decision to use pepper spray, Officer A said he ruled out other tactical options (which included baton, empty hand tactics and Taser) and considered the fact that there were other passengers in the car, including a young person (the daughter). Although Officer A said he stepped back in order to minimise the chance of overspray, it is evident that when Officer A used his pepper spray, the daughter was quite badly affected.

179. In the Authority's view, Officer A did not appropriately consider the 'exposure' of others and the potential harm to them when determining his response. The overarching principle of the TENR tool is to minimise harm and maximise safety. The Authority considers that Officer A should have given more weight to the risks of deploying pepper spray into a confined space and the likelihood that it would affect the other innocent passengers, given that the spray that he was using was a more concentrated formula, six times the strength of regular spray. The close quarter struggle, as well as Mr X ducking his head to avoid being sprayed, meant that the chances of overspray increased. The Authority is unable to say which burst of spray hit Mr X and Ms Y's daughter; however, it would seem likely that with every spray Officer A fired, the chances of overspray and contamination increased. The location of the daughter in the back seat also meant that she was in a position where it was more likely that any overspray would come towards her.
180. The Authority also believes that Officer A failed to consider the 'necessity' of "*whether to act now, later or not at all*". A more appropriate response applying TENR would have been for Officers A and B to step back from the truck after the initial punch from Mr X. This would have prevented any further injury being sustained by Officer B by putting them out of reach of Mr X and it would have given the officers the opportunity to de-escalate the threat to a more manageable level. Given that Officer A had removed the keys (refer to paragraph 56) from the ignition, Mr X was unable to use the truck to flee from Police. The officers would have then had the opportunity to re-evaluate the tactical options open to them in a more considered way.
181. The Authority appreciates that it was a dynamic situation. However, Officer A did not properly consider the necessity of using pepper spray in a confined space, the risk to the innocent passengers and the effect of using a more powerful spray. For these reasons, the Authority does not find that the use of force was proportionate in the circumstances.

FINDING

Due to the significant conflict in evidence, the Authority is unable to make a finding as to whether the force used by Police on Mr X while he was seated in the Hilux was reasonable. Officer A did not deliberately spray Ms Y and her daughter, however the use of spray in a confined space, and in the presence of Ms Y and a young person, was careless.

Should the Police have taken Ms Y's complaint at the Police station?

182. Police policy states that every complaint received by Police must be dealt with promptly, and the complainant advised of the procedure to take their complaint forward. A Police employee

who receives a complaint at the Police station must record the complaint in writing. They must not ask the complainant to return, or attempt to have them dealt with by another Police employee.

183. Officer A acknowledged that he did not take Ms Y's complaint when she arrived at the Whakatane Police station. Although Officer A believed Ms Y wanted to complain about his actions, when he told her that she was welcome to complain, he said she never indicated that she wanted to formally make a complaint. As a result, Officer A said he did not make any arrangements to take her complaint forward.
184. However, Officer A told the Authority that when Mr X later came to the station to make a complaint, he provided him with the IPCA complaint procedure and offered to refer him to a supervisor.
185. Although Officer A provided Mr X with the relevant material to take his complaint forward, in regards to Ms Y, Officer A could have dealt with the situation better. Even if Ms Y did not clearly specify that she wanted to lay a complaint, from his own account, it is evident that Officer A understood that she was unhappy and in the Authority's view it would have been more appropriate to ensure Ms Y's concerns were addressed by another officer.

FINDING

Officer A should have arranged for a supervisor to take Ms Y's complaint.

Was the process of impoundment of the Hilux lawful?

186. Ms Y complained to the Authority that Police deceived her into leaving the Hilux parked out on the street, by telling her that they needed to photograph the damage to the driver's window, when really Police were planning to impound it.
187. Officer B acknowledged that he asked Ms Y to leave the Hilux parked on the street to allow Police to photograph the damaged window. He said he suggested this location as it was "*neutral ground*" and he wanted to avoid further confrontation with Mr X and his family.
188. After speaking with Ms Y, Officer B said Police discussed what charges were to be laid against Mr X, and as part of that, decided that the Hilux was to be impounded. Under section 96(1AB) of the Land Transport Act 1998, Officer B was lawfully allowed to seize and impound the Hilux that Mr X was driving when he failed to stop. While usual Police practice would have seen the officers impound the Hilux at the time of the incident, Officer E advised that in this situation, he used his discretion to allow Ms Y to keep the truck so that she could drive her daughter to the hospital. Officers A and E were also aware that Ms Y had been told to leave the Hilux on the road for photographing and both understood that they were going to use that opportunity to also impound it.

189. Although Ms Y genuinely believed that Police deceived her into parking the Hilux on the street, the Authority is satisfied that when Officer B made the arrangements with Ms Y to photograph the Hilux, the decision to impound the truck had not yet been determined. Once the photographing arrangements had been made, the officers then decided to impound the truck and use that opportunity to facilitate its impoundment. It is therefore clear that Officer B had no intent to deceive Ms Y at the time of their conversation.
190. However, it is the Authority's view that the intent of section 96(1AB) of the Land Transport Act 1998 is to stop vehicles from being used in further road traffic offences. It is not intended to be a form of punishment. Under the Act, a Police officer "*may*" seize and impound a vehicle when it has failed to stop. It is not a statutory requirement and officers are able to use their discretion. In this instance, once Mr X had been through custody, Police would have also established that Mr X had a valid driver licence and he had no outstanding traffic issues. Given this incident was not a typical fleeing vehicle situation and he had no previous history of failing to stop, the Authority believes that there was no good reason for the Police to decide to impound the vehicle. Officer E had already shown discretion at the scene by allowing Ms Y to use the Hilux to take her daughter to the hospital. It is therefore unclear what purpose, other than punishment, could be served by subsequent impoundment.

FINDING

Officer B did not intend to deceive Ms Y at the time of their conversation.

The impoundment of the Hilux was inappropriate in the circumstances.

CONCLUSIONS

191. The Authority has reached the following conclusions on the balance of probabilities:

- Officer A was legally entitled to request Mr X's name and driver licence details. However, Officer A's interaction with Mr X was not appropriate and unnecessarily escalated the situation.
- Due to the significant conflict in evidence, the Authority is unable to make a finding as to whether the force used by Police on Mr X while he was seated in the Hilux was reasonable.
- Officer A did not deliberately spray Ms Y and her daughter, however the use of spray in a confined space, and in the presence of Ms Y and a young person, was careless.
- Officer A should have arranged for a supervisor to take Ms Y's complaint.
- Officer B did not intend to deceive Ms Y at the time of their conversation.
- The impoundment of the Hilux was inappropriate in the circumstances.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

1 December 2016

IPCA: 15-0521 & 15-0612

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.

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

Being independent means that the Authority makes its own findings based on the facts and the law. It does not answer to the Police, the Government or anyone else over those findings. In this way, its 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 complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

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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