

Use of Police dog following pursuit in Greymouth unjustified

Summary of the Incident

1. At around 2.45pm on Friday 29 May 2020, Officer A, a School Community Officer, was parked outside Paroa School, Greymouth, monitoring traffic speed around the school. He was working alone.
2. Officer A was approached by a member of the public who reported they were concerned about a vehicle being driven very slowly and “*swerving in the lane*”.
3. Officer A found the car and signalled the driver, Mr X, to stop. Mr X failed to stop and Officer A initiated a pursuit.
4. The pursuit continued for around 32 minutes over a distance of 18 to 20 kilometres. The vehicles were travelling at very slow speeds for the entire pursuit.
5. Officer B, a dog handler, joined the pursuit after 16 minutes.
6. The pursuit ended when Mr X drove onto a gravel road that became obstructed, preventing Mr X from driving any further.
7. Officer B arrested Mr X for failing to stop. A Police dog was used during the arrest resulting in injuries to Mr X’s leg requiring attendance at hospital for the insertion of stitches.
8. Mr X complained to us that the use of the dog was excessive and unnecessary.

Issues examined by the Authority

Issue 1: Were Police actions justified and reasonable during the pursuit?

Issue 2: Were Police justified in using a Police dog during the arrest of Mr X?

The Authority's Findings

9. We found that the use of a Police dog to bite Mr X was not justified or necessary in the circumstances. The level of offending by Mr X did not warrant a Police dog being deployed.
10. We also concluded that:
 - 1) The initial decision to signal Mr X to stop was justified. Based on the interpretation of the Police policy at the time, decisions to pursue and continue the pursuit were also justified;
 - 2) We are unable to determine if Officer B provided the appropriate warning before releasing the dog;
 - 3) Officer B used force to prevent Mr X fleeing to avoid arrest; and
 - 4) Mr X received timely medical assistance at the scene before being taken to hospital.

Analysis of the Issues

Policy and training issues

11. In December 2020, Police revised its Fleeing Driver policy following a review by the Authority and Police entitled *Fleeing Drivers in New Zealand*.
12. Police developed mandatory on-line training for officers to coincide with the introduction of the revised policy. The on-line training was released in December 2020. Officers were required to complete the training by February 2021.
13. When we conducted interviews for this investigation in December 2020, Officer A had completed the on-line training and Officer B had not.
14. The pursuit occurred prior to the introduction of the revised Police Fleeing Driver policy.
15. The revised policy requires officers to carry out a risk assessment before signalling a vehicle to stop and consider in advance how to respond if the driver fails to stop.

ISSUE 1: WERE POLICE ACTIONS JUSTIFIED AND REASONABLE DURING THE PURSUIT?

Was Officer A justified in initiating the pursuit?

16. Applicable principles of the Police Fleeing Driver policy are "*fleeing driver incidents will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing*".

17. The policy states:

“the decision to commence, continue, or abandon a fleeing driver pursuit must be continually assessed and reassessed in accordance with the TENR risk assessment tool, to ensure the pursuit is resolved as safely and as quickly as possible whilst using the least amount of force”.

18. When Officer A found the vehicle being driven by Mr X, the vehicle was travelling towards him. Using the speed detection device in his vehicle, Officer A noted the vehicle was travelling at 45kph in an 80kph zone.
19. Officer A suspected Mr X was driving under the influence of alcohol and decided to stop the vehicle to conduct a breath alcohol test.
20. As Mr X drove past, Officer A signalled him to pull over by motioning with his arm out of the car window. Mr X continued driving, maintaining a slow speed.
21. Officer A had not previously met Mr X and did not know his identity.
22. Officer A turned to follow Mr X and soon after signalled Mr X to stop by activating his lights and siren.
23. Officer A told us when he signalled Mr X to stop the road ahead was straight with good visibility, *“you could see kilometres down the road”*, there was minimal traffic, and Mr X was travelling well below the speed limit and driving within the lane.
24. Officer A says that before signalling Mr X to stop, he did not plan what he would do if Mr X failed to stop¹.
25. Mr X failed to stop, and Officer A initiated a pursuit.
26. The Authority considers that, based on the description of driving reported to Officer A, it was reasonable for him to suspect Mr X’s driving was impaired.
27. The decision to stop Mr X was therefore justified.
28. When Mr X failed to stop, the decision to initiate a pursuit was consistent with how the Fleeing Driver policy was applied at the time.

Were Officers A and B justified in continuing the pursuit?

29. Mr X says he was driving his vehicle that day to try and work out why a warning light was coming on intermittently. He was varying his speed to see if there was a pattern to when the light came on. Mr X says he did not exceed the speed limit, including when he was driving past Paroa School,

¹ Officer A told us that after completing the on-line training, he would now consider in advance how to respond if a driver failed to stop, before signalling the driver to stop.

but acknowledges that varying his speed by accelerating then slowing down may have seemed unusual to anyone who did not know what he was doing.

30. Mr X saw a patrol car at the rear of his vehicle with its lights flashing and siren on. He says he did not stop because he had been feeling anxious and suspicious for a number of weeks, including that day, and was immediately worried that Police might harm him.
31. Officer A continued to follow Mr X for approximately one kilometre before Mr X turned around and drove back past Officer A. Mr X continued to drive slowly, travelling at 54kph in a 100kph area. Officer A says Mr X was not swerving in his lane and the traffic was moderate.
32. Officer A says that he considered abandoning the pursuit at this time because he now knew the registration number of the vehicle and had got a good look at the driver, but he decided to continue with the pursuit because he assessed the risk to other road users as low. Officer A told us Mr X was *“well under the speed limit, he’s not doing anything, he’s just not stopped.”*
33. We consider that continuing the pursuit at this time was justified because the pursuit was having no adverse effect on Mr X’s driving and was not increasing the risk to other road users.
34. During the pursuit Officer A provided regular updates over the Police radio relating to speed, direction of travel, and road and traffic conditions. Mr X drove at well under the posted speed limit for the entire pursuit. Officer A had no concerns about Mr X’s manner of driving or the road conditions.
35. Approximately seven minutes into the pursuit, Officer A was advised by the Police Communicator that the vehicle was registered to Mr X at his residential address in Greymouth.
36. An officer advised Officer A over the police radio, *“I’ve dealt with [Mr X] a few times over the years ...[he is] quite harmless overall.”*
37. Officer A told the other officers he did not know Mr X and the officer replied, *“The description matches Mr X [and I spoke to him] a couple of weeks ago.”*
38. Although Officer A was by now aware that the driver could be Mr X, the registered owner of the vehicle, we consider the pursuit was still justified at this time because it continued to have no adverse effect on Mr X’s driving and did not increase the risk to other road users.
39. Officer B received a phone call at home requesting his assistance with the pursuit. He was off duty but on-call, and available to respond to incidents if required.
40. Officer B read the details of the incident on his Police mobility device and noted that a *“vehicle was being pursued in relation to a driving complaint and it was believed the driver may have possibly been driving while intoxicated due to the manner of driving.”*
41. Officer B commenced duty around 16 minutes into the pursuit. He advised the Police Communicator of his location and requested the current location of the vehicles involved in the pursuit.

42. Officer B told us he does not have portable radio coverage at home and he did not hear any radio transmissions between receiving the phone call and leaving home. He says *"I was getting my overalls on, getting gear out, the dog and stuff like that ... I didn't hear any part of that commentary"*.
43. We accept Officer B did not hear any radio transmissions before leaving home.
44. A short time later Officer B joined Officer A in the pursuit and became the lead vehicle.
45. Officer B says he did not consider abandoning the pursuit at any time because:
 - he did not know who was driving the vehicle;
 - the pursued vehicle was travelling at a very low speed;
 - there were no other vehicles on the road;
 - the driving was not reckless or dangerous; and
 - there was no reason to abandon the pursuit.
46. Officer A provided updates to the Communication Centre and reported they were travelling at 44kph on a gravel road. Officer A advised there were no other vehicles on the road and reported there was thick gorse on both sides of the road.
47. The pursuit continued along the gravel road for a further 10 minutes. Officer A reported the road was getting progressively more difficult to drive on and had become very bumpy, and the speed they were travelling was now below 10kph.
48. Officer A reported he had pulled back because he could not keep up with the other vehicles without causing serious damage to the patrol car. Officer B continued following behind Mr X. Officer A reminded the Police Communicator that both he and Officer B were working alone.
49. An officer said over the radio, *"if it's [Mr X] he shouldn't be too much of a problem."*
50. Officer A told Officer B he was unable to keep up because of the condition of the road and asked Officer B if he wanted to continue with the pursuit.
51. Before receiving a reply, Officer A reported Mr X and Officer B had stopped, and Officer B was out of his vehicle.
52. The Authority considers it was reasonable for Officer B to continue the pursuit given the slow speed and lack of other vehicles on the road.

FINDINGS ON ISSUE 1

Officer A was justified in signalling Mr X to stop and initiating a pursuit when Mr X failed to stop.

Officers A and B were justified in continuing the pursuit.

ISSUE 2: WERE POLICE JUSTIFIED IN USING A POLICE DOG DURING THE ARREST OF MR X?

53. When Mr X was unable to drive any further, he stopped and immediately got out of his vehicle. Officer B stopped his vehicle approximately two metres behind Mr X's vehicle.
54. Mr X says he was standing by his open driver side car door waiting to be arrested, when Officer B unnecessarily used a Police dog to apprehend him.
55. Officer B says when Mr X was unable to drive any further, Mr X ran from his vehicle and was looking for an opening into the bushes at the side of the road.
56. Officer B says he needed to apprehend Mr X to prevent him from entering the bush to avoid being arrested and potentially getting lost. He told us using the dog to apprehend Mr X was the only option available to him because he thought he would not be able to reach Mr X before he entered the bush.

What does Mr X say happened?

57. Mr X told us when the pursuit ended, he got out of his vehicle and stood in front of the open driver side door, facing the Police vehicle parked behind his vehicle. He says he thought, *"well I can't go any further, so I'll just have to wait and stand here until I'm arrested"*.
58. Mr X says he saw Officer B get the dog from the back of the Police vehicle. The dog was wearing a harness but was not on a lead. Mr X says there were no words spoken by either himself or Officer B before Officer B released the dog, saying *"get him, [name of dog] get him"*. Mr X didn't hear any warnings prior to the dog being released.
59. Mr X says the dog moved from the back of the Police vehicle down the passenger side of the Police vehicle, then crossed between the front of the Police vehicle and rear of Mr X's vehicle, over to the right-hand side of the road. The dog then approached Mr X while he was still standing in front of the open driver side door of his vehicle, and bit him on the leg.
60. Mr X told us, *"... when [the dog] worked it out it sort of had to duck a few bushes and what not and then come and grab me."*
61. Mr X says Police did not need to use the dog:

"I didn't run away in a bush or that type of carry on ... in a situation where somebody's got a gun or something and is gonna shoot heaps of people I suppose a vicious dog would be needed in that situation and would probably work out quite well but not just, you know, a silly bugger like me driving my car. It's a bit different, I wasn't armed, had no knives or guns... "
62. Mr X says he did not say or do anything that would lead Officer B to think he was going to run away.
63. Mr X says when the second officer arrived, the dog was still *"hanging on to him"*. Officer B was holding onto the dog's harness and removed the dog after the second officer arrived.

64. Mr X told us that Officer A asked him why he did not stop and Mr X replied, “... *I thought you were going to shoot me or do something to me.*”

What did Officer A see?

65. Officer A did not witness Mr X being apprehended by the Police dog.

66. Prior to Mr X stopping, Officer A reported that the condition of the road meant he was unable to keep up with the pursuit and he had pulled back.

67. Two minutes later, Officer A broadcast over the radio that he could see Officer B was out of his vehicle, and there is “*one on the ground*”.

68. Officer A told us that when he arrived, Mr X was already seated by the front driver side wheel of Officer B’s vehicle with his back to the wheel facing the bush. Mr X was moving around trying to get the dog off his leg. Officer B was holding on to the dog, trying to remove it and telling Mr X to “*stop resisting*”.

69. Mr X repeatedly said to Officer A, “*I thought you guys were going to kill me*”.

70. Officer B removed the dog as soon as Officer A arrived and returned it to the patrol vehicle.

71. Officer A placed Mr X in handcuffs and advised him he was under arrest for failing to stop.

72. After Officer B returned to provide medical treatment to Mr X’s wounds, Officer A took photographs of the scene. Officer A told us he did not touch Mr X’s vehicle before taking the photographs.

73. The photographs show:

- a single lane gravel road lined by a combination of gorse and native bush on both sides of the road;
- Officer B’s vehicle parked close to and behind Mr X’s car;
- the driver’s side door on Mr X’s vehicle is closed with a seatbelt hanging on the outside of the closed door;
- Mr X sitting on the road, adjacent to and facing the driver’s side door of the Police vehicle with his feet almost touching the police vehicle. His hands are handcuffed to the front and resting on his legs;² and
- Officer B applying first aid to Mr X’s leg.

² Officer B moves Mr X to this position prior to conducting a breath screening test and administering first aid.

What does Officer B say happened?

74. Officer B says that at the end of the pursuit he stopped approximately two metres behind Mr X's vehicle.
75. Officer B told us he was unsure if Officer A was going to arrive and assist him because Officer A had said he was unable to continue driving due to the road conditions. Officer B believed he was by himself.
76. Officer B says when he saw Mr X get out of his vehicle, Officer B opened his door and gave the warning, "Police dog handler stay there or I'll let the dog go", then went to the rear of his vehicle to get the dog.
77. Officer B told us, "I've immediately challenged him ... so he knew there was a dog behind him." Officer B says Mr X closed the driver's door of his vehicle, moved across the front of his vehicle to the left hand side of the road and has "taken off."
78. Officer B removed his dog from the back of the Police vehicle and looked down the passenger side expecting to see Mr X.
79. Officer B says:
- ".. I've seen the driver coming ... back across the front of his vehicle towards the bank. There's a bank with a mound on the left-hand side, I've come back around the back of my vehicle, I again challenged the driver ... and told him 'I'm a Police dog handler stay there or I'll let the dog go'. The driver's continued like he's looking for a place to go over the bank and then I've sent the dog and commanded ... him to apprehend the driver... The whole time the driver said nothing to me and ignored me like I wasn't even there."*
80. Officer B says when he released the dog, Mr X was standing "just ahead of his [Mr X's] vehicle" on the right hand side of the road "looking like he's heading off into the bush". He decided to deploy the dog because he believed Mr X was going to make it into the bush before he got to him.
81. Officer B says it was important to apprehend Mr X because:
- he did not know Mr X's identity;
 - Police would lose evidence if Mr X was driving under the influence of alcohol; and
 - Mr X would be difficult to find if he entered the bush, potentially requiring a Search and Rescue response.
82. Officer B says there were no alternative options available to him because:

- Mr X was not assaultive, so using a taser was not an option;³
 - using pepper spray would be ineffective due to the distance between Mr X and himself;⁴
 - Mr X would have disappeared into the bush if Officer B had just run over by himself; and
 - if Officer B had not deployed the dog before Mr X entered the bush, the dog would also no longer have been an option because Mr X would have been out of sight.⁵
83. Officer B told us Mr X was standing in front of Mr X's vehicle when he was apprehended by the dog. Mr X tried to remove the dog from his leg by pushing on the dog's head and the dog responded by pulling backwards. Mr X moved with the dog to try and release pressure from the bite, resulting in both Mr X and the dog moving from the front of Mr X's vehicle towards Officer B's vehicle.
84. Officer B moved forward and was holding the dog by its harness when Mr X fell to the ground near the front of Officer B's vehicle.
85. When Officer B returned to administer first aid, he moved Mr X next to the driver side door of Officer B's vehicle to conduct a breath alcohol screening test, which Mr X passed, and administer first aid.

Was Officer B's use of the dog legally justified?

What was the purpose of the force used by Officer B?

86. Section 40 of the Crimes Act 1961 empowers Police to use such force as may be necessary to prevent the escape of someone who takes flight, in order to avoid arrest.
87. Officer B says he used the dog to apprehend Mr X to prevent him escaping into the bush and avoiding arrest. He says that he appropriately warned Mr X before releasing the dog.⁶
88. Mr X says that when Officer B released his dog, he was not fleeing and was standing by his car door waiting to be arrested. He says Officer B did not say anything to him before releasing the dog.
89. Mr X and Officer B provide differing accounts about whether Officer B warned Mr X before releasing the dog. Officer A did not see the dog being released and we are unable to determine if Officer B provided the appropriate warning before releasing the dog.

³ Police policy provides a taser must only be used on a person whose behaviour is within or beyond the assaultive range or has the potential to escalate to within or beyond the assaultive range. Police policy defines assaultive as showing an intent to cause harm, expressed verbally or through body language or physical action.

⁴ Also known as Oleoresin Capsicum or OC Spray.

⁵ Police dog policy provides that dog handlers should not release a dog to apprehend a suspect unless they are sure the dog has sighted the suspect.

⁶ Before instructing a dog to bite a person, dog handlers must warn or challenge the person to surrender unless it is unsafe or impracticable to do so.

90. Photographs taken by Officer A immediately following Mr X's arrest, show the driver side door of Mr X's vehicle closed, with the seatbelt hanging on the outside of the door. This is consistent with someone leaving the vehicle in a hurry and closing the door immediately upon leaving the vehicle.
91. Mr X told us he stood in front of his open driver side door and was adamant he did not move from that position. Mr X also drew a picture to show us what happened which shows Mr X standing in front of the open door and not moving from that position. When shown the photograph taken by Police with the driver side door of his vehicle closed, Mr X said he could not recall if he shut the door or leaned on it and said, *"I just stayed near the car because I thought well that's the best thing to do"*.
92. However, Mr X also acknowledges he did not stop for Police because he was feeling anxious and thought Police would hurt him. Mr X also told us that he told Officer A he did not stop because he thought Police would shoot him.
93. Given Mr X's level of anxiety that Police were going to harm him, we think it most likely that when he was unable to drive any further, Mr X continued to flee from Police, as described by Officer B.
94. For these reasons we accept that Officer B used the dog to prevent Mr X from fleeing into the bush.

Was the use of the Police dog a justified, necessary and proportionate response in the circumstances?

95. We assessed whether Officer B's use of force to prevent the escape 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 nature and degree of risk he posed if his escape was not prevented.
96. In relation to the seriousness of the offence, Mr X failed to stop when signalled to do so by Police. Police also reasonably suspected Mr X was driving under the influence of alcohol and risked losing evidence of that offence if Mr X was not apprehended.
97. While in principle there is significant public interest in apprehending a person for driving under the influence of alcohol, in this particular case the likelihood that Mr X's driving was impaired was low. Officers A and B had observed Mr X driving for around 30 minutes without incident or concern.
98. Officer B says that if he had not released the dog, the likelihood of apprehending Mr X would have been substantially diminished. He was also concerned that if he allowed Mr X to enter the bush, Mr X could get lost, requiring a Search and Rescue response, and the only option available

to him was to use the dog because he thought he would not be able to reach Mr X before Mr X entered the bush.

99. However, photographs taken by Officer A show gorse and native bush on both sides of the road. Officer B says Mr X had already tried to enter the gorse on one side of the road and crossed the road when he was unable to find an entry point. When Officer B released the dog, Mr X was between two and three car lengths away from Officer B.
100. Given the short distance between Officer B and Mr X, and the density of the gorse and native bush on both sides of the road, we do not accept that Mr X would have got lost in the bush before Officer B was able to get close enough to apprehend him. There is a significant disparity in physical capability between Mr X, aged 60 at the time of the incident, and Officer B, a young and fit Police officer. Officer B also had the option available to him of using the dog to track Mr X.
101. In relation to the risk posed by Mr X, he had been identified as the likely driver by an officer who knew Mr X. The officer had described Mr X as harmless over the Police radio. In response to a concern raised that Officers A and B were working alone, an officer reported, *“he [Mr X] shouldn’t be too much of a problem”*.
102. We accept Officer B did not listen to the Police radio between being called out from home and starting work and did not hear an officer describe Mr X as harmless.
103. Officer B was pursuing Mr X when an officer transmitted over the Police radio that *“[Mr X] shouldn’t be too much of a problem”*. Officer B told us he does not recall hearing the comment and it would not have meant anything to him at the time because the description represented a risk assessment made by a different officer about something occurring on a different day. Given the short time delay between this transmission and Officer A reporting he could see Officer B out of his vehicle with Mr X on the ground, we accept it is likely Officer B did not hear this transmission as he was already out of his vehicle.
104. While Officer B did not hear the radio transmissions, he had no other reason to believe Mr X posed any particular risk to either himself or the public. Mr X had not committed any other offences and there was no suggestion he was at risk of committing further offences. When he stopped, he was in a rural area with no other vehicles or members of the public nearby. Although he was attempting to flee to avoid arrest for failing to stop and possibly driving under the influence of alcohol, Officer B had not himself witnessed Mr X driving in a reckless or careless manner during the pursuit. Nor had any other officers expressed concerns about Mr X’s driving during the pursuit. Indeed, quite the contrary, he had been described (including by Officer B) as driving slowly and sedately and on his side of the road.
105. We accept that if Mr X had been under the influence of alcohol, he would have posed some risk to the public if he had continued to drive, but he was not in a position to do so when the dog was released.
106. Officers are required to constantly assess an incident based on all the information they have and the behaviour of the people involved. We accept it was reasonable for Officer B to remove the

dog from his vehicle because he reasonably believed he would be dealing with the arrest by himself. However, he had no reason to think Mr X was a risk to himself or anyone else, meaning there were other options available to Officer B before releasing his dog, including a more concerted attempt to communicate with Mr X.

107. In this case, the seriousness of the offending and suspected offending, and the risk posed by Mr X if not immediately apprehended, was not sufficient to justify the degree of force used.

FINDINGS ON ISSUE 2

Officer B used force on Mr X to prevent him fleeing to avoid arrest.

The use of a Police dog to bite Mr X was not justified or necessary in the circumstances. The deployment was disproportionate to Mr X's suspected offending and the risk to the public if he was not apprehended.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

8 February 2022

IPCA: 20-4934

Appendix – Laws and Policies

LAW

108. Section 40 of the Crimes Act provides that Police may use *“such force as may be necessary”* to *“prevent the escape of that other person”* if they take flight in order to avoid arrest, or *“to prevent the escape or rescue”* after their arrest unless in any such case the escape or rescue can be prevented *“by reasonable means in a less violent manner.”*
109. Under section 62 of the Crimes Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

POLICY

‘Fleeing driver’ policy

110. The overarching principle of the Police fleeing driver policy is that: *“public and Police employee safety takes precedence over the immediate apprehension of a fleeing driver”*.
111. Additional principles of the policy are:
- an inquiry phase is preferred over a fleeing driver incident wherever possible;
 - fleeing driver incidents will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing; and
 - the fact that a driver is fleeing does not in itself justify a fleeing driver pursuit.
112. The policy also states that *“the decision to commence, continue, or abandon a fleeing driver pursuit must be continually assessed and reassessed in accordance with the (TENR) risk assessment tool, to ensure the pursuit is resolved as safely and as quickly as possible whilst using the least amount of force”*.

‘Use of force’ policy

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

115. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject's abilities; emotional state, the influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).
116. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are; cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
117. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public, and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.

'Use of force with Police dogs' policy

118. Police dog handlers must consider all tactical options in situations that require use of force. They must consider whether a lesser, more appropriate use of force is available before deploying a Police dog. The law sees little difference between dogs, when used as a means of force, and other methods and tactical options used by Police, such as firearms, Taser and batons.
119. Police officers operating a Police dog are personally responsible for the use of force by the dog. They must be satisfied, before releasing the dog, that the use of force is justified in the circumstances. They must call on the person to desist unless impracticable to do so and ensure that the extent of the force used by the dog is the minimum possible in the circumstances.
120. Police dog handlers must have control of their dog at all times during deployment. Control means that the dog is under immediate physical or voice control and the dog responds to that control.
121. Before instructing a dog to bite a person, dog handlers must warn or challenge the person to surrender unless it is impracticable or unsafe to do so. The person must then be given reasonable time to comply. The challenge must include that the officer is a Police employee who has a dog present which will be used to bite the suspect if they do not surrender to Police. The challenge must be loud enough to reasonably expect the suspect can hear it.
122. Everyone bitten or injured by a Police dog must be given appropriate medical attention as soon as practicable.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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

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

THIS REPORT

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



Mana Whanonga Pirihimana Motuhake

PO Box 25221, Wellington 6140
Freephone 0800 503 728
www.ipca.govt.nz
