

# Arrests of four young people in Auckland

## INTRODUCTION

1. In the early hours of Monday 26 February 2018, Police responded to a report that a number of people had smashed a window and gained entry into the McDonalds restaurant in Ormiston, Auckland. Several officers attended, and the area was searched but the offenders had left.
2. Four young people, suspected of being involved in the break in, were later detained in Manurewa by Police. Four officers dealt with the young people.
3. During his interaction with one of the young people (Mr X), Officer A put Mr X into a headlock and took him to the ground.
4. Mr X complained to the Police about the headlock, and also said that an officer twisted his finger.
5. The Authority was notified of the complaint and conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

6. This section of the report provides a summary of the incident and the evidence considered by the Authority. When quoting or describing the accounts of any officer, complainant or witness, the Authority does not intend to suggest that it has accepted that particular account.
7. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence is reserved for the 'Authority's Findings' section.

### Summary of events

8. At about 1am on Monday 26 February 2018, Police received a report of "*multiple persons trying to smash through glass into McDonalds*" in Flat Bush, Ormiston. The report indicated

that the people may have gained entry into the McDonalds.<sup>1</sup> The Police helicopter- Eagle, and a dog handler- Officer A, along with his ride-along, Officer B, all responded to the call for assistance.<sup>2</sup> Officers A and B were both wearing Police dog-handlers' uniforms. Eagle directed Officer A to a car which was emitting a hot heat signature on a nearby street.<sup>3</sup>

9. Officer A parked on Roswell Crescent. He and Officer B located a car which appeared to have been stolen; its ignition wires had been pulled from their casing and appeared to have been used to jump-start the car. Police formed the view that it was possible that the people who had stolen and then left the car were the same people who carried out the robbery at the McDonalds. .
10. Officer A deployed his Police dog, who tracked from the car to Calcite Avenue, which runs parallel to Roswell Crescent, a residential block away. Eagle advised that there was a heat signature where the dog had tracked to, indicating that a car had recently been at that location. Officer A found the remnants of a broken quarter light, and some discarded property, including documents. He therefore thought that a car had recently been stolen from that location, and items thrown from it. Using the details on the documentation, Officer A determined the make and model of the vehicle, a Primera, and attempted to contact the registered owner.

#### *Young people arrested*

11. At 1.33am, Eagle advised over the radio that they could see four people walking away from the vicinity of a car with a very hot heat signature in Manurewa. Eagle also advised that the vehicle may be a Primera. Hearing this, Officers A and B made their way to Manurewa.
12. Officers C and D were in the Manurewa area and heard about the McDonalds incident over the Police radio. Officer D thought the people involved in the robbery at McDonalds may have had weapons. They intercepted the four people as they were walking down Lupton Road near the intersection with Rosemary Lane.<sup>4</sup> One of them, Mr Z, ran down a driveway and jumped over a fence before being intercepted by Officer D. Officers C and D then handcuffed the four people and sat them down on the edge of a traffic island<sup>5</sup>. Officer C later told the Authority that he had arrested the young people and given them their rights under the New Zealand Bill of Rights Act. Officer D moved away a short distance and phoned the officers who were still at McDonalds.

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<sup>1</sup> Throughout the rest of the night, Police referred to the incident at McDonalds as a "robbery", although entry may not have occurred.

<sup>2</sup> A ride along is an officer who is not officially assigned to that particular patrol but is authorised to accompany it, often for learning or work experience.

<sup>3</sup> A hot heat signature indicates that the car has been travelling fast, and is often seen when a car has been stolen.

<sup>4</sup> Officer C was a new Constable who had recently graduated from Police College, and Officer D was a Sergeant with about eleven years' service in the Police.

<sup>5</sup> Three of the four people were younger than 17 years old, and therefore the treatment of them is governed by the Oranga Tamariki Act 1989. Mr Z was 17 at the time, and therefore is considered an adult by the law. The Oranga Tamariki Act 1989 does not apply to Mr Z. However, for ease of reference, in this report the four people will be referred to collectively as "the young people".

13. A short while later, Officers A and B arrived and drove past Officer C, who was standing in front of the four young males sitting handcuffed on a traffic island. Officer A parked the car and he and Officer B got out to assist. The young people were talking among themselves.
14. Officer A recognised two of the young people, Mr X and Mr Y<sup>6</sup>. Officer A believed at the time that the young people may have been involved in the incident at McDonalds. He was therefore concerned that the young people should be separated to prevent them from talking to each other about the incident. He helped Mr Y to his feet, walked him a few metres away, and sat him down again on a nearby patch of grass on the corner of Lupton Road and Rosemary Lane. Officer B stood Mr X to his feet and sat him down about 5 metres away on the opposite corner on Lupton Road. Mr X was wearing a backpack and had been handcuffed behind his back.

#### *Another incident*

15. Officer D approached Officers A and B and explained that a BMW which had been involved in a shooting the day before had been stopped about 50 metres further up the road. He asked for their urgent assistance. Officers A and B armed themselves and ran up the road to assist. Officer D stood Mr X up and brought him closer to Officer C, sitting him down again on a grassy verge nearby. He then moved away a short distance again to continue his phone calls with the other Police in the area. Once the incident with the BMW was dealt with, Officers A and B returned to their patrol car and secured their weapons. They then went back to assisting with the four young people.

#### *Use of force*

16. Officer A spoke to Mr X, who was complaining that his handcuffs were too tight. Officer A helped Mr X to stand up, and said he would remove Mr X's handcuffs to take his backpack off, and could loosen the handcuffs at the same time. Officer A stood behind Mr X and removed one of his handcuffs.
17. The Authority has been provided with different accounts as to what happened next.

#### *Mr X's account*

18. Mr X told the Authority that when Officers A and B returned after dealing with the BMW, the taller of the two officers [Officer A], grabbed him around the throat. That officer then put him in a headlock and lifted him up so that his feet were off the ground. Mr X thought the officer lifted him up for about eight to ten seconds. Mr X said that while he was in a headlock, he "*resisted*" and tried to pull the officer's arm off him. He said the other officer then came and grabbed his hand, twisting his fingers and saying "*what did I fuckin tell you, shut the fuck up*". In his interview with the Police, Mr X said that when the officer twisted his fingers he said "*Is that nice, is that nice?*" The officer re-handcuffed him. Mr X says then he was "*slammed to the ground*". One officer put his knee on Mr X's back, and pulled his legs and arms back.
19. Mr X said the Police then moved him back over to the corner of Lupton Road. He said he was walking but "*kinda dragging and walking*".

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<sup>6</sup> At the time of this incident, Mr X was 15 years old and has been described by Police as being of short stature.

### *Officer A's account*

20. Officer A told the Authority that when he removed Mr X's right handcuff, Mr X "*reached back and tried to grab at my head and he's ripped my radio earpiece of out my ear*". Officer A said he feared that Mr X would assault him, so he put his right arm around Mr X's neck, took a few steps backwards, and then dropped onto one knee and rolled over to his left hand side, bringing Mr X onto the ground, with his chest on Mr X and his arm between Mr X's stomach and the ground.
21. Officer B, who had been standing a metre or two in front of Mr X, came over and assisted Officer A by holding Mr X's legs in a leg lock to prevent him from kicking. Officer A then brought his arm out from underneath Mr X, and was able to handcuff him behind his back again. Officer A then moved Mr X back a few metres and sat him down leaning against a fence. He denies dragging Mr X.
22. Officer A said he did not put his hand around Mr X's throat.

### *Officer B's account*

23. Officer B told the Authority that he was standing about 1-2 metres away from Mr X, facing towards Officer A and Mr X. He saw Officer A standing behind Mr X, and it appeared he was removing Mr X's handcuffs. He said Mr X's hand went up and "*grabbed*" at Officer A somewhere above the shoulder.<sup>7</sup> He indicated that he saw Mr X's hand go to Officer A's ear/neck area, describing this as a "*quick movement*", "*not a punch*", but an "*aggressive, grabbing movement*". He said it looked as if Mr X was "*grabbing onto something*".
24. Officer B said he reacted straight away, moving towards Officer A to assist him. As he was moving towards Officer A and Mr X, he saw Officer A put his arm around Mr X's neck in a headlock type position, and take a few steps backwards with him. Officer B did not see whether or not Mr X's feet came off the ground. He then saw Officer A and Mr X go to the ground.
25. Officer A was lying over Mr X with his chest against Mr X's back. Mr X was lying face down on his stomach. Officer B held Mr X's feet towards his bottom, leaning on them with the weight of his body so that Mr X could not kick them. Officer A then handcuffed him again.
26. When questioned further about the headlock, Officer B explained that, in his view, a carotid hold or a headlock involves holding your arm in that position for a while to try to choke the other person. He explained that Officer A did not do this, but rather, he put his arm in that position, and then in "*one movement*" brought Mr X to the ground.
27. Officer B said that it was possible that he grabbed Mr X's hand while assisting Officer A, though he could not recall doing so. He denied saying "*is that nice, is that nice?*".

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<sup>7</sup> Officer B thought that this was Mr X's left hand, but was not sure.

28. Once Mr X was handcuffed, he was put into a patrol car. Officers A and B spoke briefly to Officer D and then left. When asked whether or not they had “*dragged*” Mr X to the patrol car, Officer B said he could not recall, but that it was possible.

#### *Officer C’s account*

29. Officer C had been watching the young people while Officers A and B assisted to stop the BMW. He told the Authority he was speaking with some of the boys when he turned his head and saw the shorter of the two dog handlers with Mr X in a “*headlock*” or a “*chokehold*”. He described the headlock as being “*really tight*”. He then saw Mr X reach his hand up and pull down on the arm around his neck. At this point Officer C realised that Mr X was no longer handcuffed.
30. Officer C then saw the other dog handler grab at Mr X’s arm “*and then they’ve literally just turned and fallen on top of [Mr X].*”<sup>8</sup> Officer C said he heard a thud as they landed on the ground. Once they managed to re-handcuff Mr X, one of the officers shifted him onto his bottom and “*dragged him back on the ground towards the same corner that they had him in originally.*”

#### *Officer D’s account*

31. Once the BMW matter was concluded, Officer D and another officer, Officer G were standing on Station Road about forty metres away from the young people, talking. They saw something happening between Officer A and Mr X. Officer D told the Authority:

*“all I’ve seen is [Officer A]’s right hand come up into [Mr X]’s neck area and put on what I would say is a carotid hold ... It was straight up around the neck. Given [Mr X]’s height and weight versus [Officer A]’s height, straight away [Mr X] has come up off the ground, a good couple of hundred mil...”*

32. Officer D went on to say that it looked as if Mr X could not breathe, and his hand came up to try to pull Officer A’s arm away from his neck. After a few seconds, Officer D saw Officer B approach from the left and grab Mr X’s hand. Officer D described how Mr X’s face “*turned from shock, I can’t breathe, to quite sort of pain.*” He then said that Officer A “*body-slammed*” Mr X onto the ground.
33. The dog handlers, Officers A and B, then handcuffed Mr X again, before moving him about five metres towards a nearby tree. Officer D was concerned that “*instead of standing him up and walking him to where they want to put him, they’ve literally just dragged him across the ground.*”
34. At around this time, Officers E and F arrived. As Officer D did not want any further altercations happening between Mr X and the Police, he arranged for Officers E and F to take Mr X and another of the young people back to Manukau Police Station.

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<sup>8</sup> Officer C was referring to the taller of the two officers here

35. Officer C and another officer took the other two young people to Manukau Station. Once Officer D had completed his duties in regards to the BMW incident, he went to Manukau Police Station.

#### *Officer G's account*

36. Officer G is a dog handler with 22 years' service with the Police. He arrived at the scene and spoke with Officer D about the situation. Officer G told the Authority that as he and Officer D were talking, they saw an altercation between Officer A and Mr X. Officers G and D were standing on Station Road, about 40-50 metres away from Officer A and Mr X. Officer G saw Officer A with his arm around Mr X's "upper chest area". Officer A then "put [Mr X] on the ground". Officer G said that he did not see anything of concern, so he and Officer D "wandered down" to see what was going on.
37. Officer G did not see Officer B get involved in the altercation at all. He told the Authority he spoke to Officer A about it at the time:

*"I said to [Officer A], 'What was all that about?' And he said he had to get the boy's bag off him. It was – he had a bum bag or something around his neck which was caught up on the handcuffs. Yeah, that was it. I didn't think any more of it."*

38. Officer G told the Authority that he did not think Officer A used excessive force when putting Mr X onto the ground.

#### *Mr X taken to the Police Station*

39. Officers E and F arrived at the scene and Officer D asked them to assist with transporting the young people back to the Police Station. Officer E recognised Mr X. He helped Mr X to get into the back of their patrol car. They took Mr X and another of the young people to Manukau Police Station.
40. Officer E recalls Mr X complaining during the car ride that someone had bent his fingers back. Officer E said Mr X "seemed a bit distressed about it, that they were a bit sore, but not really anything, he didn't really go into specifics about what had happened."

#### *At the Police Station*

41. The young people were brought into the Manukau Police Station for interview. They were not taken into the custody suite but were instead escorted to the interview rooms.
42. When they arrived at Manukau Police Station, Mr X spoke with Officer D about his sore fingers, and showed him his hands, which appeared swollen. Officer D took photographs of Mr X's hands. The photographs show swelling to his fingers. Officer D asked how Mr X's fingers had been hurt, and Mr X said that the "canine guys" had done it<sup>9</sup>. Officer D then spoke to his supervisor. They discussed the incident and Officer D said he would make a formal statement

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<sup>9</sup> Police officers working as dog handlers wear grey overalls; these are easy to distinguish from the usual blue Police uniform.

about what had occurred, and would send it to his supervisor along with the photographs of Mr X's hand.

43. Officer D was unable to make contact with Mr X's parent or guardian by phone. He and Officer C therefore drove Mr X home. When they arrived, Officer D spoke with Mr X's guardian, and explained what had happened. Officer D also provided her with his card, gave her the Police event number as a reference, talked to her about what to do if they wished to make a complaint, and explained that the Police Professional Conduct Team would likely be in touch with them<sup>10</sup>.

### *Complaint*

44. Later that day, Mr X went to the Police station and made a statement complaining about his treatment by Police the night before. A Police officer took his statement and took photographs of Mr X's neck. The photograph shows red scratch marks on Mr X's neck.

### **Police investigation**

45. The Police conducted an investigation into this complaint. Police determined that neither Officer A nor Officer B had committed a criminal offence or breached the Police code of conduct.

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<sup>10</sup> An event number is a number automatically generated when an incident is entered into the police database.

## THE AUTHORITY'S INVESTIGATION

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46. The Authority conducted an independent investigation into this matter. This included interviewing Officers A, B, C, D, E, F, and G, as well as Mr X and two of the other young people present on the day. The Authority also had access to the material gathered by Police during their investigation into the incident and reviewed a copy of the radio and Eagle communications from the incident.



## THE AUTHORITY'S FINDINGS

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47. The Authority identified and considered the following issues:

- 1) Were the young people arrested?
  - a. If so, was that arrest lawful?
- 2) Was Officer A's use of force appropriate when dealing with Mr X?
- 3) Was Officer B's use of force appropriate when dealing with Mr X?

### Issue 1: Did Police lawfully detain the young people?

#### a. Were the young people arrested?

48. Officer D was the sergeant in charge of the scene on the night. Officer D was of the opinion that at first the young people were not arrested, but were simply detained for the purpose of being searched for weapons. He was not clear when the young people were arrested, but said that when the young people were at Manukau Police Station *"I can't comment 100% but my take is that they are now all under arrest for being unlawfully in a stolen motor vehicle."*
49. However, Officer C told the Authority that he arrested and handcuffed the young people and read them their rights under the New Zealand Bill of Rights Act when they were intercepted on Lupton Road. The Authority therefore finds that the young people were arrested by Officer C at that point.

#### b. Was that arrest lawful?

##### i. What were the young people arrested for?

50. Section 315 of the Crimes Act allows an officer to arrest without warrant *"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."* Officer C told the Authority that he arrested the young people because he was told to do so by Officer D, his sergeant. He said *"I believe they were arrested on suspicion that they were in the car, at that point I didn't know, I was sort of just taking it all in to be honest."* Officer C had only recently graduated from Police College. He was under the supervision of Officer D on the night in question.
51. It is apparent that Officer C was unclear of the precise reason for arresting the young people; he just did as he was told. The Authority considers that he should have made his own decision about whether, and on what grounds, he could arrest them. Given that Officer C was a newly graduated officer, it is understandable he followed the directions of his immediate supervisor. However, it is not sufficient for an officer to follow directions to arrest someone without being satisfied of the lawful power to do so.
52. Additionally, as the supervisor on the scene, Officer D ought to have ensured that Officer C was clear about what he was doing (arresting or detaining the young people) and on what

grounds. Alternatively, he should have considered arresting/detaining the young people himself. The Authority considers that more proactive communication between Officers C and D would have prevented this confusion.

#### *ii. Grounds for arrest*

53. The Authority accepts that Officers C and D had good cause to suspect that the young people had been unlawfully in, or had stolen, the Primera located at Lupton Road for the following reasons<sup>11</sup>:

- Comms advised that the Primera [found near Mc Donalds] was stolen from Halsey Road an hour earlier, and that the occupants “*must have decamped in another stolen vehicle*”
  - Eagle advised there were some suspicious cars around the Lupton/Station Road area “*and people walking off*”.
  - Eagle advised that one of the suspicious vehicles may have been a Primera (the model of car which had been stolen) [from near McDonalds].
- Comms advised there was a possible link between the Primera the young people appeared to be walking away from and the earlier robbery.
    - Officers C and D intercepted the young people walking along Lupton Road and away from the direction of the Primera.

54. Police had sufficient reason to arrest the young people for stealing the Primera without a warrant in accordance with their power under section 315 of the Crimes Act 1961.

55. The arrest of Mr Z, an adult, would have been lawful had Officer C considered this.

#### *Section 214 Oranga Tamariki Act*

56. However, section 214 of the Oranga Tamariki Act 1989 requires that Police do not arrest a child or young person without a warrant, even if they would normally be empowered to. The Act then sets out the exceptions to the general rule that a child or young person should not be arrested. These are discussed below.

57. At the time of the arrest, neither Officer C nor D turned their minds to the applicability of section 214, and whether they actually had grounds under it to arrest the young people. Therefore the arrest was unlawful.

58. The wording of section 214 requires that, for an arrest to be lawful, the arresting officer must be “*satisfied, on reasonable grounds*” that one of the exceptions applied. The Authority has considered whether or not any of the exceptions would have applied, had the officers turned their minds to them.

59. Section 214(a)

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<sup>11</sup> An offence against section 226 of the Crimes Act.

*(i) ensuring the appearance of the child or young person before the court*

60. This subsection is generally used when the Police do not know the identity of the young person and to ensure their details are obtained. If the Police know who the young person is then they can summons the young person to appear at court, rather than arrest them.
61. Officer D told the Authority that he knew who Mr X was, therefore this exception would not apply to his arrest. However, the Authority has seen nothing to indicate that Officers C or D knew who the other young people were. Therefore it would have been reasonable for them to arrest the young people under this exception.

*(ii) preventing that child or young person from committing further offences*

62. Although at the time that the young people were arrested, Police thought that they had committed a robbery and stolen a car, the Authority has formed the view that there was insufficient evidence of potential future offending by the young people to warrant their arrest under this subsection. Police did not know the identities of the young people (with the exception of Officer D knowing Mr X) at the time. There were no reasonable grounds to indicate that the young people might commit further offences.

*(iii) preventing the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the enforcement officer has reasonable cause to suspect that child or young person of having committed, or preventing interference with any witness in respect of any such offence*

63. Police have submitted to the Authority that there could have been evidence on the young people, such as phones containing text messages discussing the details of the crimes, or fragments of glass in their hair from the burglary. They have suggested that, had Officers C and D turned their mind to Section 214 at the time, they would have been empowered to arrest the young people under this provision. However, Police were not aware of any specific evidence which they thought the young people might tamper with and the Police submission is hypothetical. The Authority considers that the general suggestion that the young people might have had evidence on them when stopped by Officers C and D would not be sufficient to justify an exception under S214 (a). The purpose of the Act, and the specific wording of s214 tend to indicate that a more specific risk to interference with evidence would be required for that section to be satisfied.
64. The Authority has concluded that the arrest of Mr Z would have been lawful had he been told what he was being arrested for, as he was over 17 years old. The arrest of Mr X was unlawful, as none of the criteria set out in section 214 were applicable to him.
65. The Authority finds that the arrest of the other two young people would have been lawful under s214(a)(i) had Officers C and D turned their minds to it.

## FINDINGS

The four young people were arrested on Lupton Road.

The arrests of the young people by Officer C were unlawful.

However, had Officer C considered, for example section 226 of the Crimes Act 1961, the arrest of Mr Z would have been lawful because he was an adult.

The arrest of all three young people under the age of 17 was unlawful. However, the arrest of two of the young people would have been lawful pursuant to s214(a)(i) of the Oranga Tamariki Act 1989, had the officers turned their minds to it.

The arrest of Mr X was unlawful pursuant to s214 of the Oranga Tamariki Act 1989.

## Issue 2: Was Officer A's use of force appropriate when dealing with Mr X?

66. The Police Use of Force policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, arrest someone, or otherwise carry out lawful duties. These include communication, handcuffs, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
67. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.

### *What force was used?*

68. Officer C said that the person with his arm around Mr X's neck was the shorter of the two dog handlers. Officer A is taller than Officer B. All other accounts indicate that it was Officer A who put his arm around Mr X's neck, and Officer B who went to assist. This accords with what officers A and B have told us, therefore the Authority considers that it was Officer A who put his arm around Mr X's neck.
69. Officers C and D have referred to Officer A putting Mr X in a "choke hold", or a "carotid hold". This is denied by Officer A. Officers C and D also described Officer A as using more force to bring Mr X to the ground than officers A or B say that he used.
70. Officer A told the Authority that he put Mr X in a headlock as a response to Mr X reaching up and grabbing at his face, resulting in his earpiece coming out. Officer A told the Authority that he feared Mr X was attempting to assault him, so he responded to that threat by putting Mr X in a headlock, stepping backwards, bending his knees to get onto the ground, and then rolling over onto his left, so that Mr X was below him on the ground, face down, with Officer A kneeling over him.
71. Officer A explained that he had not intended to lift Mr X up off the ground, but rather that this happened as a natural result of the height difference between Officer A and Mr X. Officer A said that the whole interaction between him and Mr X, between him reaching up to Officer A's face and Officer A putting him in a headlock and taking him to the ground was only a matter of about two seconds.

72. When asked how much force he used when taking Mr X to the ground, Officer A said that there was “some” force, but that it “wasn’t the force of a spear tackle”, he said he did not “dump” Mr X to the ground. Officer A explained that he used “just enough to get him onto the ground and regain control.”
73. All witnesses provided evidence that Officer A put his arm around Mr X’s neck. The Authority accepts that Officer A put Mr X in a headlock, and that this was not a choke hold or a carotid hold.
74. It is clear that Officer A took Mr X to the ground, and that a degree of force was used in doing so. The degree of force used has been variously described. The Authority accepts that the manner in which Mr X was taken to the ground was a continuation of the headlock manoeuvre.
75. Several witnesses have said that Mr X was dragged to a seated position near the fence once he was re-handcuffed. The Authority accepts on balance that it is likely that the officers did move Mr X as described, which may have included his feet dragging on the ground.

### *Self-defence*

76. Section 48 of the Crimes Act 1961 provides legal justification for any person, including Police officers, to use reasonable force in defence of them self or another. ‘Legal justification’ in this sense means that the person is not guilty of an offence or liable to any civil proceeding in connection with their use of force. Police policy is separate from but related to the legal test, and provides guidance on what is considered “reasonable” force.
77. In order to rely on a defence under section 48 of the Crimes Act, the officer’s actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:
- a) What were the circumstances as the officer believed them to be? (a subjective test)
  - b) Did the officer use force for the purpose of defending himself or herself or another? (a subjective test)
  - c) Was the force used reasonable in the circumstances as the officer believed them to be? (an objective test)

1) *What were the circumstances as Officer A believed them to be?*

78. The following factors contributed to Officer A’s assessment of the situation:
- Officer A did not know Mr X, and had not come across him before
  - Mr X was reaching up towards his face, and pulled Officer A’s earpiece out of his ear
79. Officer A told the Authority that:

*“he was in handcuffs but he was reasonably compliant, maybe a little bit of just verbal resistance and then when he had his opportunity he’s... tried to grab at my head to grab hold of me ... he’s reached back and ripped that earpiece out ... he’s jumped from compliant up ... into the assaultive range”.*

80. Neither Officers C nor D saw Mr X reach up and grab at Officer A’s face. Mr X, when spoken to by the Authority, denied doing this. However, Officers A and B both said that Mr X reached up towards Officer A’s face, and that they acted in response to that. The Authority therefore accepts on balance, that it is likely that Mr X reached up towards Officer A’s face, resulting in his earpiece coming out.

*2) Did Officer A use force for the purpose of defending himself or another?*

81. The Authority questioned Officer A about the extent of the threat posed by Mr X, given that Officer A is the taller of the two. He explained: *“I am, but if you grab hold of my head you could easily injure my neck or, yeah, just ‘cos he’s, just ‘cos he’s little doesn’t mean that he’s not capable of carrying out what he’s trying to do.”*
82. The Authority accepts that, although Mr X was smaller than Officer A, at the time that Officer A used force, Mr X was no longer fully handcuffed, and reached towards Officer A’s face. Although Officer A may have told Officer G that the incident related to the need to remove Mr X’s backpack, the Authority accepts Officer A’s actions in restraining and taking Mr X to ground were for the purpose of defending himself.

*3) Was the force used reasonable in the circumstances as Officer A believed them to be?*

83. Officer A told the Authority that he thought his actions:

*“prevented any further either an attempt to assault me .... I definitely, it was necessary, I don’t believe I had any other real choice at the time”*

84. The Authority accepts that placing Mr X in a headlock and taking him to the ground was a minimal use of force, which enabled Officer A to re-handcuff Mr X so that he was no longer a threat to Officer A.

*Other: Was Officer A’s use of force reasonable in the circumstances?*

85. In addition to examining the legality of the officer’s use of force, the Authority must consider whether, as a whole, it believes that his actions were reasonable in the circumstances.
86. To determine the reasonableness of his actions, the Authority considered whether the officer contributed to the circumstances in which he or she found themselves.
87. The Authority accepts Officer A’s explanation of what he was trying to do. It considers that a momentary headlock and bringing Mr X to the ground to re-handcuff him was not a disproportionate or unreasonable response under the circumstances.

## FINDING

Officer A acted in defence of himself and his actions were reasonable.

### Issue 3: Was Officer B's use of force appropriate when dealing with Mr X?

88. When spoken to by the Authority, Officer B could not recall grabbing or touching Mr X's hands at all. He said that though he could not unequivocally deny touching Mr X's hands, he had no memory of doing so. Rather, Officer B explained, his attention was on controlling Mr X's legs once he was on the ground.
89. Officer A's focus was on getting Mr X back under control and moving him onto the ground. He does not recall Officer B grabbing Mr X's hands.
90. Officer D told the Authority that after Officer A held Mr X in a headlock, Officer B came from the rear left-hand side of Officer A and "grabbed hold of" Mr X's hands. He explained that from what he saw, Mr X was trying to pull Officer A's arm off from around his throat, so Officer B would have grabbed Mr X's left hand.
91. The Authority has seen evidence which shows swelling to Mr X's fingers on his left hand. The Authority is satisfied on the balance of probabilities that this injury occurred while Mr X was in Police custody, and it seems most likely that it occurred during this incident. However, Mr X's account of how he received his injuries is different to Officer B's account of the incident.
92. From its analysis of the evidence, the Authority considers that the injuries to Mr X's fingers were most likely caused by Officer B as he moved to assist Officer A. The Authority does not have sufficient evidence to conclude that the injury was caused by Officer B purposefully twisting Mr X's fingers. Rather, it seems probable that the injuries were an unfortunate consequence caused inadvertently by Officer B as he sought to assist Officer A in getting Mr X under control again.

## FINDING

The Authority finds that the injuries to Mr X's hands were most likely caused by Officer B but as an inadvertent consequence of him assisting Officer A to restrain Mr X.

## CONCLUSIONS

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93. The Authority found that:

- 1) None of the arrests of the four young people were lawful, as Officer C did not turn his mind to what he was arresting them for; he simply carried out Officer D's instructions.
- 2) Had Officer C turned his mind to what he was arresting them for, the arrest of Mr Z would have been lawful. Had Officer C turned his mind to section 214 of the Oranga Tamariki Act, the arrests of three of the young people would have been lawful. The arrest of Mr X was unlawful.
- 3) Officer A did not use excessive force on Mr X; and
- 4) Officer B did not use excessive force against Mr X.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

6 June, 2019

**IPCA: 17-1929**



### Arrest

94. S315 of the Crimes Act 1961 provides that an officer may arrest someone without a warrant if they “*have good cause to suspect*” they have committed an offence punishable by imprisonment.

### Use of force

#### Law

##### *Use of force by Police officers*

95. Section 39 of the Crimes Act 1961 allows Police officers to use reasonable force in carrying out 83.their duties, such as arrests and enforcement of warrants. Specifically, officers may use “*such force as may be necessary*” to overcome any force used in resisting the officer carrying out their duty.
96. Section 40 of the Crimes Act 1961 empowers a Police officer to use necessary force in order to 84.prevent a person from fleeing to avoid arrest.
97. The justification to use force under sections 39 and 40 are both limited by the requirement that force is not used where the Police’s purposes “*can be carried out by reasonable means in a less violent manner*”.
98. Under section 62 of the Act, anyone who is authorised by law to use force is criminally 86.responsible for any excessive use of force.

##### *Use of force for self-defence or defence of others*

99. Section 48 of the Crimes Act states: “*Everyone is justified in using, in the defence of himself or 87.herself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.*”

#### Policy

##### *Police guidance on use of force*

100. The Police’s ‘Use of Force’ policy provides guidance to Police officers about the use of force. The 88.policy sets out the options available to Police officers when responding to a situation. Police officers have a range of options available to them to help de-escalate a situation, restrain a person, make an arrest or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), pepper spray, batons, Police dogs, Tasers and firearms.

101. Police policy provides a framework for officers to assess, reassess, manage and respond to potentially dangerous situations. This helps them to ensure their response is necessary and proportionate to the risk to themselves and the public.
102. An officer must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option 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).
103. An officer's decision about using force will largely depend on the actions of, or potential actions of, the people involved. These are categorised as:
- 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.
104. Police policy provides guidance as to what level of force by Police may be appropriate depending on the response they are faced with. Ultimately, the authority to use force is derived from the law and not from Police policy.
105. Police 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.
106. Police policy also states that:

*"If a striking action is required, you should avoid vulnerable areas of the body (head, neck, spine, tail bone and groin), unless you believe it to be absolutely necessary to protect yourself or others from GBH."*

Section 214

107. Section 214 of the Oranga Tamariki Act 1989 states:

*“Arrest of child or young person without warrant*

*(1) Subject to [section 214A](#) and [sections 233](#) and [244](#), where, under any enactment, any enforcement officer has a power of arrest without warrant, that officer shall not arrest a child or young person pursuant to that power unless that officer is satisfied, on reasonable grounds,—*

*(a) that it is necessary to arrest that child or young person without warrant for the purpose of—*

*(i) ensuring the appearance of the child or young person before the court; or*

*(ii) preventing that child or young person from committing further offences; or*

*(iii) preventing the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the enforcement officer has reasonable cause to suspect that child or young person of having committed, or preventing interference with any witness in respect of any such offence; and*

*(b) where the child or young person may be proceeded against by way of summons, that proceeding by way of summons would not achieve that purpose.*

*(2) Nothing in subsection (1) prevents a constable from arresting a child or young person without warrant on a charge of any offence where—*

*(a) the constable has reasonable cause to suspect that the child or young person has committed a category 4 offence or category 3 offence for which the maximum penalty available is or includes imprisonment for life or for at least 14 years; and*

*(b) the constable believes, on reasonable grounds, that the arrest of the child or young person is required in the public interest.*

*(3) Every enforcement officer who arrests a child or young person without warrant shall, within 3 days of making the arrest, furnish a written report—“*

*(a) where that enforcement officer is a constable, to the Commissioner of Police:*

*(b) where that enforcement officer is a traffic officer who is a Police employee who is not a constable, to the Commissioner of Police:*

*(c) where that enforcement officer is an officer or employee of the Public Service, to the chief executive of the department of which that person is an officer or employee:*

*(d) where that enforcement officer is an officer of a local authority, to the chief executive of that local authority.*

*(4) Every report furnished pursuant to subsection (3) in respect of the arrest of any child or young person shall state the reason why the child or young person was arrested without warrant.*

*S48 of the Oranga Tamariki Act 1989 states:*

*“(1)*

*Where a child or young person is found unaccompanied by a parent or guardian or other person who usually has the care of the child or young person in a situation in which the child’s or young person’s physical or mental health is being, or is likely to be, impaired, a constable may, using such force as may reasonably be necessary, take the child or young person and—*

*(a)*

*with the consent of the child or young person, deliver the child or young person into the custody of a parent or guardian or other person usually having the care of the child or young person; or ...*

*In subsections (1) and (2) the term young person means a person of or over the age of 14 years but under the age of 18 years.”*

### 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 Colin Doherty.

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

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

### What are the Authority's functions?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

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

### This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. 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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