

# The detention of three people in Greymouth

## INTRODUCTION

1. On the morning of 2 May 2015, Police arrested three people at an address in Greymouth: Mr X, Ms Y and Mr Z. Mr X was arrested for assault and Ms Y and Mr Z were arrested for possession of cannabis. All three were transported to Greymouth Police Station.
2. Police took Mr X to appear at Greymouth District Court at about 10am, and he was remanded in custody. He remained handcuffed from the time of his arrest for a period of about eight hours and thirty minutes, including time he spent alone in a cell.<sup>1</sup>
3. Ms Y and Mr Z were not taken to court, but were held in Police custody for over 19 and 15 hours respectively.
4. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation into the detention of Mr X, Ms Y and Mr Z. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

5. Greymouth Police were looking for Mr X after he allegedly assaulted his partner on Thursday 30 April 2015. The Police were informed that Mr X had gang connections and may be under the influence of methamphetamine.

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<sup>1</sup> The handcuffs were temporarily removed while Mr X's fingerprints were scanned at the Police station.

6. On the evening of Friday 1 May 2015, three officers began working the night shift covering the Greymouth area. Officer A (a sergeant) was the supervisor and Officers B and C were the other two officers on duty.
7. At about 5.30am on Saturday 2 May 2015, Officer A briefed Officers B and C that they had received information suggesting Mr X may be at a particular address in Greymouth, and they were going to visit that address to see if they could find him. The officers carried out a background check and discovered that Mr X was a large man with a history of being aggressive towards Police, and that he was a cage fighter and methamphetamine user.
8. Officers A, B and C arrived at the address at about 5.45am and approached the front door. Officer A told Officer B he could smell cannabis. Ms Y answered the door and Officer A advised her that the officers were going to conduct a search of the property under the Search and Surveillance Act 2012.
9. Mr Z was inside the house, sitting at a dining table. Officer A informed Ms Y and Mr Z that they were being detained for the purpose of the search, and Officer B gave them a Bill of Rights caution. Ms Y told Officer B that she lived at the house with her daughter, and denied knowing Mr X. Mr Z said he did not live at the property and was only visiting.
10. Officers A and C searched the house and found cannabis, methamphetamine, drug equipment, a stun gun and a large amount of cash.
11. At about 6.45am, Officer A found Mr X outside lying half in the bushes, half on the grass. Officer A aimed his Taser at Mr X and 'laser-painted' him (but did not fire the Taser at any stage).
12. Officer A told the Authority that Mr X "*presented a huge risk to Police*", due to his strength and unpredictable nature. He commented that the risks identified in Mr X's background check were some of the most extreme he had dealt with in his policing career (see paragraph 6).
13. After hearing some yelling outside, Officer B quickly joined Officer A and told Mr X he was under arrest, handcuffed him and gave him a Bill of Rights caution. He then searched Mr X and found a small cannabis cigarette in his jeans, which Mr X admitted he had been smoking when Police arrived.
14. Mr X did not physically resist being handcuffed and searched, but Officer B said that:

*"[Mr X] started, I won't say he was sort of really aggressive or anything but you could tell he was amping up and was going on that he's innocent, he hasn't assaulted anyone. And then he sort of stood up and he was, it was a big guy, well built, probably six foot ...."*
15. Officer B then asked Mr X to sit down on the deck, and handcuffed him to a post, because:

*"... I just didn't know what he was going to do, whether he was just going to walk away and I would've had to try and put him on the ground or something like that, just took that out of it basically. I didn't want to have to try and get in*

*any kind of tussle with him, he was a big boy and as far as I believed he was a kickboxer, trained in whatever.”*

16. Officer B said Mr X was *“quite agitated”* and started shivering, so he put a towel around his shoulders to warm him while he was handcuffed to the deck.
17. Officers A, B and C were due to finish their shift at 7am but stayed on duty to complete the search of Ms Y’s address and the subsequent arrests. The next shift of officers (the early shift), Officers D and E, arrived at the address to assist them at about 7.30am. Officer D told the Authority that Mr X *“seemed pretty calm”* at that stage.
18. Officer A arrested Ms Y for possession of cannabis for supply at 8am, and arrested Mr Z for procuring/possession of cannabis at 8.15am. Mr Z denied any possession or knowledge of the drugs at the address.
19. Officer B said he was *“a bit surprised”* that Mr Z was arrested because there did not seem to be any evidence to connect him to the drugs; however he did not know exactly what Officers A and C had found during their search of the property. Officer D was also *“quite surprised”* at Mr Z’s arrest.
20. Officer A told the Authority that he arrested Mr Z because he had good cause to suspect him of possession of cannabis. However when questioned about the evidence available Officer A could not point to anything concrete, other than the fact that Mr Z was present at Ms Y’s house when the drugs and other items were found by Police. He said he did not believe Mr Z’s claims that he had nothing to do with the drugs.
21. Officer E fetched a prisoner van, and she and Officers B and D transported Mr X and Ms Y to Greymouth Police Station, arriving at about 8.30am. Officer A drove Mr Z to the station separately while Officer C stayed behind at the house for a short time to deal with the evidence that had been seized.
22. Ms Y was the first person to be processed into the custody area at 8.31am, followed by Mr X at 8.55am and Mr Z at 9.44am.
23. Both Mr X and Ms Y were assessed to be ‘in need of care and frequent monitoring’, which meant Police were required to check on them at least five times per hour at irregular intervals (see paragraphs 70-73 for relevant policy). Mr Z was assessed to be ‘not in need of specific care’ and Police were required to check on him at least once every two hours.
24. Mr X remained in handcuffs because Officer A considered him to be a risk, and he would shortly be taken to court (the handcuffs were briefly removed while Officer B scanned his fingerprints).
25. Mr X asked to speak to his lawyer but Officer A denied the request. When Police later interviewed Officer A, he said there was not enough time for Mr X to speak to his lawyer before the court hearing, and that for Mr X to receive legal advice: *“... the most pragmatic way*

*and time efficient in the circumstances was for him to consult with the duty lawyer [available at the court].”*

26. Two highway patrol officers, Officers F and G, helped to process the prisoners and at 9.52am they transported Mr X to Greymouth District Court. Ms Y and Mr Z were not taken to appear at court and remained in their cells at the station. Officer A later told the Authority that he and the other officers did not have the time and resources to take all three to court that morning.
27. Officer F described Mr X’s behaviour as: *“... vocal ... he wasn’t yelling, he wasn’t threatening, he was – I suppose you could call it mildly agitated.”* Officer G said Mr X was not being violent but: *“... he didn’t want to listen to what anyone had to say, and just continually carried on talking over everybody.”*
28. Due to Mr X’s behaviour, he was kept in a court cell for his appearance. Officer A, as the prosecutor, opposed bail and Mr X was remanded in custody by a Justice of the Peace.
29. Mr X did not have the opportunity to consult a lawyer before the court appearance. The solicitor on duty at the court could not act for Mr X due to a conflict of interest, and no other lawyer was available at the time. Officer A later told Police he accepted that Mr X’s right to legal advice was breached but that it did not occur to him at the time. He had been anticipating that Mr X would receive advice from the duty solicitor.
30. Officers A, F and G returned to the Greymouth Police Station with Mr X at 10.25am. Officer F said he intended to remove Mr X’s handcuffs when he was placed in a cell, but Officer A directed him not to because he was going to interview Mr X soon and wanted him to remain handcuffed.
31. Officer A interviewed Mr X from 10.50am to 11.45am. Mr X was handcuffed with his hands in front of his body during the interview.
32. Meanwhile a custody officer was called in to help monitor the prisoners from about 11am. At about 11.15am Officer D called a lawyer to speak to Mr Z, and the lawyer raised questions about why Mr Z was being held in custody.
33. Officer F returned Mr X to his cell after his interview with Officer A, and again intended to remove his handcuffs but Officer A said they should remain on.
34. At about 12.15pm Officers A and C went off duty (over five hours after their shift was supposed to end). Officer B had already gone off duty at about 10am.
35. According to Officer D, before he left the Police station Officer A directed that Mr X was to remain handcuffed while in his cell. Officer A later told Police that he did not want the handcuffs removed until Mr X had calmed down, because he had been aggressive. Officer A said there was no *“access slot”* in the cell door and he was concerned that Mr X may assault

the other officers if they tried to remove his handcuffs in the cell.<sup>2</sup> However Officer A said he did not explain his reasons for keeping Mr X handcuffed to the officers remaining on duty and did not give instructions about when it would be appropriate to remove the handcuffs.

36. Officer A also directed that Ms Y and Mr Z were to remain in custody until he came back on duty for the night shift that evening at 10pm, so he could interview them.
37. Police are legally required to bring an arrested person before the court as soon as reasonably possible – otherwise the person should be released without charge or on bail. Police are not entitled to detain someone in custody for the sole purpose of interviewing them.
38. Officer A told the Authority he accepted that Ms Y and Mr Z should have been bailed once the opportunity to take them to court that morning had passed, and that they were unlawfully detained and their rights under the New Zealand Bill of Rights Act 1990 were breached. He said they were not bailed because: *“I made an error, in my tiredness”*. The officers had not had enough time to go through all the evidence and finish off all the interviews, so he decided they would do it that night *“... but that clearly was the wrong decision.”* For the Authority’s findings on this issue, see paragraphs 90-95.
39. Officer A could have delegated the interviews to the officers who were on the early shift (Officers D and E), but he argued that it was a complex matter and it would have been difficult for them to conduct an effective interview because they were not involved in the search of the property. From the time Officer A went off duty and until he returned, Police did not undertake any further enquiries in respect of the alleged offending by Ms Y and Mr Z.
40. There was no sergeant on duty for the early shift on 2 May 2015 – one sergeant was on leave and another (Officer H) was attending a course at the Royal New Zealand Police College in Wellington. Consequently there was no custody supervisor, who would normally be responsible for monitoring the welfare of the prisoners and ensuring that they were being lawfully detained.
41. The West Coast is a remote area with limited resources, and the nature of policing in this region requires the officers on duty to step up and take responsibility for decision-making when supervisors are on leave or unavailable.
42. Officer E was a more senior officer than Officer D, with eight years’ service compared to his three years’ service. For that reason, Officer D considered her to be the early shift supervisor and recorded this in his notebook.
43. However Officer E told the Authority that she was never asked to be an acting sergeant or to take on any supervisory role during the shift. She considered that Officer D was ‘in charge’ of the shift because of his core role as a frontline general duties officer, whereas she was a Youth Aid officer who had been brought in at short notice as cover because another officer was on

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<sup>2</sup> Some Police cell doors have “access slots” which enable prisoners to present their hands through the closed doors so that officers can remove the handcuffs without having to enter the cells. The cells at the Greymouth Police Station do not have access slots.

leave. She also said that she was not up to date with custody management or processing prisoners, and was not given any extra training, support or guidance when she was called in as cover.

44. Officer E stated that Officers F and G were more senior than her and had been involved in dealing with the prisoners, so: *“It was my understanding that one of these senior officers was responsible at that time for the prisoner management.”* However the Authority notes that Officers F and G were working as highway patrol officers and would not typically be responsible for the prisoners in custody.
45. West Coast Police Management had the responsibility to appoint an acting sergeant in the absence of the usual sergeant for the early shift on 2 May 2015, and needed to consider which officer on duty was best placed to discharge that responsibility. This appointment was not made, which resulted in confusion within the early shift regarding who had the delegated authority and responsibility of the sergeant. As a result, none of the officers stepped up to fill the role and turn their minds to the Police’s obligations with respect to custody management.
46. Officers D and E followed Officer A’s direction to keep Ms Y and Mr Z in the cells. Mr X also remained in a cell because he was remanded in custody. The custody record shows that Mr X and Ms Y were not checked five times per hour as required by policy (see paragraph 23). In particular, there are no entries in the custody record between 11.53am and 2.58pm. Mr Z also did not receive a check within that period of time.
47. After Officer D mentioned Mr Z’s lawyer’s concerns about why he was being detained, Officer E decided to call Officer H for advice at about 2pm. She said Officer H advised her to keep them in custody because Officer A was still doing enquiries.
48. Officer H said in a Police statement:

*“My assessment of the present situation was that due to what presented as an ongoing investigation, with likelihood of evidential loss/interference, that [Officer A] had made the decision to hold them in custody until matters could be finalised.*

*Based on this information, I informed [Officer E] to either advise the lawyer around rationale for continued detention, or attempt to contact [Officer A] for further direction.”*

49. Officer E told the Authority she did not contact Officer A for advice because she knew he would have gone to bed. Instead she called Mr Z’s lawyer to explain why he was still in custody. She never checked the charge sheets for Ms Y or Mr Z to see why they had been arrested and did not think it was her responsibility to do so.
50. Officers D and E also kept Mr X in handcuffs as instructed by Officer A. The custody officer on duty said that Officer D advised him not to go into Mr X’s cell alone, and that his handcuffs should be left on because he was under the influence of drugs and unpredictable. He recalled that Officer E also told him Mr X’s handcuffs should stay on.

51. The custody officer described Mr X as verbally animated, but said he did not observe any behaviour that required restraint and would have removed the handcuffs had he not been instructed otherwise.
52. When interviewed by the Authority, Officers D, E and F said they did not personally observe any behaviour from Mr X that would have justified him being kept in handcuffs while he was in a cell. Officer E said she was not in the custody area, and was not concerned about it at the time because it was Officer A's decision and there were reasons why Mr X was still handcuffed.
53. Officers D and F both commented that Mr X would not have been able to harm anyone while alone in the cell. Officer D said:

*"... personally I felt like, if he's in a cell, you know, he's not going to harm anyone and if he was going to harm himself or something, then we'd have to look at other [options], like the restraint chair ... but I think he was more ... upset with us, not himself ....*

*I remember [Officer E] checked in at one point and said, 'How is he?' and he was still, he was very abusive and quite angry and I think she said, 'Oh well the cuffs can stay on' at that point."*

54. A noting in the custody record at 3.03pm states: "[Mr X] is still unbalanced and unpredictable in his manner. [Officer E] decides to leave handcuffs on him until he stabilises."
55. At about 3.15pm Officer F, who had been out of the station performing his duties, returned and removed Mr X's handcuffs. He told the Authority:

*"... I went back later that afternoon and I was driving back towards town and then I thought, I just, I don't know why, I just thought to myself, there's no way [Mr X] should be in handcuffs in the cells .... So I went back and got [Officer G] and I'm not sure if it was a jailer or another constable that was around and went down and took the cuffs off him."*

56. Meanwhile the custody officer called a lawyer for Ms Y and she was able to speak to the lawyer at about 3.10pm. Ms Y told the Authority she had been asking to speak to a lawyer throughout the morning.
57. The custody record indicates that Mr X, Ms Y and Ms Z were first offered meals at 3.34pm (they had been held in custody at the Police station since about 8.30am). At 3.51pm Ms Y rang her mother to make arrangements for the care of her daughter.
58. At about 3.56pm the custody officer left a message for Mr X's lawyer. The custody record shows that at 5.25pm, Mr X asked to talk to "a lawyer now, any lawyer", and by 6.08pm he had spoken to one.
59. Officers A, B and C came back on duty at 10pm. Officer B told the Authority he was surprised that Ms Y and Mr Z were still in the cells as he thought they would have been given bail.

60. At the start of the night shift, Mr Z's lawyer called and asked to speak to him but Officer A denied the request. Officer A told Police that the lawyer was rude and demanding, and "*I wasn't even sure whether the guy was a lawyer or not.*" He said he advised the lawyer that Mr Z was not in the room with him and he could not just transfer the call to him.
61. Officer A began interviewing Mr Z at 11.10pm and he was bailed at 11.36pm on a charge of possession of cannabis. Officer A told the Authority that he still believed he had sufficient evidence to charge Mr Z at that point.
62. From 1.26am to 2.05am on Sunday 3 May 2015, Officer A interviewed Ms Y. She was bailed at 3.37am on a charge of possession of cannabis for supply.
63. On 7 May 2015, Officer A sent a letter to Mr Z informing him that Police were not proceeding with the charge against him because: "*Other persons have now clarified their involvement in this matter.*"
64. Police subsequently charged Ms Y with possession of methamphetamine and possession of a restricted weapon (stun gun). However these charges, and the possession of cannabis for supply charge, were later dismissed at the request of the prosecution.

## LAWS AND POLICIES

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### Arrest without warrant

65. Section 315(2) of the Crimes Act 1961 provides that:

*"Any constable, and all persons whom he or she calls to his or her assistance, may arrest and take into custody without a warrant—*

*(a) any person whom he or she finds disturbing the public peace or committing any offence punishable by imprisonment:*

*(b) any person whom he or she has good cause to suspect of having committed a breach of the peace or any offence punishable by imprisonment."*

### New Zealand Bill of Rights Act 1990

66. Section 9 of the New Zealand Bill of Rights Act 1990 (NZBORA) states that: "*Everyone has the right not to be subjected to torture or to cruel, degrading, or disproportionately severe treatment or punishment.*"
67. Section 22 of the NZBORA provides that: "*Everyone has the right not to be arbitrarily arrested or detained.*"
68. Section 23 of the NZBORA addresses the rights of people who have been arrested or detained. It states:

- “(1) Everyone who is arrested or who is detained under any enactment —*
- (a) shall be informed at the time of the arrest or detention of the reason for it; and*
  - (b) shall have the right to consult and instruct a lawyer without delay and to be informed of that right; and*
  - (c) shall have the right to have the validity of the arrest or detention determined without delay by way of habeas corpus and to be released if the arrest or detention is not lawful.*
- (2) Everyone who is arrested for an offence has the right to be charged promptly or to be released.*
- (3) Everyone who is arrested for an offence and is not released shall be brought as soon as possible before a court or competent tribunal.*
- (4) Everyone who is—*
- (a) arrested; or*
  - (b) detained under any enactment—*
- for any offence or suspected offence shall have the right to refrain from making any statement and to be informed of that right.*
- (5) Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.”*

### Arrest and detention policy

69. The ‘Arrest and detention’ chapter of the Police Manual provides guidance to officers on issues of arrest and detention. It also states that officers have rights and duties including those relevant to the New Zealand Bill of Rights Act 1990. It identifies that there is no power to detain for questioning except where authorised by statute.

### Managing prisoners policy

70. The ‘Managing prisoners’ chapter of the Police Manual in force at the time of this incident provided that unnecessary force, violence or harshness must not be used against people in custody.<sup>3</sup> It also stated that officers must *“be familiar with and respect the rights of prisoners as detailed in the New Zealand Bill of Rights Act 1990.”*
71. The policy set out the responsibilities of the custody supervisor, which include ensuring that all prisoners received are lawfully detained and that custody is the appropriate course of action.

<sup>3</sup> The chapter has since been amended and re-titled ‘People in Police detention’.

72. Prisoners who are assessed to be ‘in need of care and frequent monitoring’ must be checked at least five times per hour at irregular intervals. Those who are assessed to be ‘not in need of specific care’ must be checked at least once every two hours.
73. The policy states that: *“Prisoners must be provided with adequate meals .... As a general rule, a prisoner must be supplied with a meal if they are in custody at a normal meal time.”*

### Mechanical restraints policy

74. The ‘Mechanical restraints’ chapter of the Police Manual states that mechanical restraints (such as handcuffs) are used to reduce the risk of injuries to Police employees, the “*subject*”, and any other person; or when there is a risk of the subject escaping.
75. Police employees and supervisors are required to ensure that mechanical restraints are used in a safe and humane manner, and not for the purpose of cruel, inhumane or degrading treatment or punishment. The policy states that: *“All mechanical restraints must be removed from a person as soon as it is believed that the need for using them ceases ....”*

## THE AUTHORITY’S FINDINGS

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### Issue 1: Were Police justified in arresting Mr X, Ms Y and Mr Z?

76. The Authority is satisfied that Police had good cause to suspect Mr X and Ms Y of committing imprisonable offences, and that their arrests were justified under section 315 of the Crimes Act 1961.
77. However Officer A’s arrest of Mr Z was not justified, because Officer A did not have good cause to suspect that Mr Z had committed an offence. The only ‘evidence’ linking Mr Z to the cannabis was that he was present at the address where Police found it. There was no physical evidence linking him to the drugs and nothing to suggest that he lived at the property. Nor did he admit to any involvement with the drugs.
78. Furthermore the Authority has found nothing to suggest that Officer A learned any new information from the time he released Mr Z on bail to the time he sent him a letter on 7 May 2015 to advise that Police were not proceeding with the charge of possession of cannabis.

### FINDINGS

The arrests of Mr X and Ms Y were justified.

Officer A was not justified in arresting Mr Z under the circumstances. This was a breach of Mr Z’s right not to be arbitrarily arrested under section 22 of the New Zealand Bill Of Rights Act.

Officer A was also not justified in charging Mr Z.

## Issue 2: Were Police justified in keeping Mr X handcuffed?

79. Mr X was a large, strong man, who was noted to be a cage fighter and possibly under the influence of methamphetamine. Police were well aware of these risk factors, and they seem to have influenced Officer A's decision to keep Mr X handcuffed after his arrest. Ultimately Mr X remained in handcuffs for over eight hours and thirty minutes (apart from when Officer B scanned his fingerprints as he was being processed into custody). For some of that time, such as when he was being interviewed by Officer A, he was handcuffed with his hands in front of his body. Officer F twice attempted to remove the handcuffs when placing Mr X in his cell, but was stopped by Officer A.
80. While the officers who were in contact with Mr X on 2 May 2015 have said that he was "verbally animated" and "amping up" at times, they did not describe him as making threats or being physically violent at any point.
81. Officer A later said he was concerned that Mr X would assault officers if they tried to remove his handcuffs in the cell (because there was no access slot in the cell door), but that concern does not appear to have been justified in light of the evidence regarding Mr X's behaviour at the time, including the observations of the other officers interviewed by the Authority. In any event, officers are trained in ways to safely remove handcuffs from uncooperative prisoners in the cells.
82. Officer A, the night shift sergeant, remained on duty until 12.15pm on 2 May 2015, but there were no sergeants rostered on duty for the early shift and the West Coast managers had not made it clear who was in charge. As the most senior general duties officer on duty for the early shift, Officer E was technically responsible for the prisoners in custody after Officer A went off duty at 12.15pm. However she pointed out that she was called in as cover at short notice, did not usually perform front line duties, and was not up to date with custodial management practice. The custody record shows that at about 3pm, Officer E decided to leave the handcuffs on because Mr X was "still unbalanced and unpredictable".
83. In the Authority's view, Police were not justified in keeping Mr X handcuffed for such a long period, particularly at times when he was alone in a cell and not actively threatening to harm himself or others.
84. Officer A is primarily responsible for this unnecessarily harsh treatment of Mr X. The Authority understands that the other officers involved were following Officer A's instructions; nonetheless the handcuffs should have been removed earlier. In particular Officer E had the opportunity to remove the handcuffs after Officer A went off duty but decided to leave them on. The fact that Officer A had given instructions to that effect is not an adequate excuse. Officer F made the correct decision to return to the station and remove the handcuffs from Mr X with assistance from two other officers at 3.15pm.

## FINDINGS

Officer A was not justified in directing that Mr X should remain in handcuffs while in his cell, and breached Mr X's right to be treated with humanity and with respect for his inherent dignity while deprived of liberty under section 23(5) of the New Zealand Bill Of Rights Act.

Police, and in particular Officers A and E, were not justified in keeping Mr X handcuffed while he was placed in a cell.

### Issue 3: Did Police provide Mr X, Ms Y and Mr Z with timely access to legal advice?

85. Mr X asked to speak to his lawyer before the court hearing, which took place at about 10am. Officer A denied this request because he did not believe there was time for this to happen before Mr X had to appear in court. He believed the duty solicitor would be able to provide legal advice to Mr X, but the solicitor had a conflict of interest and was unable to act for him. As a result Mr X did not have access to legal advice at that time.
86. The Authority accepts that there was not enough time for Mr X to speak to his own lawyer before court that morning, and that it was reasonable for Officer A to expect that Mr X would be able to receive assistance from the duty solicitor. However, when that did not occur, the Authority considers that Police should have sought legal advice for Mr X as soon as possible, before Officer A interviewed him. The custody record shows that Police failed to do this; the first attempt to contact a lawyer for Mr X took place at 3.56pm, and he only spoke to a lawyer at about 6.08pm.
87. Ms Y told the Authority she had requested to speak to a lawyer throughout the morning after her arrest, but she only spoke to one at about 3.10pm. In the Authority's view this was an unjustified delay.
88. Mr Z spoke to a lawyer at about 11.15am, but when the lawyer called the Police station at the start of the night shift (around 10pm) Officer A denied his request to speak with Mr Z. This was shortly before Officer A interviewed Mr Z.
89. Officer A later told Police he did not know who the lawyer was and could not just transfer the call. However it appears he made no effort to confirm the identity of the lawyer with Mr Z or determine whether Mr Z wished to consult his lawyer before Officer A interviewed him.

## FINDINGS

Police failed to provide Mr X and Ms Y with timely access to legal advice. This was a breach of their rights to consult or instruct a lawyer without delay under section 23(1)(b) of the New Zealand Bill Of Rights Act.

Officer A should have advised Mr Z that a person identifying himself as his lawyer had called, and asked whether he wished to speak to the lawyer before his interview.

#### Issue 4: Were Police justified in keeping Ms Y and Mr Z detained in custody for periods of over 19 and 15 hours respectively?

90. Ms Y was arrested for possession of cannabis for supply at 8am on 2 May 2015, and was released on bail 19 hours and 37 minutes later, at 3.37am on 3 May 2015. The cannabis charge and two other related charges were later dismissed.
91. Mr Z was arrested at 8.15am on 2 May 2015 for possession/procuring of cannabis, and was released on bail at 11.36pm after 15 hours and 21 minutes in custody. On 7 May 2015 Officer A advised him that the charge had been dropped.
92. Neither Ms Y nor Mr Z were taken to court on the morning of 2 May 2015, and Officer A decided to keep them in custody until he returned for the night shift at 10pm. Officer A has stated that this was an error on his part, due to his tiredness, and admitted that both Ms Y and Mr Z should have been released on bail. The Authority does not accept Officer A's explanation that his actions resulted from an "error", because Officer A deliberately instructed that Ms Y and Mr Z be detained so he could interview them later and, as an experienced sergeant, must have known full well that this was illegal. Accordingly, the Authority is of the view that Officer A's actions were a flagrant abuse of his power.
93. As with the prolonged handcuffing of Mr X, Officer A is primarily responsible for the unlawful detention of Ms Y and Mr Z. However, after Officer A left the station at 12.15pm, there should have been a custody supervisor on duty to re-assess whether the prisoners should remain in custody.
94. In the absence of any sergeants, responsibility for the prisoners fell to the most senior general duties constable on duty, Officer E. She has stated that she was not asked to take on any supervisory role. The Authority acknowledges that the West Coast managers failed to appoint an acting sergeant for the early shift, and consequently there was a lack of clarity regarding who should fulfil that role. However the Authority considers that Officer E's actions in calling Officer H for advice, and then speaking to Mr Z's lawyer, demonstrate that she was the acting supervisor for that shift.
95. The Authority finds that:
  - a) There was no lawful justification for Officer A to keep Ms Y and Mr Z in custody after the opportunity for them to appear at court on 2 May 2015 had passed.
  - b) Officer E was technically responsible for overseeing the prisoners in custody during the early shift, and therefore was responsible for the continued unlawful detention of Ms Y and Mr Z after Officer A went off duty. She should have known that it was unlawful to keep Ms Y and Mr Z in custody just so that Officer A could later interview them. The Authority acknowledges that she sought advice from Officer H before deciding to keep Ms Y and Mr Z in custody, however that advice was based on his mistaken belief that the investigation was ongoing and there was a "likelihood of evidential loss/interference" if

the prisoners were released. In fact Police were not undertaking any further enquiries that afternoon and had already seized the evidence from Ms Y's address.

- c) It was unfair for Officer A to interview Ms Y and Mr Z after they had been arbitrarily detained.

## FINDINGS

Officer A directed the unlawful detention of Ms Y and Mr Z in custody for periods of over 19 and 15 hours respectively. This was a flagrant abuse of his power and a breach of Ms Y's and Mr Z's rights under sections 22, 23(2) and 23(3) of the New Zealand Bill Of Rights Act.

There was a lack of clarity regarding who was responsible for the management of prisoners in custody during the early shift. However, as the senior general duties officer, Officer E was technically responsible for supervising the management of prisoners in custody after Officer A went off duty. She should have realised that Ms Y and Mr Z were being unlawfully detained and released them on bail.

Officer A acted unfairly by interviewing Ms Y and Mr Z after they had been arbitrarily detained.

### **Issue 5: Did Police provide adequate monitoring and care to Mr X, Ms Y and Mr Z while they were in custody?**

- 96. Mr X and Ms Y were assessed to be 'in need of care and frequent monitoring' while they were in custody. Police should have checked them at least five times per hour, but the custody record shows that fewer checks than required took place.
- 97. Mr Z should have been checked at least once every two hours but no checks were recorded between 11.53am and 2.58pm, a period of over three hours.
- 98. Furthermore Police did not offer meals to Mr X, Ms Y and Mr Z until 3.34pm. They should have been provided with meals at breakfast and lunch-time, as required by Police policy.

## FINDING

Police did not provide adequate monitoring and care to Mr X, Ms Y and Mr Z while they were in custody.

## SUBSEQUENT POLICE ACTION

- 99. Police are currently undertaking an employment investigation regarding Officer A's actions.

## CONCLUSIONS

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100. The Authority has determined on the balance of probabilities that:

- 1) The arrests of Mr X and Ms Y were justified.
- 2) Officer A was not justified in arresting Mr Z under the circumstances. This was a breach of Mr Z's right not to be arbitrarily arrested under section 22 of the New Zealand Bill Of Rights Act.
- 3) Officer A was also not justified in charging Mr Z.
- 4) Officer A was not justified in directing that Mr X should remain in handcuffs while in his cell, and breached Mr X's right to be treated with humanity and with respect for his inherent dignity while deprived of liberty under section 23(5) of the New Zealand Bill Of Rights Act.
- 5) Police, and in particular Officers A and E, were not justified in keeping Mr X handcuffed while he was placed in a cell.
- 6) Police failed to provide Mr X and Ms Y with timely access to legal advice. This was a breach of their rights to consult or instruct a lawyer without delay under section 23(1)(b) of the New Zealand Bill Of Rights Act.
- 7) Officer A should have advised Mr Z that a person identifying himself as his lawyer had called, and asked whether he wished to speak to the lawyer before his interview.
- 8) Officer A directed the unlawful detention of Ms Y and Mr Z in custody for periods of over 19 and 15 hours respectively. This was a flagrant abuse of his power and a breach of Ms Y's and Mr Z's rights under sections 22, 23(2) and 23(3) of the New Zealand Bill Of Rights Act.
- 9) There was a lack of clarity regarding who was responsible for the management of prisoners in custody during the early shift. However, as the senior general duties officer, Officer E was technically responsible for supervising the management of prisoners in custody after Officer A went off duty. She should have realised that Ms Y and Mr Z were being unlawfully detained and released them on bail.
- 10) Officer A acted unfairly by interviewing Ms Y and Mr Z after they had been arbitrarily detained.
- 11) Police did not provide sufficient monitoring and care to Mr X, Ms Y and Mr Z while they were in custody.

## RECOMMENDATION

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101. Greymouth Police Station is a custodial 'hub', meaning that it is used to hold prisoners from Greymouth and surrounding areas on a 24/7 basis. However, its cell doors do not have access slots which enable the safer removal of handcuffs from prisoners.
102. The Authority understands that Police now include access slots in the cell doors when designing and building all new custodial facilities. For safety reasons the Authority considers that the provision of access slots should be a formal requirement in the Police Accommodation Code. In the absence of such provision, officers could leave volatile prisoners in a cell with their handcuffs on or enter the cell to remove the handcuffs in potentially unsafe circumstances.
103. The Authority therefore recommends that, as part of the finalisation of the agreed National Standard that governs Police custodial facilities in order to ensure compliance the Optional Protocol to the Convention against Torture (OPCAT), Police complete their revision of the Police Accommodation Code and include provision for access slots in all cell doors.



**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

27 September 2016

**IPCA: 14-2494**

## ABOUT THE AUTHORITY

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### Who is the Independent Police Conduct Authority?

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

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?

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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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