IPCA
Independent Police Conduct Authority
Mana Whanonga Pirihimana Motuhake

Police conduct unlawful entry to arrest a man in Hawkes Bay

1. During the evening of 14 July 2024, seven Police officers went to a house in Flaxmere, Hawkes Bay, to arrest a man (Mr Z) for breaching his electronically monitored bail. At the front door officers told Mr Z he was under arrest. Mr Z denied breaching bail and refused to cooperate with the officers, trying to shut the door.

2. Officers used pepper spray and forced their way into Mr Z's home.[1] Mr Z ran to a bedroom, barricading himself in. Officers retreated outside the house. After calling on Mr Z to come out, officers fired a 40-millimetre sponge round weapon[2] and a Taser into the house to incapacitate Mr Z as they had concerns he would self-harm. Mr Z was handcuffed and taken into custody.

3. Mr Z's family, including young children, were at the house during this event. After Mr Z had been placed into a Police vehicle, Ms Y (the property owner and mother of Mr Z) arrived home.

4. Ms Y later complained to the Authority about the actions of Police. We forwarded the complaint to Police, then conducted an independent investigation.

The Authority's Findings

Issue 1: Were Police justified in going onto the property and entering the house to arrest Mr Z for breaching bail?

Officers had an implied licence to go onto the property to speak to Mr Z, but this did not extend to officers accessing the rear of the property.

Officers said they entered the house pursuant to section 7 of the Search and Surveillance Act 2012. We found this power was not applicable in the circumstances as Mr Z had not been arrested and therefore was not unlawfully at large (a condition of the entry power). Police should have applied for an arrest warrant if they suspected entry would be required to arrest Mr Z.

The second entry to the house was justified under section 14 of the Search and Surveillance Act 2012 because officers believed there was risk to Mr Z's life.

[1] Pepper spray is also known as oleoresin capsicum or OC spray.
[2] A XM1006 high density sponge round is fired from a 40-millimetre launcher with a range of about 30 metres. The weapon is designed to be less-lethal.

Issue 2: **Were officers justified in using force against Mr Z?**

Officer B's use of OC spray was unjustified under section 39 of the Crimes Act 1961 because Police had not effected Mr Z's arrest at the front door. Under this provision, Police are only empowered to use force to overcome resistance to arrest or other lawful process.

Officer B was justified under section 41 of the Crimes Act 1961 in firing both the first and second sponge rounds at Mr Z.

Officer C was justified under section 41 of the Crimes Act 1961 in discharging his Taser at Mr Z.

Analysis of the Issues

Background

5. On 14 July 2024, Mr Z was on electronically monitored bail under strict conditions because he was facing several criminal charges, which included presenting a firearm, assaulting and resisting Police, injuring with intent to injure and wilful damage. Mr Z was known to Police as a person who had previously resisted and assaulted officers, and as having carried weapons. Mr Z also had a history of mental health issues.

6. At about 7.30pm, the Electronically Monitored Bail team advised Hawkes Bay Police that Mr Z had breached his bail conditions that afternoon by leaving his home address without approval.

How did Police plan to arrest Mr Z?

7. At about 8.05pm, a team of seven officers gathered a short distance from Mr Z's house and discussed a plan to arrest him for breaching bail. They did not have a warrant for his arrest. An acting sergeant (Officer A) led the team, which included a Tactical Dog Team (Officers B and C), and four other general duties officers, including Officers D and E.

8. Officer A outlined the plan to this team, which was to approach the front door in a low-key manner and request to speak to Mr Z, who would then be placed under arrest.

9. Officers B and C had previously dealt with Mr Z at this house and reported this to the group. Officer A decided that each officer would carry pepper spray, a Taser and a Glock pistol. Officer B, who was appropriately trained, also took a sponge round weapon.

What happened when officers arrived at the house?

10. Mr Z lived with his mother, Ms Y, and his siblings and several young children, although Ms Y was not home at the time. Her house is at the end of a cul-de-sac with no boundary fence at the front. A small porch is about six metres from the footpath, and this contains a front door of timber construction with four glass panels.

11. At about 8.10pm, three officers (Officers B, D and E) walked to the front door and knocked. Other officers held position around the front of the house. Officer A was on the front lawn and saw Mr Z through a bedroom window. Officer A calmly asked Mr Z to go to the front door, which he did, half opening the door.

12. From outside the front door, Officer D informed Mr Z he was under arrest for breaching his bail. Mr Z denied breaching bail and aggressively tried to shut the front door, but Officer D stopped him by placing his booted foot in the door frame. Officers then tried to push open the door, but Mr Z pushed back.

13. At least two of Mr Z's family members began filming on their mobile phones.

14. With the force being applied to the front door, glass in the two lower panels broke. As the door was partially open, Officer B reached around and sprayed pepper spray into Mr Z's face.

15. Mr Z stopped pushing on the door and retreated down the hall, barricading himself into a bedroom. Officers B, D and E entered the hallway and Officer E unlocked the rear door to let in Officer C and the other officers who had gone to the back of the property.

16. With Mr Z holding the bedroom door closed, all officers decided to leave the house but remained on the property. Officers voice appealed though a bedroom window for Mr Z to surrender.

17. This continued for about four minutes when Mr Z, who was highly agitated, returned to the front door and picked up a shard of glass from the broken pane. Mr Z held the glass to his neck, yelling: *"You just want me to fucking kill myself!"*

18. Officers called out for Mr Z to stop, and when he did not, Officer B fired his sponge round weapon to distract Mr Z from harming himself with the glass. Just as he fired, Mr Z pushed the door shut and the projectile went through the glass of the door and struck Mr Z in the groin. Mr Z ran back into the same bedroom.

19. Officers went back into the house, although were again not able to enter the barricaded bedroom. Officers B and C went outside to the bedroom window, and due to concerns held that Mr Z would seriously harm himself, another officer broke the window glass.

20. Mr Z threw a full drink can at Officers B and C, narrowly missing one and striking the other on the hip. Simultaneously Officer B fired another sponge round and Officer C fired his Taser through the broken window.

21. Both the sponge round and Taser incapacitated Mr Z, and other officers were then able to enter the bedroom, handcuff Mr Z and take him into custody.

What powers did officers say they used to enter the house?

22. Officers say they entered the house the first time under Section 7 of Search and Surveillance Act 2012.[3] They said that because Mr Z had been arrested (for breaching bail) and then escaped back inside, he met the criteria of a person being 'unlawfully at large', meaning Police could enter the house without a warrant.

23. When they entered the house for the second time, officers say they used section 14 of the Search and Surveillance Act[4] 2012 because Mr Z had indicated he would self-harm, and they held immediate fears for his safety.

[3] Section 7 of the Search and Surveillance Act is set out in paragraph 66.
[4] Section 14 of the Search and Surveillance Act is set out in paragraph 67.

ISSUE 1: WERE POLICE JUSTIFIED IN GOING ONTO THE PROPERTY AND ENTERING THE HOUSE TO ARREST MR Z FOR BREACHING BAIL?

Was there an implied licence for officers to go onto the property?

24. Implied licence is a common law rule that allows Police, and anyone else, to enter a property with the implied consent of the occupier to communicate with them for a legitimate law enforcement or other reasonable purpose. However, that licence does not extend to an officer undertaking activities that "*go beyond what is reasonable to enable a police officer to communicate with the occupier*".[5] Further, while Courts have found that it may be within the scope of implied licence for Police to go to the back door of a house for the purpose of communicating with the occupier, if his fundamental purpose is to prevent the escape of an occupier, as opposed to communicating with them, this is not within the scope of implied licence. In such circumstances the officer would be trespassing.[6]

25. When the officers arrived at Mr Z's address, three approached the front door and one went onto the front lawn. Initially, the remaining officers stood to the front and side of the house.

26. It was within the ambit of an implied licence for Police to go onto Mr Z's property and knock on the front door to arrest him for breaching bail.[7] Those officers who approached the front door to communicate with Mr Z therefore had implied licence to be there.

27. Mr Z was seen at a front bedroom window as the officers approached. They called out to him to come to the front door, which he did. We agree officers were entitled to go to the front door and we accept no officer initially entered the rear of the property. However, Officer A says after he heard a scuffle at the front door, he ran around to the back of the house. Given he had heard the other officers communicating with Mr Z at the front of the house, it is evident that his fundamental purpose in running to the back was not to communicate with Mr Z. He therefore had no implied licence to do so. As we set out from paragraph 33 below, he had no other authority for entering the property, so he was acting unlawfully when he ran to the rear of the house.

Did Police effect the arrest of Mr Z when speaking to him at the front door?

28. Under section 35 of the Bail Act 2000, a defendant on bail (as Mr Z was) can be arrested without a warrant under certain circumstances, including when Police believe on reasonable grounds that the person has contravened a bail condition.[8] We accept that officers believed, based on information from the Electronically Monitored Bail team, that Mr Z had breached conditions of his bail and he was eligible for arrest.

[5] Tararo v R [2012] 1 NZLR 145
[6] R v Balsley [2013] NZCA 258
[7] Tararo v R [2012] 1 NZLR 145
[8] Section 35 of the Bail Act 2000 is set out at paragraph 65. It also provides that nothing in that section prevents officers from obtaining a warrant under section 37 of the Bail Act.

29. In certain circumstances, words can be enough to effect an arrest. Specifically:

> *"… (a) the arrester, by words or conduct, makes it clear to the person being arrested that he or she is no longer free to go where he or she pleases; and*
>
> (b) the person being arrested knows that he or she is no longer free to leave."[9]

30. In submissions, Officer B referred to the case of *Arahanga v R*[10] as authority for the idea that Mr Z was under arrest at the point they told him at the front door that he was under arrest.

31. However, the facts in that case were materially different from these. In *Arahanga* the arrest occurred in a public place, on the street. The officer told Mr Arahanga he was under arrest. Mr Arahanga then ran away and was found hiding in bushes a short while later. The Court in that case held that the officer did not need to be able to physically touch him in order for there to be a lawful arrest. However, it is clear the officer had a lawful basis for physically touching him if he had needed to do so to take him into custody, because they were in a public place – the officer could reach out and grab him or chase him down the street and tackle him to the ground in order to effect the arrest.

32. The same is not true in this case. Mr Z was not in a public place. He was inside the house. There is no implied licence for the officer to enter a house to effect an arrest. If the officer does not have a warrant (they did not) and if the test in section 8 of the Search and Surveillance Act 2012 is not met (it was not here, because breach of bail is not an imprisonable offence) then they have no lawful authority to physically take a person into custody who is inside their home. In short, at the time the officers purported to arrest Mr Z at the front door, they did not have the ability to lawfully physically take Mr Z into custody, because they had no lawful basis for entering the house. There was, therefore, no arrest.

Did Police have lawful powers to enter the house on the first occasion?

33. Police can enter a house without consent if they have an arrest warrant from the Court, or if they have a statutory warrantless power.

34. Police had not obtained an arrest warrant under section 37 of the Bail Act 2000 in this case.

35. Instead, the officers say they relied on section 7 of the Search and Surveillance Act 2012, which provides that an officer can enter a place without a warrant to arrest a person if they have reasonable grounds to suspect that the person is unlawfully at large and believe the person is there.

36. The significance of our finding above that there was no arrest, is that the officers could not rely on section 7 of the Search and Surveillance Act 2012 to then enter the house as they did. Mr Z was not unlawfully at large, because he had not been arrested.

[9] Arahanga v R [2012] NZCA 480 at [53].
[10] Arahanga v R

37. Consequently, Police had no power to enter the house without permission and had no legal option other than to withdraw and apply for a warrant.

38. Without a warrant, the officers' only option was to rely on Mr Z's cooperation in coming out of the house to be arrested, accepting that if he did not comply, they would have to leave. In this case, the officers that attended knew that Mr Z was unpredictable and posed sufficient risk for them to deploy as a group of seven, armed with a range of tactical options. It was therefore unlikely he was going to cooperate by voluntarily coming out of the house. Therefore, in our view the officers should have applied for an arrest warrant under section 37 of the Bail Act 2000 prior to going to arrest Mr Z, to give them the power of entry if Mr Z was uncooperative. This was the prudent option and the purpose of section 37.

39. While we appreciate that obtaining a warrant is inconvenient, and that there are difficulties obtaining a warrant out of Court hours (in this case it was not possible to do so), this does not change the fact that the law is clear on the limits of Police entry powers in the absence of a warrant. In choosing not to obtain a warrant, the officers had to be prepared for the possibility that if Mr Z did not come out of the house, they would have no choice but to leave without having arrested him.

40. We have seen several cases in recent times, in which Police have wrongly assumed that they have a power of entry when arresting people for breach of bail at their front door. Frontline officers should understand that while section 35 of the Bail Act 2000 allows them to arrest people without warrant for breaches of bail conditions, it does not provide any power of entry into a house. Further, without a power of entry, merely saying the words *"you're under arrest"* while standing at the front door, does not constitute a lawful arrest, because the officer has no lawful ability physically to effect that arrest. In the absence of a lawful arrest, the warrantless entry power under section 7 of the Search and Surveillance Act 2012 is not available.

Did Police have lawful powers to enter the house on the second occasion?

41. Having found the initial entry into the house was unlawful, we now consider the lawfulness of subsequent entries.

42. Section 14 of the Search and Surveillance Act 2012 gives officers the power to enter a place without a warrant and take urgent necessary action to avert risk to the life or safety of any person.

43. Paragraphs 17 to 19 describe how Mr Z threatened to harm himself with a shard of glass. Officer B told us: *"At that point I have had genuine and immediate concerns for his safety, that he was going to kill himself."* Officer B fired the sponge round weapon to stop Mr Z harming himself with the glass he was holding to his neck.

44. Shortly afterwards, both Officers B and C (who could see Mr Z was still holding the glass shard) say they held immediate concerns for Mr Z's safety when watching him through the bedroom window, prompting them to have the window broken and simultaneously fire the sponge round weapon and Taser at him to incapacitate him. Officers then entered the bedroom and placed Mr Z in handcuffs.

45. Despite the initial entry being unlawful, we accept that officers had reasonable grounds to believe Mr Z would self-harm and that an emergency response (entry) was necessary, both when they entered through the front door after the first sponge round was fired, and when they acted through the broken window and entered the bedroom. For this reason, these two subsequent entries were justified under section 14.

FINDINGS ON ISSUE 1

Officers had an implied license to go onto the property to speak to Mr Z, but this did not extend to officers accessing the rear of the property.

The officers did not effect Mr Z's arrest when they spoke to him at the front door.

The officers were not justified in entering the house the first time because they did not have a warrant or a warrantless power to enter under the Search and Surveillance Act.

The subsequent entries into the house were justified due to officers believing that Mr Z was at immediate risk of self-harming.

ISSUE 2: WERE OFFICERS JUSTIFIED IN USING FORCE AGAINST MR Z?

46. In this section we consider whether the various uses of force, as described in paragraphs 14 to 21, were justified.

Was Officer B justified in pepper spraying Mr Z when he tried to shut the front door?

47. Paragraph 14 describes how Officer B pepper sprayed Mr Z when he was trying to shut the front door on the officers after being told he was under arrest.

48. Section 39 of the Crimes Act 1961 empowers Police to use *"such force as may be necessary"* to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process. However, as the officers had not arrested Mr Z, because they could not enter the house, the force used against Mr Z to make an arrest or execute a process was unlawful.

49. Officer B's use of pepper spray was therefore unjustified.

Were Officers B and C justified in using force against Mr Z to prevent self-harm?

50. Officers also used force to stopping Mr Z from harming himself, as opposed to effecting his arrest.

51. As set out in paragraphs 18 and 20, Officer B fired two sponge rounds at Mr Z; the first through the front door glass pane when Mr Z was holding a shard of glass to his neck, and the second through the broken bedroom window. Officer C discharged his Taser at Mr Z also through the bedroom window.

52. Section 41 of the Crimes Act 1961 justifies the use of reasonably necessary force to prevent suicide.[11] Under section 41, we must consider:

a) What were the circumstances as the officer, on reasonable grounds, believed them to be (an objective test applied to the officer's actual belief)?

b) Was the force used reasonable (an objective test)?

What did Officer B believe the circumstances to be when he fired the first sponge round?

53. Officer B's view of what occurred at the front door is outlined above in paragraphs 17 and 18. Also, Officer B told us:

> "*At that point I have had genuine and immediate concerns for his safety that he was going to kill himself… I couldn't deploy my Taser. The only thing I could do in that moment was to deploy the [sponge round weapon] which is just a single shot sponge round in an attempt to stop him from trying to slice his throat open.*"

54. We accept the officer genuinely believed Mr Z was about to cause himself harm and given Mr Z was holding a shard of glass to his neck, based on Mr Z's words and actions we accept this belief was reasonable.

Was the first firing of the sponge round reasonable?

55. As Officer B had no opportunity to use other tactical options to stop Mr Z, in the circumstances the use of the sponge round was proportional to the level of threat and Officer B acted to avert Mr Z's death or serious injury. The use of the sponge round weapon was reasonable and Officer B's actions under section 41 were justified.

What did Officers B and C believe the circumstances to be when they deployed the sponge round weapon and Taser at Mr Z while he was in the bedroom?

56. Officer B says he fired the sponge round weapon through the bedroom window at Mr Z because he still feared Mr Z was at risk of harming himself:

> *"I've then seen him [Mr Z] turn around and go back through the door again still with the thoughts of him trying to harm himself but also, he's going back to that door where the two constables are on the other side. I didn't know if he had the glass in his hand or not still but there's other factors still in play, so I've deployed the [sponge round weapon] for a second time at the centre mass on his back and [Officer C] has tasered him basically at the same time."*

57. Officer C says he fired his Taser at Mr Z through the broken bedroom window at the same time because he could see glass in his hand and his erratic behaviour caused him to fear he would self-harm:

> *"I could see [Mr Z] moving up and down next to the door quite erratically and I could see him holding a, a piece of glass in one of his hands. I can't remember if it was left or right,*

[11] Section 41 of the Crimes Act 1961 is set out in paragraph 68.

but he was holding the door closed. Because it was a net curtain it was more of silhouettes rather than details as such. I told [another officer] that I'm gonna taser him. So, I decided to taser him at that point 'cos I didn't want him to kill himself and I had to stop him from doing that."

58. We accept that both officers believed on reasonable grounds that Mr Z was still at risk of harming himself while in the bedroom. Both officers had heard Mr Z threaten to harm himself minutes before, and Mr Z's circumstances or demeanour had not obviously changed. While Officer C could see Mr Z was still holding the shard, Officer B had good reason to suspect that Mr Z still had access to the shard of glass, even if he could not see it. The fact that Officer B also acted to protect his colleagues does not prevent him from relying on section 41 of the Crimes Act 1961.[12]

Was the second firing of the sponge round weapon and the firing of the Taser reasonable?

59. Officers B and C had no opportunity to use other tactical options urgently to incapacitate Mr Z in the circumstances. He was inside the house whereas the officers were outside. The other officers could not enter the bedroom from inside the house to intervene. As above, the level of force both officers used were proportional to the level of threat Mr Z posed to himself. We find the use of the sponge round weapon and Taser to be justified under section 41.

FINDINGS ON ISSUE 2

Officer B's use of pepper spray was unjustified, because Mr Z had not been arrested.

Officer B was justified in firing both the first and second sponge rounds at Mr Z to prevent him from self-harming.

Officer C was justified in discharging the Taser at Mr Z to prevent him from self-harming.

Subsequent Action

60. We spoke to Ms Y, who was not present when officers entered her home, and she outlined disappointment that damage was caused when Police entered. As of November 2025, the front door and bedroom window had not been repaired.

61. The Police investigation found that, while the use of force was unfortunate, officers were technically justified in entering the house and using force. For the above reasons, in part at least, we disagree.

Recommendations

62. From the complaints we receive, there is widespread misunderstanding of section 7 of the Search and Surveillance Act 2012, and the powers available when arresting someone for breach of bail. The issues we have highlighted in this report are not isolated.

[12] *R v Roulston* [1998] 2NZLR 468, (1998) 15 CRNZ 515 (CA).

63. We, therefore, recommend that Police:

    1) implement a project so that officers can obtain a warrant to arrest pursuant to section 37 of the Bail Act 2000 when outside of Court hours. This is likely to involve a multi-agency approach; and

    2) produce written guidance on the scope of section 7 of the Search and Surveillance Act 2012 and the powers Police do and do not have available to them when arresting people for breach of bail; and

    3) deliver training on this issue to frontline Police across all districts.

64. We also recommend that Police repair the damage to the front door of Ms Y's property as that occurred when officers were unlawfully entering the property.

Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

11 December 2025

IPCA: 24-23604

Appendix – Laws and Policies

LAW

Bail Act 2000

65. *Section 35 - Defendant on bail may be arrested without warrant in certain circumstances*

(1) Any constable may arrest without warrant a defendant who has been released on bail by a court or Registrar or Police employee if the constable believes on reasonable grounds that:

(a) the defendant has absconded or is about to abscond for the purpose of evading justice; or

(b) the defendant has contravened or failed to comply with any condition of bail.

Search and Surveillance Act 2012

66. *Section 7 – Entry without warrant to arrest a person unlawfully at large*

A constable may arrest a place or vehicle without warrant to search for and arrest a person if the constable believes on reasonable grounds:

a) To suspect that a person is unlawfully at large; and

b) To believe that the person is there.

67. *Section 14 – Warrantless entry to prevent offence or respond to risk to life or safety*

(1) A constable who has reasonable grounds to suspect that any 1 or more of the circumstances in subsection (2) exist in relation to a place or vehicle may -

a) Enter the place or vehicle without a warrant; and

b) Take any action that he or she has reasonable grounds to believe is necessary to prevent the offending from being committed or continuing, or to avert the emergency.

(2) The circumstances are as follows:

a) An offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or serious loss of, any property:

b) There is risk to the life or safety of any person that requires an emergency response.

Crimes Act 1961

68. *Section 41 - Prevention of suicide or certain offences*

(1) *Every one is justified in using such force as may be reasonably necessary in order to prevent the commission of suicide, or the commission of an offence which would be likely to cause immediate and serious injury to the person or property of any one, or in order to prevent any act being done which he or she believes, on reasonable grounds, would, if committed, amount to suicide or to any such offence.*

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 Kenneth Johnston KC.

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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

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

THIS REPORT

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

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