



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihimana Motuhake

# **Police officers unlawfully detain Auckland teenager**

*November 2019*

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## Executive Summary

1. Z, aged 17, was in a relationship with a 15-year-old girl, Y. Z's family disapproved of the relationship and wanted him to break up with Y. This led to a dispute between Z's family on one side, and Z, Y and Y's family on the other. Z's family were connected to Inspector Hurimoana Dennis,<sup>1</sup> and requested his help with convincing Z to end the relationship.
2. On 5 May 2015, Inspector Dennis detained Z at the Auckland Central Police Station although Z had not been arrested or charged with any crime. Inspector Dennis and Z's family pressured Z to leave New Zealand, as Z's family desired. After spending some time in a Police cell, Z reluctantly agreed to travel to Australia. He flew to Sydney the next day, accompanied by an uncle.
3. On 10 June 2015, Z returned to Auckland, but Police detained him at Auckland International Airport as soon as he arrived. Z's family arranged for him to fly back to Australia that same evening.
4. Z was later able to return to New Zealand. He complained to the Authority on 24 July 2015. Police subsequently investigated and, in October 2016, charged Inspector Dennis and Sergeant Vaughan Perry with kidnapping Z.<sup>2</sup> Both were acquitted following a trial in November 2017.
5. The Authority has found, on the balance of probabilities, that:
  - 1) Inspector Dennis and Sergeant Perry unlawfully detained Z at the Auckland Central Police Station on 5 May 2015.
  - 2) Inspector Dennis and Officers E, F and G unlawfully detained Z at Auckland International Airport on 10 June 2015. Officer D directed officers to unlawfully detain Z.
  - 3) Inspector Dennis' actions in attempting to force Z to comply with his family's wishes were an abuse of his influence, power and authority as a Police inspector and were outside any Police policy applicable at the time.
  - 4) Inspector Dennis failed to recognise, report and address the conflict of interest arising out of his relationship with Z's family.
  - 5) Officer A failed to inform Z that Inspector Dennis and his grandfather would be meeting with him. This was inappropriate and led to Z attending the Police station under a misapprehension.
  - 6) Officers C, J and K should have further questioned Inspector Dennis' actions.

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<sup>1</sup> Hurimoana Dennis left Police in 2018 but, for ease of reference, he is referred to as Inspector Dennis throughout this report.

<sup>2</sup> Section 209 of the Crimes Act, titled "Kidnapping", states: "Every one is liable to imprisonment for a term not exceeding 14 years who unlawfully takes away or detains a person without his or her consent or with his or her consent obtained by fraud or duress,— (a) with intent to hold him or her for ransom or to service; or (b) with intent to cause him or her to be confined or imprisoned; or (c) with intent to cause him or her to be sent or taken out of New Zealand."

- 7) Police should have conducted an employment investigation into Inspector Dennis' actions concurrently with the criminal investigation process.
- 8) The Police's employment investigation processes in respect of all officers involved in this incident were flawed and lacked transparency, leadership and co-ordination. Nobody had oversight of all the outcomes to ensure they were consistent and proportionate.
- 9) Police failed to properly investigate the actions of all the officers involved in detaining Z. Only one officer received an appropriate disciplinary outcome, and this was downgraded two years later to achieve consistency with the more lenient outcomes received by other officers.

## Outline of Events

6. This section of the report provides a summary of the incident and the subsequent complaint. 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. Analysis of the evidence and explanations of where the Authority has accepted, rejected or preferred that evidence are reserved for the 'Authority's Findings' section.
7. In accordance with its usual practice the Authority has anonymised the officers mentioned, apart from Inspector Dennis and Sergeant Perry whose names have already been widely published in connection with this incident.
8. Z's account is sourced from his complaint to the Authority in July 2015, his subsequent Police statements and interviews in September 2015, October 2015 and September 2016, and the evidence he gave in court in November 2017. While some details were challenged under cross-examination at the trial of Inspector Dennis and Sergeant Perry, the Authority is satisfied that Z's account remained largely consistent throughout.

### RELATIONSHIP BETWEEN Z AND Y

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9. Z and Y formed a relationship in October 2014, when he was 16 and she was 14. Their families initially accepted the relationship, but after some time Z's parents decided it was not in his best interests. Z's parents pressured him to break up with Y, but he refused and increasingly began to stay at Y's family home. This led to an ongoing dispute between Z and his family, which Z said involved threats of violence from his stepfather.
10. In late March 2015, Z's and Y's parents found out that Z and Y had had sexual intercourse. By this time, Z was 17 years old and Y was 15. The legal age to consent to have sex is 16.
11. Z's parents were severely distressed and said they needed to advise Police about "*the illegal relationship*". However, Y's mother did not think that was necessary and believed the families could deal with the issue themselves.

### POLICE CALLED TO ATTEND FAMILY DISPUTES

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12. On 27 March 2015, Z's mother and uncle went to Y's house to take Z back to their family home. After a big argument, Z and Y left the house and went to the Point England Reserve. Z's mother and uncle followed them, as did Y's mother, father and younger sister. Z's mother also contacted Z's grandfather for help, and he came to the reserve.
13. Z's grandfather called a Police officer he knew personally, Inspector Hurimoana Dennis, and informed him about the situation. At the time of this incident Inspector Dennis was the Police's National Māori Strategic Advisor, based in Auckland.

14. Inspector Dennis advised Z's grandfather to call the Police, which he did. Inspector Dennis said he received further "*desperate*" calls from Z's grandfather saying Police had not yet arrived, and then learned the attending officers were having trouble finding the location, so he also went to the reserve (although he was off duty). The attending officers were there by the time he arrived, and he gave his Police business card to them and Y's mother. He asked the officers to record the details of both families and email them to him. He also asked the officers to get Y's family to leave the reserve. Z agreed to accompany his family to his grandparents' house, but left early the next morning through a bathroom window and returned to Y.
15. Later that day Z's mother and grandfather found Z and took him back to his grandparents' home. Y and her mother went to the grandparents' house that afternoon, and Z's grandfather called Police. Z said he told Police he felt unsafe and wanted to be with Y. According to Z, his grandfather called Inspector Dennis. Inspector Dennis later said he could not recall whether Z's grandfather rang him, but he was certain he did not speak with the attending officers. In any event, Z said the officers then told Z to stay and that he could not go to his girlfriend's house.
16. The next morning, at approximately 4am, Z called 111 and reported that his family had trapped him in his grandparents' house. Two officers attended and decided the matter was a minor domestic incident. They followed Z and his mother back to their own home. Later that evening, Z packed a bag and left to stay with Y.
17. On 30 March 2015, Z's mother reported to Police at the Avondale Police Station that Z was having a sexual relationship with Y.

## POLICE INVESTIGATION INTO Z

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18. Police referred the matter to the District Child Protection Team. A member of that team, Officer A, contacted Inspector Dennis after learning he had dealt with the two families during the Point England Reserve incident. Inspector Dennis advised him he knew Z's family and offered to facilitate meetings to try to resolve the situation.
19. Inspector Dennis was overseas in early April 2015, and asked Officer B (a Māori Responsiveness Manager) to assist Officer A. Officer B arranged a meeting with Z's mother and her family to help Officer A clarify the purpose of the Police complaint and to discuss potential outcomes to resolve the situation.
20. By 13 April 2015 Inspector Dennis had returned to New Zealand and attended a meeting with Z's family and Officers A and B. At this meeting, the family agreed they did not want Z to be prosecuted. Instead the family wanted to separate Z from Y, and remove him from what they perceived to be Y's mother's influence over him.
21. Inspector Dennis suggested to Z's grandfather that a "*choices and consequences*" conversation could provide Z with a reality check, and noted this would involve taking Z to visit the Police cells. Inspector Dennis said Z's grandfather and mother also suggested that Z should leave New Zealand to stay with family in Australia, a proposition which Inspector Dennis supported.

22. Several days later, Z's parents contacted Police again, levelling allegations against Y's mother and requesting that Inspector Dennis help Officer A get Z out of Y's home. Officer A advised Z's mother there was nothing to suggest Y's mother was committing an offence, so Police could only take limited action in the circumstances.
23. Officer A then met with Z and Y's aunt on 30 April 2015. Officer A said that during this meeting:
- Z denied having a sexual relationship with Y;
  - he clearly explained the consequences of Z continuing a sexual relationship with Y:  
*"I explained to him in depth his liability in terms of the sexual relationship and explained to him without going into detail that there were a number of actions that the Police could take to prove the nature of the relationship should the matter not be able to be resolved. I suggested to him that given [Y's] age, it was in his best interests not to continue any sexual relationship with her until she was 16 years old...";*
  - he told Z that, while the Police could not direct him to reside at any particular place, his residing at Y's home was adding to the distress of his family; and
  - Z agreed that he would live at another address.
24. Z recalled that Officer A told him what the consequences of underage sexual conduct with Y would be, and Z understood he was *"free to make my own choice and be with [Y] and her family at her home and also be in the relationship with [Y] as well"*.
25. The next day Officer A advised Z's mother that:
- he believed he had come to a resolution with Z that would encourage and facilitate renewed communication between Z and his family;
  - Z had been fully informed of the consequences of continuing a sexual relationship with Y (as previously agreed between Z's family and the Police); and
  - he did not believe he could achieve anything further in this matter or that there were any further criminal matters that needed addressing.
26. Z's mother replied that she was unhappy with the outcome. She informed Officer A that Z had returned to Y's home, and that Z had told her the Police could not stop him from being there. Z's mother also levelled allegations of *"grooming"* against Y's mother (for supporting Z's and Y's ongoing relationship).
27. Officer A again told Z's mother there was no formal action the Police could take in relation to either Y or her mother. Z's mother repeated the grooming allegation against Y's mother and expressed her dissatisfaction to Officer A, accusing him of giving Z and Y *"permission to have sex"*.

28. Officer A forwarded the email conversation with Z's mother to Inspector Dennis and Officer B. Inspector Dennis replied that he was about to meet with Z's mother and grandfather. Officer A advised Inspector Dennis that:
- a) to his knowledge, Y's mother had not committed any offences;
  - b) there was no legal basis for removing Z from Y's home unless they arrested and charged Z; and
  - c) *"Taking action against [Z] in my opinion is the wrong way to deal with this. He seems to be a good kid with his head on his shoulders the right way."*

## DETENTION OF Z AT THE AUCKLAND CENTRAL POLICE STATION ON 5 MAY 2015

### **Inspector Dennis' plan to take Z to the Auckland Central District Custody Unit**

29. Inspector Dennis agreed with Z's mother and grandfather that he would take Z to see the Police cells, and they would organise Z's travel to Australia.
30. Meanwhile Inspector Dennis asked Officer A to set up a meeting with Z. Officer A arranged to meet with Z at the Auckland Central Police Station on 5 May 2015. He did not mention that Z would also be meeting with Inspector Dennis and his grandfather. Nor did he inform Z of the plan to show him the Police cells.

### **Events at the Auckland Central Police Station**

31. On 5 May 2015, Officer A instructed an officer to pick Z up and bring him to the Auckland Central Police Station. At 11.30am, Inspector Dennis sent a text message to Officer A to confirm that Y's mother would not be attending the meeting because *"otherwise we can't put our process into place"*.
32. Z's arrival was delayed, and Officer A could no longer meet with him due to other commitments. He advised the officer picking Z up to contact Inspector Dennis when they arrived at the station. Z was not told he would no longer be meeting with Officer A as he expected.
33. Meanwhile Inspector Dennis and Sergeant Vaughan Perry, who was working as a custody sergeant, had lunch together at the station and discussed Inspector Dennis' plan to put Z through a realistic 'mock' processing in the custody unit.

### *Interview room*

34. At 1.45pm Z arrived at the Police station and was placed in an interview room. Inspector Dennis and Z's mother and grandfather then joined him. Z later said he felt he had been *"set up"* by Officer A and no one there had his best interests at heart.
35. According to Z:

- a) Although Z believed the criminal allegations had been dealt with, Inspector Dennis told him he was taking over his case from Officer A (Inspector Dennis denied saying this).
  - b) Z felt as though he was *“not in a position to get up and leave the room”*, noting that the door was closed and he was in a secure Police station. He accepted, however, that nobody said he could not leave.
36. Inspector Dennis later confirmed to Police investigators that the door was likely to have been closed and agreed Z would have felt he could not leave. He said he did not explain Z’s rights under the New Zealand Bill of Rights Act to him because he was not under arrest. Z was confined in the interview room for approximately 15–20 minutes.
37. Z said Inspector Dennis gave him two options:
- a) go to Australia and start a new life; or
  - b) Inspector Dennis *“would take me down to the police cells and charge me with rape. He told me he would hold me in the cells overnight and I would go to Court the next day.”*
38. Inspector Dennis denied giving Z this ultimatum. Z said the rest of the conversation involved swearing, yelling and frustration from Inspector Dennis, and then his grandfather *“started up”*. Inspector Dennis told the Authority: *“No anger, [or] threats of violence took place in the interview room. [Z’s] mother and grandfather can confirm this.”*
39. Inspector Dennis did a pat-down search of Z in the interview room, then told Z he wanted to show him something. Inspector Dennis instructed Z to follow him, and asked Z’s mother and grandfather to remain in the interview room.

#### *Custody unit*

40. Inspector Dennis and Z entered the custody unit through the ‘sally port’ on the lower ground floor of the Police station, via the roller door.<sup>3</sup> This is the mode of entry for arrested people.
41. When later giving evidence in court, the Auckland Central District Custody Unit Manager (a senior sergeant, Officer C) said he would have expected Inspector Dennis to enter the custody unit via a different, *“public access point”*. A Police inspector giving evidence also stated: *“the only time that you should be using the sally port is if you’re taking a person that you’ve detained or you’ve driven a detainee into the sally port for that purpose.”*
42. Inspector Dennis told Police investigators:
- “I did say to [Z] that this was a visit, you’re not staying here [Z]. So that would have taken a little bit of anxiety away from him but I did say to him you’re here because we need you to see the reality of your situation.”*

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<sup>3</sup> A sally port is a secure, controlled entryway to a Police station where officers bring detainees in to be searched and received into Police custody. Visitors and staff going to the custody unit for other business enter through an alternative, non-secure doorway.

43. Z denied being told it was just a visit.
44. In the receiving area of the custody unit, a custody officer began processing Z into custody.<sup>4</sup> The custody officer questioned Z and recorded his personal details into a computer, including his name, date of birth, and if he had ever had any suicidal thoughts or taken drugs or alcohol.
45. According to Z's September 2015 Police statement, an officer in a blue Police uniform (as opposed to the custody officers, who wore black uniforms) began to "get intimidating" towards him:

*"He was saying racial things.... The police officer told me not to look at him. He [said] 'Do all you Māori like being in the cells?' [Inspector Dennis] was there when he said this. I did not respond. He asked me what tribe I was from. He was saying 'well, well, what tribe are you from'. I told him Tūhoe, and he said, 'That would be right. There are a lot of them in the cells.'"*

46. The colour of the officer's uniform and the evidence of who was there at the time indicates that the officer Z was referring to is Sergeant Perry, who is Māori and in his forties. However, in his interview Z described the officer as "a fair European" in his early thirties (and he later confirmed this description in court, saying "that's what he looked like"). Sergeant Perry said there was "no way" he would make a racial comment to anyone, and no one else present recalled this happening.
47. Z was instructed to hand over his property, including his shoelaces and two jerseys. A second custody officer cut the strings off the front of his trousers. This custody officer put a yellow band with Z's full name handwritten on it around his wrist.<sup>5</sup> Z said Inspector Dennis told him he was not allowed to take it off until he said so.
48. Z was put through a "big scanner thing". A custody officer told Z to put his hands up on the wall and carried out another pat-down search. There was no discussion of a charge. Z said:

*"I was not given any rights to my right to silence, that I did not have to answer any questions. I was not told I could contact a lawyer..."*

49. Z said in his September 2015 Police statement that, while being processed, he was feeling "terrified":

*"I was thinking now that [Inspector Dennis] has charged me with rape and I was going to be held overnight and going to Court, just like he had said to me he would. [Inspector Dennis] did not tell me that he was just trying to scare me or warn me about what this process would be like. I was left thinking that this had got real and I was scared. I did not tell the officers or security guards that I was scared. I was shaking because I was scared and cold."*

50. He confirmed this when giving evidence at the trial of Inspector Dennis and Sergeant Perry.

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<sup>4</sup> Custody officers (or 'authorised officers') are non-sworn Police employees who have responsibility for managing the health, safety and secure custody of detainees.

<sup>5</sup> A yellow band signifies the person needs to go to Court and is not younger than 17.

### Z locked in a cell

51. Once the processing was complete, Inspector Dennis told Z to pick up his shoes and he and Sergeant Perry took him to a cell on the 'male' side of the cell block suite. These cells are accessed through a locked grill gate. They told Z to put his shoes up on a shelf, and he entered the cell. At some point the cell door was closed with Z left inside. Z has consistently said he was locked in the cell, including when he gave evidence at the trial. Neither Sergeant Perry nor Inspector Dennis denied that when interviewed by Police. There was at least one other detained person in a nearby cell.
52. About this time, Inspector Dennis sent Z's grandfather a text message which read: *"...all good just taking him through cells he looks very scared at moment."* Z recalled that he had no idea what was happening or how long he would be locked in the cell.
53. In his Police interview, Inspector Dennis said a loud drunk person was in the cell next door and he *"let [Z] sort of stew over some stuff for a little bit listening to the racket that was going on and being in the cells."* He asked Z:

*"... is that what you want, is this where it's all heading?... I did say to him too that erm you know this is what we call statutory rape... there's a 10-year penalty for this type of behaviour so it's no laughing matter and it's no joke."*<sup>6</sup>

54. There are varying accounts as to the length of time Z was detained alone in the cell, but according to the Police investigation report, it was approximately 15-20 minutes. At court, Z maintained that he was in the cell for *"close to an hour"* and said: *"It felt like forever, like, it felt really long when I was in the cell."*
55. In his September 2016 Police interview, Z recalled:

*"I'm standing in there freezing, I don't know what to think, I've just been put in the cell and I've just been locked in a cell and I'm looking across and here's all these people that have committed crime, real crime and they're giving me these glances and I'm feeling very like, like I've got no security around me, nothing to help, no, no help, I'm feeling helpless, feeling vulnerable, feeling under duress, under great duress."*

56. Sergeant Perry said he or Inspector Dennis were *"nearby the cell"* at all times, and *"had observations on [Z]"*.
57. Z told Police investigators that when Sergeant Perry and Inspector Dennis returned and opened the cell door, Inspector Dennis repeated his ultimatum:

*"Inspector Dennis asked me if I was going to Australia or am I going to keep you in here and you're going to Court charged with rape. I did not know what I did wrong. There were no details discussed like where I would be going in Australia. I knew it was a way that they wanted to split me and [Y] up."*

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<sup>6</sup> 'Statutory rape' does not exist as an offence but is sometimes used colloquially to refer to the specific offence of unlawful sexual connection with a person under 16 years old.

58. Inspector Dennis denied threatening to charge Z, but said he did ask him if he would go to Australia and “look at it as an opportunity to get himself back on track”. He said he believed Z thought going to Australia was a novel idea and did not object to it.
59. According to Z, Sergeant Perry asked him: “What do you want, to go into prison and get bum-raped?” Sergeant Perry denied saying this when interviewed by Police, and said he told Z: “there was enough and far too many of our Māori people incarcerated in prison, this is no life for you or our people, you need to make good decisions to keep you away from places like this.”
60. Z said he began crying and the officers “just had blank expressions and did not react to me crying”. Inspector Dennis said Z started to cry because they were discussing what his late relative would think of his behaviour, but Z recalled that discussion happening much earlier, in the interview room. After some time, Z told Inspector Dennis he would go to Australia.

### After the cell

61. Z received his property back in a sealed plastic bag, and Inspector Dennis and Z returned to the interview room. Inspector Dennis asked Z if he had his phone and Z replied he did not. After retrieving Z’s bag from a cubby hole, Inspector Dennis opened it and found Y’s phone. He took the phone, saying he would return it to Y.<sup>7</sup> He also removed a photograph of Y from Z’s wallet, telling Z he needed to start a new life.
62. Z overheard Inspector Dennis and his grandfather discussing that Z would go and stay with his great-uncle in Sydney. This was the first he had heard of any specific details of going to Australia. At 3.15pm, Z’s grandfather arranged a plane ticket for Z to travel to Australia the next morning.<sup>8</sup>
63. In his September 2015 Police statement, Z said Inspector Dennis threatened to put him back in a cell if he caused any trouble:

*“[Inspector Dennis] told me that I was not to run away, or he will ‘hunt for me himself’ and he will put me back in the cell. [Inspector Dennis] told me in a low, serious tone. My mother and grandfather were busy at the car, so I do not think they heard this.*

*... I did not want to leave [Y] and my life in New Zealand. I was forced by [Inspector] Dennis and my family to go. I was fearful of what would happen if I didn’t go; [Inspector] Dennis basically threatened me and gave me the option of going to Australia or being charged with statutory rape. I felt I had no choice.”*

64. Inspector Dennis denied threatening Z. He acknowledged that, at some stage during the events of 5 May 2015, he would have told Z not to come back. However, it was up to Z when he was to return given he was 17 years old.
65. Z thought it was approximately 3–4pm when he left the Police station with his mother and grandfather. He spent the night at the family home, and felt he could not leave. Z said he could

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<sup>7</sup> Inspector Dennis later arranged for Officer A to return the phone.

<sup>8</sup> Z said, in addition to telling Inspector Dennis he did not want to go to Australia, he told his mother, stepfather, and the uncle who accompanied him to Australia. His mother, stepfather and uncle denied this.

hear the phone ringing and knew it was Y and her family, but his stepfather continually hung up the phone. Z noted that Inspector Dennis had told Z's mother at Auckland Central Police Station that Z was not to have any contact with Y or her family at all.

66. That night, Z saw his stepfather patrolling the property with a tomahawk and a hammer, and then a tomahawk and a knife. Z said his stepfather told him: *"I won't fuck around, if someone tries to take you from this house."* As it happened, Y went to Z's family home that night looking for him. She never entered the property but remained nearby during parts of the night. She also described seeing Z's stepfather outside by the closed gate, armed with weapons.

## EVENTS BETWEEN 6 MAY 2015 AND 10 JUNE 2015

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### Z travels to Australia

67. Early the next morning Z's parents took him to Auckland International Airport, where his uncle met them. Z's mother gave his passport to his uncle, who took Z through Customs and accompanied him on a flight to Sydney. The departure document, which Z's uncle filled out for him, stated that Z would be absent from New Zealand for seven months.
68. Z was still wearing the yellow band from the custody unit. In his October 2015 Police interview and later at court, he said Inspector Dennis had told him the band contained a tracking device, and if he took it off he would not be able to re-enter New Zealand. Inspector Dennis denied saying this. Inspector Dennis did not recall telling Z that he had to keep the yellow band on for any period, but he thought:

*"... it was a good thing 'cause he got to take it home... this bracelet would have been a real good memento for him to say, 'well actually Z you know you keep doing what you're doing... then you'll get another one of these bracelets.' I don't think it was a bad idea. I think it was reasonable also considering our context of what we were trying to... achieve."*

69. When they arrived in Sydney, another of Z's uncles met them and took possession of Z's passport.

### Police investigation outcome

70. On 6 May 2015, Inspector Dennis emailed Officer A, copying in Officer B, Sergeant Perry and Officer C, thanking them for their help. He noted that Z was on his way to Sydney and *"the reality of his previous pathway sunk in very quickly when he paid a visit to the custody suite and what awaited him if he chose to continue on his current course."* Inspector Dennis said further: *"His whānau will monitor his progress over there which will determine when and if he comes home."*
71. Officer A completed his report on the underage sexual relationship complaint on 18 May 2015, recommending that no further action be taken on the basis that:
- Z had left New Zealand and was not likely to return prior to Y's 16<sup>th</sup> birthday, preventing any further offences;

- b) Y and her mother appeared to have accepted that Z had left the country and wanted no further interaction with Z's family; and
- c) Z's family had obtained the result they were trying to achieve by reporting the matter, and no further action was sought from Police.

72. Officer A recorded the result of the investigation as a verbal warning having been issued to Z. In relation to the possibility of a criminal charge of 'sexual connection with a young person under 16' against Z, Officer A commented that while he had statements from people saying Z had admitted the sexual relationship, both Z and Y had denied it. Therefore, it would be "preferable" to have more evidence, which would likely be forensic. He considered this to be a "highly intrusive course of action" in the circumstances and so did not proceed with collecting it. Officer A also wrote:

*"While there is prima facie evidence of sexual conduct between [Z] and [Y], I don't believe there is any public interest in placing this matter before the court, as both of them are of a similar age, they were in a consensual relationship and the matter only came to Police attention after [Z's mother's] attempts to break up the relationship failed and she sought assistance from the Police and other agencies."*

### Z in Australia

- 73. Z remained with his extended family in Sydney between 6 May 2015 and 10 June 2015. He was eventually permitted to buy a phone with money his mother sent, in order to communicate with his family in Sydney.
- 74. Around 9 June 2015, Z managed to get his passport back from his Australian uncle, telling him he needed it to open a bank account. Z bought a plane ticket with help from Y and her mother and, at 10am on 10 June 2015, departed Sydney for Auckland.

### EVENTS ON 10 JUNE 2015 AT AUCKLAND INTERNATIONAL AIRPORT

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#### Inspector Dennis notified of Z's return to New Zealand

- 75. Z's mother called Inspector Dennis that morning to inform him she had discovered Z was on his way back to Auckland. She told Inspector Dennis she was going to the airport.
- 76. Inspector Dennis contacted the officer in charge of the Auckland Airport Police, Officer D (a detective senior sergeant). He advised in an email that Z's family wanted Police support to meet Z, given "he was not supposed to return and warned by Police not to return". He asked if Police and Z's parents could take Z to the Airport Police Station so Z could be spoken to regarding his intentions, allowing time for the family to arrange for Z to be returned to Australia.

## Police response at Auckland International Airport

77. Officer D forwarded Inspector Dennis' email to Officer E (a sergeant), and asked him to deal with the matter. Officer E directed Officers F and G to meet Z at the door of the plane and bring him to the Police station. Officers F and G did not know this request came from Inspector Dennis.
78. There was no Customs or immigration alert against Z's name, and he was not shown as "wanted" on any Police database. There were no legal reasons for any such alerts to be in existence.
79. At 12.44pm, Z's mother sent a text message to Officer E which read: "Hi [Officer E] [Z's mother] here my father was wanting to know if we can put him on the next flight out to Sydney and he will pay". Officer E called her five minutes later, and there were several calls between Z's mother and Officer E over the next few hours. Officer E obtained Z's flight information from New Zealand Customs, and gave his mother these details. However, she already knew this information from another source.
80. At approximately 2pm, call data shows Inspector Dennis called the New Zealand Consulate in Sydney, and shortly afterwards he called Officer H (a Māori Responsiveness Manager). Inspector Dennis had several calls with Officer H on 10 and 11 June 2015, but at his Police interview said he could not recall what the phone calls were about. He suggested he probably would have mentioned the circumstances surrounding Z to Officer H, among some other unrelated matters. Officer H confirmed that Inspector Dennis talked about Z coming back to New Zealand, but said he did not seek further details and told Inspector Dennis he was unable to help as he was out of town.
81. Officer E arranged to meet Z's parents at the Airport Police Station at the international terminal shortly after 4pm. Inspector Dennis also decided to go to the airport.

## Z escorted off the plane and detained

82. At 4.41pm, a woman (believed to be Z's grandfather's executive assistant) called Air New Zealand and booked a ticket in Z's name for a flight from Auckland to Sydney at 7pm that evening. The ticket was paid for with Z's grandfather's credit card.
83. At about the same time, Z's flight landed at Auckland International Airport. Before any other passenger disembarked, Z's name was called over the aircraft's intercom and he was asked to go to the front of the plane.
84. Officers F and G met Z at the airbridge. Both were in uniform and carrying holstered Glock pistols (which is a requirement for airport Police staff). The officers asked Z to follow them and took his passport. According to Z, one of them told him he was being taken to talk with their (unnamed) "boss".
85. Officers F and G walked Z through secure areas to the Airport Police Station. Z said he saw his parents there; they looked "angry and upset" and told him Inspector Dennis was on his way. Z stated he was not advised of his rights, and "felt like when I was in that room [at the Airport Police Station] I was not allowed to leave".

86. Z recalled that Officer E introduced himself and asked how he came to get back into New Zealand:

*"[Officer E] asked me if I planned with my girlfriend's family to get back here. I said 'No', and he said 'Well, why are they outside?' and that he had seen them on the cameras. The officer asked me, 'What did [Inspector Dennis] say to you, you can't come back into the country until you're 18 or you will be charged with statutory rape'."*

87. Officer E denied making these comments and said he did not know if he *"even tried to see"* if Y and her family were at the airport.
88. Z told Police investigators that when he left Officer E's office at about 5pm, he saw Inspector Dennis had arrived. He said Inspector Dennis looked very angry, and told him: *"you are making this case a lot worse for yourself. I told you not to come back to the country until you are 18."* Inspector Dennis then said Z was going to be on the next flight back to Sydney.
89. Inspector Dennis, however, recalled that he said *"hello"* to Z when he arrived but did not otherwise talk to him, leaving him to have a discussion with his parents. Inspector Dennis acknowledged that at no time did he tell Z that he was free to leave the Police station, nor did he hear any Police staff advise Z that he could leave. He arranged dinner for Z and his parents, which they ate at the station.
90. Z was still wearing the yellow wristband which had been put on him on 5 May 2015. Inspector Dennis told Police investigators he did not recall seeing that Z was still wearing it, but said if he was, this was *"good"*. He later explained to the Authority that he meant it was good because it was *"an ongoing reminder of his situation and not to put himself in harm's way again"*.
91. Inspector Dennis said he spoke to airport staff and asked if Z could be processed airside for his travel back to Australia. He said he made this request to avoid any conflict in the public area.
92. Y and her mother were waiting for Z in the public arrivals hall, but no one from Police ever let them know what was happening. Y and her mother were unable to obtain any information from the airport's information counter.

#### *Z escorted to plane returning to Australia*

93. After Z had been at the Police station for over an hour, Officers E and F escorted him to passport control through back doors in a manner not available to regular passengers. They led Z through the check-in process as a departing passenger (though neither recalled doing it). The departure card, completed by Z with Officer E standing beside him, stated that he would be out of the country for 12 months and listed his occupation as 'team building' (Z was unemployed at the time).
94. Officer E walked Z all the way to the door of the aircraft. He did not recall having done this when Police later interviewed him. When asked why, if Z was willing to return to Australia, it was necessary to escort Z all the way to the departing aircraft, Officer E replied that he did not know but it was *"possibly just to let [Inspector] Dennis know he had been sighted out"*.

95. Z boarded the flight. The flight captain later gave evidence that Officer E told him there was a passenger on board who was a “voluntary deportee” and had chosen to go to Australia to avoid a “situation” in New Zealand. The captain said he had never encountered such an event previously.
96. The aircraft departed Auckland for Sydney at 7.01pm. Shortly afterwards, Officer E sent Inspector Dennis a text message confirming Z was on the plane. He then emailed Officer D to advise that he had ‘sighted out’ Z on a plane back to Australia and:
- “I previously interviewed [Z] with his parents present and then alone at his own request and quickly established a good rapport and we collectively encouraged his return to Oz. Inspector Dennis fortunately also made his way out to the station to re-connect his affinity with the parents and [Z] before we escorted [Z] to the gate lounge.”*
97. That evening Officer D emailed the Counties Manukau District Commander, Officer I, to advise him of the “effective” crime prevention measures Police had instigated around Z.

## SUBSEQUENT EVENTS

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### Z’s return to Australia

98. Z was picked up from Sydney airport by his Australian uncle, who took his passport. Z told Police investigators that his uncle threatened him and was verbally abusive. According to Z, when they arrived at his great-uncle’s house he was further verbally abused, threatened and then physically assaulted by both his uncle and his great-uncle. This included being hit with an aluminium crutch.
99. Z said his uncle “told me that if I left or if I caused any more trouble then he would find me and he would kill me. I totally believed this.”
100. Later that night, Z’s great-uncle forced him to contact Y and her family via Skype. Z was instructed to tell Y that the relationship between them was over. Both his uncle and his great-uncle were threatening and verbally abusive towards both Z and Y’s family.
101. Z said he was forced to sleep outside the main house on a couch in a “closed in” veranda. He barely slept and remained in the same clothing. Although he was not locked in at his great-uncle’s house, he said he felt “trapped, scared and unable to escape”. He had “no money, no passport, no phone, and nowhere to go”.

### Z reports assaults

102. By 15 June 2015, Z’s uncle and great-uncle had begun to trust that Z would not leave and permitted him to take the train to his boxing class. At the railway station, Z called Y’s mother who arranged for Z to meet a friend of hers at a different station. The friend took Z to his home, and Y’s mother flew to Sydney the next day. This was the first time she had seen Z since 5 May 2015. She said he had lost a lot of weight, was experiencing pain as a result of his injuries, and appeared to be traumatised.

103. About this time Z removed the yellow band which had been put on his wrist on 5 May 2015 during the mock processing. Y's mother helped Z cut the band off and they threw it away.
104. Y's mother helped to get Z a replacement passport from the New Zealand consulate. She also organised for him to meet a social worker and visit a hospital to receive medical attention. His patient notes detail injuries caused to his left upper arm involving "tenderness and pain", and "numbness".
105. On 17 June 2015, Y's mother took Z to Campbelltown Police Station. Z laid a formal complaint of assault against his uncle and great-uncle. As it happened, his uncle and great-uncle went to the station not long afterwards to report Z missing. They were both arrested and charged by New South Wales Police (ultimately, the charges were withdrawn in December 2015).
106. On 18 June 2015, Z's mother left an enquiry with the Commissioner's Office of the New South Wales Police, stating that Z's great-uncle would not have assaulted Z, raising concerns about Y's mother, and attempting to report Z as missing.

#### Inspector Dennis contacts the Australian Police seeking Z's location

107. Later that day Inspector Dennis called the station supervisor at the Campbelltown Police Station. The station supervisor said they had a long conversation in which he became aware of what he called "dubious actions taken by New Zealand Police" – namely a strategy to avoid Z going to court by sending him to live in Australia, and the fact that when Z tried to return to New Zealand he was detained at Auckland International Airport and 'deported' back to Australia:

*"I questioned Inspector Dennis on the powers New Zealand Police have to detain and deport someone from their own country when no one has been charged with a criminal offence. I was again assured that it was all above board as he was breaching the agreement which he had made which sent him to Australia."*

108. Inspector Dennis asked the station supervisor where Z was staying, and whether Z could be reported missing to try to see him relocated with Z's family. The station supervisor explained that the Apprehended Violence Order (AVO) in effect following Z's complaint against his uncle and his great-uncle would prevent Z from being returned to them in any circumstances. He explained that people over the age of 16 can choose where they want to live, and Police could only report to the family that a person was alive and well. The station supervisor said Inspector Dennis was not happy with this response. Inspector Dennis told the Authority that:

*"In the end, I accepted the officer's explanations regarding their law, but only asked if he could site [sic] Z and make sure he was ok and then I would inform his parents."*

109. Later that day Inspector Dennis emailed the station supervisor and again asked if he could "shed some light" on Z's location. The station supervisor said he made some further enquiries and learned there was a close relationship between Inspector Dennis and Z's family. He also heard that:

*“Inspector Dennis did not have Z’s best interests in mind and was in fact acting on behalf of the family to locate him so they could intervene and take him away, potentially exposing him to further violence.”*

110. Z told the station supervisor he wanted to go and live in New Zealand, *“but was not allowed to by the New Zealand Police”*. The station supervisor later said:

*“Z understandably was scared of [his] family and very concerned about the actions of Inspector Dennis. Z was reluctant to provide me with his address in fear it would be disclosed to his family or the New Zealand Police.”*

111. The station supervisor said he shared Z’s concerns that if information about Z’s location were disclosed to Inspector Dennis, this information could get back to Z’s family. He made a note in the New South Wales Police report that the address details were not to be disclosed.

### Z returns to New Zealand

112. Z returned to New Zealand with Y’s mother on 29 June 2015.
113. On 24 July 2015, Z made a formal complaint to the Authority with allegations against Inspector Dennis, his mother and grandfather, and other members of Police and of his family.

## POLICE INVESTIGATION INTO INSPECTOR DENNIS AND OTHERS

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### Criminal investigation

114. The Authority notified Police of Z’s complaint, and Police began a criminal investigation in September 2015. When Police advised Inspector Dennis of their investigation, Inspector Dennis reportedly said he was *“just trying to get a young boy’s life back on track”* and *“it’s worked before, taking them down to the cell.”*
115. On 18 September 2015 Police obtained a formal statement from Z. Several days later Inspector Dennis was stood down and, on 21 October 2015, Police formally suspended him on full pay.
116. Police interviewed Inspector Dennis on 16 February 2016 and completed their investigation by October 2016.
117. On 3 November 2016 Inspector Dennis and Sergeant Perry appeared in court on charges of kidnapping in relation to the detention of Z at the Auckland Central District Custody Unit on 5 May 2015. Inspector Dennis was also charged with kidnapping in relation to the detention of Z at Auckland International Airport on 10 June 2015.
118. Following a jury trial in November 2017, Inspector Dennis and Sergeant Perry were acquitted on all charges.
119. Police met with Z in December 2017, and issued an apology acknowledging that the officers had acted unlawfully and breached Z’s rights by detaining him on 5 May 2015 and 10 June 2015.

120. In December 2017 Police concluded a settlement agreement with Inspector Dennis, who subsequently retired from Police.

### Employment investigations

121. Meanwhile Police conducted employment investigations into the actions of Sergeant Perry and other officers involved in the detention of Z at Auckland Central Police Station and at Auckland International Airport.

122. Since Inspector Dennis elected to retire, Police did not conduct an employment investigation into his actions and made no finding of misconduct against him.

123. Police determined that the shortcomings of eight officers, including Sergeant Perry, were performance issues which would be addressed through 'expectation-setting' conversations.

124. Only one officer, Officer A, received a disciplinary outcome. Almost two years later Police downgraded this to an 'expectation-setting' conversation.

## The Authority's Investigation

125. The Authority initially chose to oversee the Police's investigation into Z's complaint rather than conduct its own independent investigation, as Police initiated both criminal and employment investigations into the actions of various officers. Accordingly, the Authority reviewed the prosecution file containing the evidence produced by the Police's investigation into Z's complaint, as well as transcripts of the evidence given at court during the criminal trial of Inspector Dennis and Sergeant Perry.
126. In November 2017, the Authority decided to also independently investigate concerns regarding the Police's employment investigations of the officers who were not charged with kidnapping, but assisted with or knew about the detention of Z at the Auckland Central Police Station and Auckland International Airport. The Authority subsequently interviewed eight people involved in handling the Police's employment investigations.
127. The Authority's investigation considered the following issues:
- 1) Was Inspector Dennis' intervention with Z appropriate?
  - 2) Did Police act lawfully when detaining Z at the Auckland Central Police Station?
  - 3) Did Police act lawfully when detaining Z at Auckland International Airport?
  - 4) Did the Police employment investigations adequately address the actions of the officers involved in detaining Z?
128. The Authority notes that Inspector Dennis and Sergeant Perry were acquitted at the criminal trial, where the prosecution was required to prove the officers were guilty of the kidnapping charges "*beyond reasonable doubt*". The Authority uses a lower standard of proof for its findings: "*on the balance of probabilities*" (which means more likely than not).

## The Authority's Findings

### ISSUE 1: WAS INSPECTOR DENNIS' INTERVENTION WITH Z APPROPRIATE?

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129. At 17 years old, Z was legally able to make his own decisions regarding where he lived. Nonetheless, Z's family were concerned about his involvement with Y and her family, and sought Inspector Dennis' help to end the relationship.
130. While the Authority cannot provide specific details about the connection between Inspector Dennis and Z's family due to concerns that such information would identify Z and Y, it is satisfied that the relationship between them was close enough for Inspector Dennis to have a conflict of interest in dealing with this matter. Conflicts of interest arise in situations where officers' personal and professional interests may conflict with their position, obligations or responsibilities as a Police employee.
131. Inspector Dennis did not report the conflict of interest to his supervisor, as required by Police policy.<sup>9</sup> He said he thought his involvement in this matter was "*business as usual*" for him. The Authority considers that, despite being a senior Police officer, he simply failed to recognise that a conflict of interest existed.
132. Inspector Dennis said he saw his role as supporting Z's family and protecting the reputation of the Police, rather than taking over or undermining the Police's investigation into Z in any way. However, he elected to become directly involved in helping Z's family to create separation between Z and Y, including by:
- a) attending the Point England Reserve incident on 27 March 2015 (even though he was off-duty and other on-duty officers had been dispatched), and taking charge in his role as a Police officer;
  - b) having Officer B organise a meeting between Police and members of Z's family (excluding Z), and directly organising and attending another meeting himself;
  - c) engaging multiple times with Z's mother and grandfather to organise Z's detention at the Auckland Police Station and for Z to be sent to Australia;
  - d) detaining Z in the cell at the custody unit;
  - e) at the request of Z's mother, asking Officer A whether any action could be taken against Y's mother;
  - f) organising for Police to intercept Z at Auckland International Airport on 10 June 2015;
  - g) attending the Police station at Auckland International Airport; and

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<sup>9</sup> See paragraphs 264-266 below.

- h) contacting the New South Wales Police on 18 June 2015, and attempting to obtain information about where Z was staying.
133. Even if there had been no conflict of interest, it was highly inappropriate (and in some respects unlawful, as discussed below) for Inspector Dennis to involve himself to this extent. It would have been appropriate for him to attempt to ease the ongoing animosity by facilitating meetings between the disputing parties, and maintaining an impartial position. But Inspector Dennis only ever heard Z's family's side of the story and was determined to use his authority to achieve the result they wanted: the separation of Z and Y.
134. In essence, Inspector Dennis defended his actions (and continues to do so) by saying he was acting in accordance with Māori lore and the Police's Te Huringa o Te Tai (The Turning of the Tide) crime prevention strategy. The Te Huringa o Te Tai strategy was developed by iwi and Police (including Inspector Dennis) in 2012 to address the over-representation of Māori in the criminal justice system.
135. At Inspector Dennis' trial, (now Sir) Kim Workman, who was called by the defence as an expert in the areas of criminal justice and state sector responsiveness to Māori, gave evidence that:
- "The Turning of the Tide strategy invites officers dealing with Māori offenders to, one, take another look. Is there an alternative way to deal with this situation? Two, talk to your Iwi liaison officer and your Māori partners. What other Māori agencies, or whānau, or providers can you go to for help or assistance? Three, think outside the square. Dealing with a situation effectively and efficiently doesn't always mean by the book. Tino rangatiratanga, empowering the whānau unit, means long-term solutions."*
136. Mr Workman stated, while acknowledging that it was for the jury to determine whether or not it accepted what Inspector Dennis said regarding *"his stated actions and purposes"*:
- "... it is my opinion that [Inspector Dennis's] stated actions in seeking to bring the whānau together, and in providing guidance and alternatives to [Z], are completely consistent with the police stated aim of being responsive to Māori and with current police policies and strategies."*
137. Mr Workman also placed a caveat on the implementation of the strategy:
- "Obviously it goes without saying that the adoption of Turning of the Tide strategies, in any particular case, must operate within the framework of the law. Turning of the Tide does not give any mandate to police to operate outside the law. It does, however, encourage police officers to seek alternative, lawful solutions to respond to situations involving Māori offenders."*
138. Additionally, the superintendent in the role of Deputy Chief Executive of Māori, Pacific & Ethnic Services advised in April 2016 that *"...the Turning of the Tide Strategy does not provide a lawful basis to detain any person"*. He confirmed this when interviewed by the Authority in November 2018.

139. The Authority agrees, and further notes that neither Māori lore nor the Te Huringa o Te Tai strategy justifies Inspector Dennis' abuse of his official authority as a Police officer, the breach of Z's fundamental human rights, or the use of coercion in this case.

## FINDINGS ON ISSUE 1

Inspector Dennis failed to recognise, report and address the conflict of interest arising out of his relationship with Z's family.

Inspector Dennis' actions in attempting to force Z to comply with his family's wishes were an abuse of his influence, power and authority as a Police inspector and were outside any Police policy applicable at the time.

## ISSUE 2: DID POLICE ACT LAWFULLY WHEN DETAINING Z AT THE AUCKLAND CENTRAL POLICE STATION?

### Inspector Dennis

140. Inspector Dennis knew Officer A had investigated the complaint that Z was having an underage sexual relationship with Y. Officer A concluded that prosecution was not appropriate, because Z and Y were of a similar age and it was a consensual relationship.<sup>10</sup> He also noted the matter only came to the attention of Police because Z's mother's attempts to break up the relationship had failed. He advised Inspector Dennis: *"Taking action against [Z] in my opinion is the wrong way to deal with this. He seems to be a good kid with his head on his shoulders the right way."*
141. Although Z's family agreed they did not want Z to be prosecuted, his mother was not satisfied with the outcome of Officer A's investigation. The family remained determined to separate Z from Y and her family. Inspector Dennis met with Z's family and suggested taking Z to see the cells at the Auckland Central District Custody Unit, with a focus on *"choices and consequences"*. Inspector Dennis said this was part of his *"ongoing ... support to the family and to this process"*, and there was *"an amount of tikanga"* that needed to be factored in. He said he felt a *"responsibility to... [Z's] safety throughout this whole process. Not just his physical safety but his... cultural and tikanga safety as well"*.
142. The Authority does not question that Inspector Dennis' intention was to help Z and his whānau by intervening in this matter. However, Inspector Dennis did not have lawful authority to detain Z at the Auckland Central Police Station on 5 May 2015, as Police had not arrested Z or charged him with any offence.
143. Inspector Dennis said taking Z to the cells was done with the consent of Z's family,<sup>11</sup> and with Z's *"informed consent"*. The Authority notes Z's mother (a guardian under the Care of Children Act 2004) could not consent on his behalf to being detained. According to Inspector Dennis, Z demonstrated his consent by *"participating"* in a pat-down search at the Police station, following

<sup>10</sup> However, consent was not in fact relevant to the charge.

<sup>11</sup> It is unclear whether Z's family knew Z would be locked in a cell for some time.

him to the cells, and never asking to leave. He also said he told Z it was “just a visit” and he would not be staying in the cells.

144. Z told the Authority, and the Court, that he did not consent to be taken to and detained in the Police cells and several factors confirm this:

- a) Z’s family and Inspector Dennis did not ask Z beforehand whether he would agree to do this.
- b) Inspector Dennis asked Officer A to get Z to come to the Police station. Officer A did not tell Z that Inspector Dennis, his mother and his grandfather would be there. Officer A noted he did not raise this as he “*thought it may affect [Z’s] willingness to meet with me*”. Inspector Dennis also asked Officer A to ensure Y’s mother would not be in the interview room “*otherwise we can’t put our process into place*”. The Authority considers that this reflects Inspector Dennis’ desire to isolate Z and exert pressure to make him conform with his family’s wishes.
- c) Z’s family had enlisted Inspector Dennis’ help because, alone, they were unable to influence Z’s behaviour. Inspector Dennis’ authority as a Police officer was what kept Z from leaving the Police station. Z did not feel he had any choice in the matter because he was “*gonna be forced to regardless*” or “*there were going to be big consequences*” if he did not go along.
- d) The definition of a ‘detainee’ in Police policy includes: “*...any person who reasonably believes they are not free to leave*”.<sup>12</sup> Inspector Dennis admitted he did not inform Z of his rights and did not say he could leave at any time.
- e) Inspector Dennis did not tell Z where they were going when they left the interview room or what would happen.
- f) Z denied that Inspector Dennis told him it was “just a visit” to the cells, and said Inspector Dennis gave him an ultimatum – to leave New Zealand or be charged with statutory rape. The Authority believes Z’s evidence, because Inspector Dennis’ obvious goal was to pressure and intimidate Z into doing something he did not want to do – namely leave his girlfriend and travel to Australia. Inspector Dennis leading Z to believe he was being or could be arrested served that purpose.
- g) Z consistently stated that he felt scared, vulnerable and under duress:

*“I think that I’m getting locked away and getting ready to be charged for something... and also I felt like he was doing it to try and scare me, he was doing it to, to put that scared-ness into me so that I, so that I wouldn’t return to [Y] and... like the message he was trying to give me was don’t go back to her otherwise this is will be the consequence if you go back to her and then again I felt forced because no one wanted me to be with [Y].”*

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<sup>12</sup> A detention occurs when someone’s freedom to leave is “*hindered, retarded or restrained by intimidation*” [Boyd v R (1998) 8 CRNZ 664]. In the absence of overt intimidation, a person may also be detained where their freedom of movement is intentionally restrained by “*psychological or other means*”.

145. A Police investigator noted:

*“The description of events described by [Z] is identical to the sequence followed by [custody] staff in processing an arrested person. [Z] had never been in trouble with police or previously been placed under arrest and therefore had no experience of being held in custody to fall back on and believed he was about to be charged with ‘statutory rape’.”*

146. Inspector Dennis argued that taking Z to the Police cells was a form of ‘alternative action’,<sup>13</sup> consistent with the Police’s strategies of ‘Prevention First’, ‘Turning of the Tide’, and *“Policing excellence of the future”*:

*“... this gets all of us members of the Police our mandate and authority to look outside the square and to try and resolve things as best we possibly can. So as far as I’m concerned there was a strategic platform and direction for us to do these sorts of things... if you talk about authority or statutory authority, well all of these strategies and directions around reducing Māori offending and victimisation come from [the] Commissioner.”*

147. As noted above, the Authority does not accept that any of these Police strategies gave Inspector Dennis the lawful authority to detain Z against his will. Nor does reliance upon Māori lore (in the form of the ‘Te Huringa o Te Tai’ strategy or otherwise) empower Police to take unlawful action. Furthermore, it is untenable to argue that such strategies justify detaining young Māori against their will without due process.

148. Inspector Dennis also said he obtained support from the acting officer in charge of operations at Auckland Central Police Station (Officer J, a senior sergeant), and the Auckland Central District Custody Unit Manager (Officer C), regarding his plan to put Z through a *“mock receiving process”* at the cells and *“make it as realistic as possible”*. Therefore, he believed his actions were appropriate.

149. However, Officers C and J denied being aware of the full extent of Inspector Dennis’ plan, and said they would not have allowed it if they had been. They thought Z would only be walked through the custody unit. This is discussed further at paragraphs 177-184.

150. The Authority notes that Police have discouraged the use of a *“scared straight”* approach, which aims to deter young people from future offending by taking them on organised prison (and presumably Police cell) visits, describing it as ineffective and harmful to youth. In any event, Z’s experience in the custody unit was markedly different from what would have happened during a ‘scared straight’ visit.

151. In his effort to put Z through a ‘realistic’ receiving process, Inspector Dennis went much further than just showing Z the custody unit. First, he carried out a pat-down search of Z while in the interview room. Upon arriving in the custody unit, the custody officers processed Z as if he had been arrested: they entered his details into the computer system as they would for any detainee

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<sup>13</sup> ‘Alternative action’ is a Police diversionary response aimed particularly at lower-level youth offenders. This intervention involves a plan being put in place between the youth, his or her parents or caregivers, and Police, and if the youth completes the plan, that is the end of the matter.

(although these were later deleted); they assessed him for risk; and they searched him again and took some of his clothing. Inspector Dennis then locked Z alone in a cell for at least 15-20 minutes. Finally, Inspector Dennis took a phone and a photograph from Z's bag.

152. Z did not freely consent to be taken to the cells; nor did he consent to be searched, have his belongings taken from him, and be locked in a cell. Inspector Dennis also had no statutory power to detain Z in the circumstances. Accordingly, the searches, the seizure of Z's property, and Z's detention were all unlawful. Due to Inspector Dennis' actions, Police breached Z's rights under the New Zealand Bill of Rights Act 1990:

- to be secure against unreasonable search and seizure (section 21); and
- not to be arbitrarily detained (section 22).

153. The Authority is satisfied that Inspector Dennis unlawfully detained Z at the Auckland Central Police Station without his consent.

### Sergeant Perry

154. Sergeant Perry was on duty as a custody supervisor on 5 May 2015. That morning, Officer C asked him to help Inspector Dennis take Z through the custody unit. Officer C told Police investigators that Sergeant Perry:

*"...was agreeable to carrying this out and I'm pretty sure he's seen me facilitate visits before so it didn't need any conversation on it. I was confident that if he had any concerns he would have put his hand up and said it's not right and he would have let me know immediately."*

155. According to Sergeant Perry, Inspector Dennis told him:

*"... he was helping [Z's] family out by utilising the Māori Restorative Justice and 'Turning of the Tides' process. He requested that [Z] be brought into the watch house; the purpose was a role play scenario and a mock receiving process of an arrested person. ... [Inspector] Dennis requested that once the receiving process was complete he would like Z placed in a cell for a short time so he could reflect on what he was doing and that cell is where he could end up if he didn't make good choices."*

156. Inspector Dennis and Sergeant Perry later met for lunch and again discussed the plan to put Z through a realistic 'mock receiving process'. Sergeant Perry said:

*"[Inspector Dennis] asked me to more just be there, staunch but that he would do most of the talking. By staunch I took it to mean just a physical presence, and to remain emotionless. These are my words, not what [Inspector] Dennis said."*

157. Sergeant Perry repeatedly said he understood this was to occur with the express consent of Z's parents, and that Officer C had approved the process as outlined. But when asked if anyone had checked with Z if he wanted to be there or understood why he was there, Sergeant Perry responded:

*“Not to my knowledge. Not in the [custody unit] ... I understood from my discussion with Inspector Dennis that [Z’s] visit was by consent. But I did not personally ask him that.”*

158. Inspector Dennis could not have obtained Z’s consent to the “visit” at the time he discussed it with Sergeant Perry, as Z did not yet know about it. Therefore, it is difficult to see how Sergeant Perry would have “understood” that Z had consented before Z arrived in the custody unit – at which point he said Z’s consent was not discussed. The fact that Z’s parents had consented to the process was entirely irrelevant.
159. According to Sergeant Perry, Inspector Dennis told Z about the consequences of remaining in a relationship with Y and that having sex with an underage girl is a crime. Sergeant Perry denied hearing Inspector Dennis giving Z the ultimatum of going to Australia or facing a charge of ‘statutory rape’, but recalled Inspector Dennis saying something along the lines of “take the opportunity to live in Australia and get away from [your] girlfriend and [your] girlfriend’s mother”. He confirmed Z was crying when he was in the cell.
160. As the custody supervisor, Sergeant Perry was responsible for ensuring that all people received at the custody unit were lawfully detained. The Authority considers that Sergeant Perry either knew, or should have known, that Z did not freely consent to be taken to the cells, processed as a “normal prisoner”, and locked in a cell. At the very least, Sergeant Perry should have made an effort to confirm that Z himself had agreed to undergo this process, and he did not.
161. Sergeant Perry argued that he was “pulled into” the situation which was “already underway”. However, Sergeant Perry had discussed the plan to conduct the ‘mock arrest’ process with Inspector Dennis over lunch, and there was time for him to raise concerns had he chosen to do so.
162. Sergeant Perry also said he “reasonably considered” the plan to be in accordance with the Police’s ‘Turning of the Tide’ strategy. As noted above, the Authority does not accept that the strategy justified detaining Z in this manner, and does not consider that it was reasonable for Inspector Dennis or Sergeant Perry to believe it did.
163. Sergeant Perry also argued that it is unrealistic to expect him to question “the chain of command and directions from officers significantly more senior and experienced than him”. The Authority’s view is that, although Sergeant Perry believed Inspector Dennis and his supervisor had authorised this approach, he was not obliged to go along with an unlawful act – in fact his role as the custody supervisor demanded that he prevent the unlawful detention from occurring. As a highly experienced Police officer himself, he should have recognised this.
164. Therefore, the Authority is satisfied that Sergeant Perry unlawfully detained Z at the Auckland Central Police Station without his consent.

#### Officer A

165. Officer A said he agreed to arrange the meeting with Z on 5 May 2015, as suggested by Inspector Dennis, because:

*“I was concerned that the matter hadn’t been resolved, that there was continued aggravation between [Z] and his mother and between and amongst both families so I thought it would be helpful for me to speak to [Z] again to try and impress upon him the continued consequences of the course of action he had chosen to take. While Inspector Dennis had also expressed that he was going to speak with [Z], show him the cells and get him to speak to his grandfather with a view to getting him to Australia it never occurred to me that any of this would occur without [Z]’s consent.”*

166. Z was due to meet Officer A at Auckland Central Police Station at midday on 5 May 2015. When Z did not show up, Officer A called him and asked if he was still planning to visit the Police station. Z told him he was still intending to come in, but had no transport. Officer A then asked another officer to pick Z up. That officer asked whether Z was being arrested and should be read his rights. Officer A advised the officer that Z was coming in voluntarily, and if he decided not to come the officer should leave him at the address.

167. Officer A had arranged the meeting with Z after Inspector Dennis sent a text message on 3 May 2015 advising that Z’s family had organised their travel to take Z to Australia. Inspector Dennis’ text message also said:

*“... to make this work could you look to pick Z up during a late shift that way it does not interfere too much with work and will allow a smooove [sic] transition from you to me and me to them, FYI once you had finished I will look at taking him to visit the police cells and then to our police recruit program at unitec, a bit of a here’s what is on offer strategy which one do you want... He will be escorted to Sydney by his uncle and they have a program / support to help him on his way if at least for a while so he can re-focus...”*

168. Officer A said he understood that Z respected his grandfather, and it was thought if his grandfather were able to speak to him “away from other influences” there was a greater possibility that Z would take note of the concerns of his family.

169. Regarding Z being taken to the cells, Officer A said he would have facilitated a cell visit, had he been able to meet with Z on the day. He had planned to walk Z into the public area of the watch house and then, with the custody sergeant’s approval, through the corridors of the cell block. Officer A also noted he had never been involved in processes where people were taken to a custody unit to show them ‘where they might end up’, but he had heard from others that it was used as a prevention measure with young or first-time offenders.

170. While Officer A was aware of the plan to convince Z to travel to Australia, he did not know of Inspector Dennis’ intention to submit Z to a realistic ‘mock processing’ in the custody unit, including putting him in a cell. He thought Z would just be walked through the custody unit. According to Officer A, he became an unwitting participant in circumstances that occurred after his involvement had ceased, and of which he had no knowledge; he was not part of any plan and had never been part of any discussion to do anything to Z that was non-consensual or unlawful. Therefore, there is no evidence to say Officer A was directly involved in unlawfully detaining Z at the Police station against his will.

171. Officer A did, however, fail to inform Z that Inspector Dennis and his grandfather would be meeting with him. He said his intention was not to be dishonest or deceptive but *“solely to provide an opportunity for the resumption of communication between Z and his family”* so they could work towards resolving the continued issues.
172. The Authority finds that failing to inform Z of the full circumstances of the meeting was inappropriate and led to Z attending the Police station under a misapprehension.

## Other officers

### Custody officers

173. The custody officer who began processing Z into custody and asked him risk assessment questions said no one told him it was a ‘mock’ processing beforehand: *“The prisoner, as far as I was aware, had been arrested and I simply commenced my normal duties of receiving him.”* He said someone (he could not recall who) later instructed him that Z was not to be *“put through the books”* and the recorded information should be deleted. At court, this custody officer said he had never seen a ‘mock’ arrest or processing before.
174. Another custody officer said he heard Inspector Dennis saying he wanted Z ‘processed, but not processed’. In his Police statement he said: *“That made the hairs on the back of my neck stand up. This was unusual practice. I had never encountered this before. Either a prisoner is charged or not.”* He raised his concern with Officer K but said the sergeant shrugged in response.
175. While there is some evidence that at least one of the custody officers had concerns about the way they were processing Z, there is not enough evidence to say they were clearly aware of the circumstances which made his detention unlawful. In this case it was reasonable for the custody officers, who were non-sworn officers with less experience and authority, to rely on the expertise and advice of the custody supervisors.
176. Therefore, the Authority is satisfied that none of the custody officers were responsible for Z’s unlawful detention.

### Senior officers

177. Inspector Dennis spoke with the officer in charge of operations at Auckland Central Police Station, Officer J, about taking Z to the custody unit. Although Inspector Dennis said he told Officer J that he wanted to run a *“mock receiving process”* and outlined the scenario he had in mind, Officer J stated: *“I don’t recall being asked if he could run a mock receiving and I would not have allowed this.”* Officer J thought Inspector Dennis just wanted to show someone through the custody unit, and directed him to ask Officer C (the manager of the custody unit) whether this was possible.
178. Inspector Dennis said he told Officer C that he wanted Z to visit the custody unit and be taken through a *“mock receiving process”*, *“to run it through the books”* and *“make it as realistic as possible”*. He said both Officer J and Officer C were *“very supportive and very accommodating”*.

Inspector Dennis could not recall whether he specifically told them that he wanted Z to go into a cell or be shut in a cell but suggested he would have told them something to that effect.

179. Officer C recalled that Inspector Dennis was looking to organise “a visit to the custody unit and a walk through”, and:

- he was told the family supported the visit and it would be done with Z’s consent;
- there was never any discussion of Z being placed in a cell with the door closed and locked; and
- he advised Inspector Dennis that, with such visits to the cell block area, it is important to steer clear of cells with offenders in them.

180. Officer C also said:

*“I can’t recall if I actually told him that the people visiting aren’t allowed to go into the cell. But that is certainly my mind-set, my approach. I said I had no issues as long as everything was above board. There was certainly no discussion around the boy being processed or received as a prisoner nor anything of his clothes would be removed etc.”*

181. Officer C advised Officer K that Inspector Dennis would be bringing someone through the custody unit. Officer K recalled:

*“It was my understanding from [Officer C] that we were just going to receive him in the receiving area and go through the motions [of] a normal prisoner processing. It was to be a ‘pseudo’ processing. My understanding was that we definitely weren’t to lock him in a cell or anything like that.”*

182. Officer C denied telling Officer K that Z was to go through a “pseudo” receiving process.

183. Officer K was not present for most of Z’s time at the custody unit, but he recalled a custody officer asking about whether Z was being processed “as we would a normal arrest” (see paragraph 174). He said he told the custody officer it was going to be a “pseudo processing” and recommended that Z go through the process but not be entered into the system “as it would cause complications”. He left it with Sergeant Perry to deal with, noting that he was “confident with Sergeant Perry’s abilities as a supervisor so I had no reason to question what was going on”.

184. On balance, the Authority accepts that neither Officer J nor Officer C were aware of Inspector Dennis’ intention to put Z through a ‘mock’ processing in the custody unit, because this would have been an extraordinary request. Officer K apparently was aware, but did not think Z would be locked in a cell.

185. Nonetheless, all these officers should have further questioned Inspector Dennis’ actions, given that Police guidance discouraged the use of the ‘scared straight’ approach. The Authority considers that they were unduly influenced by the will of a higher-ranking officer with a national role.

## FINDINGS ON ISSUE 2

Inspector Dennis and Sergeant Perry unlawfully detained Z at the Auckland Central Police Station on 5 May 2015.

Officer A failed to inform Z that Inspector Dennis and his grandfather would be meeting with him. This was inappropriate and led to Z attending the Police station under a misapprehension.

Officers C, J and K should have further questioned Inspector Dennis' actions.

## ISSUE 3: DID POLICE ACT LAWFULLY WHEN DETAINING Z AT AUCKLAND INTERNATIONAL AIRPORT?

186. Police did not have any lawful reason to detain Z at Auckland International Airport on 10 June 2015. He was a New Zealand citizen travelling legitimately on a New Zealand passport. There were no Customs or immigration alerts against Z, and he was not shown as 'wanted' on any Police database. Police should have allowed Z to proceed as a normal passenger through airport processing to the public arrivals area.

187. Instead, two Police officers intercepted Z at the door of the aircraft, took possession of his passport, and escorted him through a secure area to the Airport Police Station. Z met with his parents, Officer E, and later Inspector Dennis. Z said that when he saw his parents:

*"I knew in a way that [Inspector] Dennis was going to be coming too, to that Police Station and I also had ... a feeling that I was going to either be arrested or I was going to be sent back to Australia. ... I was angry, sad, depressed, um, feeling like choices were taken away."*

188. Police did not advise Z of his rights, that he was being detained and why, or that he was free to leave at any time.

### Inspector Dennis

189. Inspector Dennis instigated Z's unlawful detention by contacting Officer D, the officer in charge of the Auckland Airport Police. He explained in an email that Police had investigated Z's relationship with Y, and he emphasised his view that Y's mother was *"actively promoting and supporting the relationship despite the ongoing risks it presented to her daughter and herself"*. He said Z's family wanted Police support to meet Z in the public area and *"assess his intentions, knowing that he was not supposed to return and warned by Police not to return"*. However, he warned that Y and her mother would *"cause a scene"* if they met Z's mother in the public area.

190. Inspector Dennis asked if the airport Police officers could:

*"... take [Z] to the airport station to speak to him regarding his intentions, this will allow time for whānau to make arrangements for him to be returned to Australia.*

*... the notion of this effort is to prevent further offending/harm coming to young person and a very immature 17-year-old, allow whānau time to reset what they*

*had put in place and avoid further unnecessary police time, resources and effort being put into this situation.”*

191. Once again, Inspector Dennis abused his authority as a Police officer to isolate Z and attempt to force him to comply with his family’s wishes. While Inspector Dennis said the purpose of detaining Z was for his family *“to speak with him regarding his intentions”*, he clearly anticipated that Z would be returning to Australia whether or not he was willing to do so.
192. Z had only just travelled home to be with his girlfriend; clearly, he did not want to be detained at the airport and immediately return to Australia. As with his detention at the Auckland Central Police Station on 5 May 2015, Z only complied because he felt he had no other choice. If Z’s family could have convinced him to go back to Australia on their own, they would not have needed to involve the Police.
193. Inspector Dennis argued that he acted out of concern for Z’s safety, as *“he was still a missing person”*. When asked what authority the airport Police had to detain Z, he said: *“Well, care and protection I suppose”*. However, Z had not been reported as missing and it was clear his family knew from their own enquiries that he was flying to Auckland.
194. Inspector Dennis also said he was there to support the ‘alternative action’ process Z’s family had put in place *“with wider extended family in Australia and this is the tikanga that I am talking about. This is where the L..A..W that doesn’t quite fit, this is the L..O..R..E”*.
195. However, as the Authority noted above, ‘alternative actions’ (including the ‘Te Huringa o Te Tai’ strategy) do not authorise coercive actions such as unlawful detention.
196. Due to Inspector Dennis’ actions, Police breached Z’s rights under the New Zealand Bill of Rights Act 1990:
- to enter New Zealand and have freedom of movement (section 18); and
  - not to be arbitrarily arrested or detained (section 22).
197. Inspector Dennis unlawfully detained Z at the airport without his consent.

#### **Officer D**

198. Following the initial contact and email from Inspector Dennis, Officer D made no follow-up enquiries regarding Z’s immigration or criminal status.
199. He failed to identify any problem with Inspector Dennis’ request that Police should meet Z upon his arrival in New Zealand and bring him to the Police station. In fact, later that evening, Officer D sent an email to the Counties Manukau District Commander, Officer I, describing Z’s ‘interception’ at the airport as an effective *“crime prevention story”*.<sup>14</sup>

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<sup>14</sup> Officer I said he did not recall *“receiving this email or having any knowledge of the facts contained in the email.”* He advised that the email was forwarded to the District Communications Manager, in accordance with his usual practice of providing *“good news stories”* for his weekly newsletter. However, the email was not used for the newsletter.

200. Subsequently Officers E, F and G argued they were acting lawfully and appropriately by implementing Officer D's direction to assist Inspector Dennis. The Authority strongly disagrees with that assertion, as following orders is not a defence or justification of any unlawful action.
201. While Officer D was not himself directly involved in detaining Z, he was responsible for making it happen. It was clear from Inspector Dennis' email that Z had not been charged with any offence, and that his family would be sending him back to Australia against his will. Officer D should have realised that Police had no legal power to detain Z and it was inappropriate for Police to intervene in these circumstances.
202. The Authority finds that Officer D directed other officers to unlawfully detain Z at the airport.

### Officer E

203. As the sergeant on duty on 10 June 2015, Officer E was also responsible for the unlawful detention of Z. He is a highly experienced officer, and at the time had worked at Auckland Airport for about 15 years.
204. He first learned of Inspector Dennis' request for help when he received an email from Officer D, forwarding the email from Inspector Dennis. In his interview with Police, he said he did not "*feel comfortable*" about Inspector Dennis' request that officers take Z to the Police station "*to be spoken to regarding his intentions*", so he went to Officer D's office to discuss it. Later in the interview he said:
- "I didn't have concerns. I just saw that bit in the email about 'police speaking to [Z]' and to me this seemed a complex matter involving CIB [Criminal Investigation Branch] and CAT team [Child Abuse Team] that I knew relatively little about, and I went to see [Officer D] to clarify what exactly the involvement was and what I was expected to do."*
205. Officer D advised him that Inspector Dennis would likely be coming to the airport himself. Officer E did not further question the request for Police assistance in these circumstances. The Authority considers that this was a serious neglect of his duty to ensure that he would be acting lawfully when detaining Z.
206. Officer E contacted Z's mother, who "*was grateful for Police being involved*". They exchanged several calls over the next few hours, and Officer E confirmed that Z was due to land on an Air New Zealand flight. However, Z's mother had already received this information from another source.
207. Officer E could not recall whether he checked the Police database for information on Z. Police records indicate he did not. When asked whether he checked if there were any border alerts, he said: "*I don't think so. I think I was just acting on what Inspector Dennis asked us to do.*"
208. Near the time when Z's flight was due to land, Officer E instructed Officers F and G to meet Z and bring him to the Police station. He also called Inspector Dennis (who confirmed he was on his way to the airport), and met with Z's parents.

209. Officer E said Z's situation fell within the usual circumstances for which Police would meet a passenger from an international flight, and noted Police could only ask Z to come with them; if he declined there was nothing they could do. He said he told Officers F and G that if Z did not comply he would just have to advise Inspector Dennis.
210. However, Officer E knew Z did not expect Police to meet him upon his arrival. He also must have known that Z would feel compelled to comply with any request from Police, simply through the presence of uniformed and armed officers.<sup>15</sup> Furthermore, Police did not inform Z that he was free to leave, and the officers escorted him through a secure area of the airport where he could not leave of his own volition.
211. Officer E said he thought Z *"was okay with being there"* though *"he was quiet and maybe a bit staunch. He was a bit down maybe and he didn't show much expression, but it could have been his normal look."* When asked whether Z wanted to return to Australia, Officer E said:
- "I didn't have that specific conversation with him but I understood that all parties including [Z] agreed that [Z] was going to return to Australia.*
- ... Inspector Dennis asked me to enquire about the availability of flights back to Australia. I didn't hear anything from [Z] that indicated to me that he did not want to return to Australia."*
212. Officer E also said he *"genuinely and reasonably formed the honest belief that I was acting in good faith in the repatriation of the family and the Inspector"*, believing *"this was a family meeting arranged between the Inspector and themselves"*.
213. The Authority does not accept that it was reasonable for Officer E to assume that Z agreed to this process, having seen the email Inspector Dennis sent to Officer D (see paragraphs 189-190). If Z was, in fact, willing to go back to Australia, then it should not have been necessary for Officer E to escort him onto the return flight as he did. Officer E told the Authority *"... we were just assisting him to the flight as we do with many passengers to help get them to their flights on time. This is certainly not unusual."* The Authority finds it hard to believe that this is the case, and notes that this was a highly unusual situation because Police were escorting Z back onto an aircraft only two hours after he had arrived in the country. In the Authority's view it is beyond question that Police were detaining Z, and any belief by Police staff that they were not was entirely unreasonable and without foundation.
214. Officer E also argued that he was acting on instructions from higher-ranked officers, namely Officer D and Inspector Dennis. Nonetheless, this does not excuse his direct involvement in unlawfully detaining Z and breaching his rights, and saying that he was 'following orders' does not provide him with a defence. As a highly experienced airport sergeant, he was required to ensure that his actions were both lawful and objectively reasonable. He should have known an unlawful restriction on Z's liberty was the inevitable result of his direction to the officers to meet Z upon his arrival and bring him to the Police station.

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<sup>15</sup> While airport officers are required to be routinely armed, it is unreasonable to say the presence of firearms should not or would not have influenced Z's inclination to refuse to accompany them.

215. The Authority considers that Officer E unlawfully detained Z at the airport without his consent.

### Officers F and G

216. Officers F and G confirmed that, at the beginning of their shift, Officer E directed them to meet Z later that afternoon and walk him to the Police station. Officer E briefed the officers that Police needed to speak to Z about a matter involving a 15-year-old girl.

217. Officer F recalled that Police were *“acting in a prevention role to stop this guy from being charged with an unlawful sexual connection type charge... that's why I thought we were acting in a lawful manner.”*

218. Neither of the officers checked the Police database or border alerts for information on Z. They were given the gate number shortly before Z's flight arrived. Officer G said they were instructed to meet Z at the aircraft, while Officer F said they met Z at the plane door *“for ease of interaction, it's a controlled environment”*.

219. According to Officer G, they *“invited”* Z to come to the Police station. Officer F stated: *“By bringing him to the station at no point did I tell [Z] that he was under arrest or detained under any enactment. We asked him to come back to the station to talk about the matter.”* Officer F also said he knew he would have informed Z that his parents and Inspector Dennis were at the airport Police station (though he could not recall when or what words he used to do so).

220. Officers F and G could not recall taking Z's passport. Officer G said it was his usual practice to request a person's travel documents, so Police could 'fast-track' the person through Customs; Officer F said he would have requested it to confirm Z's identity. Neither could explain why they did not immediately return the passport to Z. This would have reinforced to Z their power and control over him.

221. Officer F recently advised the Authority:

*“Police have an authority to act under the Customs and Excise Act. Information was given to Officers F and G that Z needed to be spoken to regarding an unlawful sexual connection offence. Detaining him and speaking to him about this matter falls within the scope of the Customs and Excise Act. Z's passport was required for ID purposes and was taken to a Customs officer.”*

222. However, Officer F is mistaken about his powers under the Customs and Excise Act 1996. Section 148C of the Act provided for Customs officers, not constables, to detain a person they have reasonable cause to suspect is liable to be prosecuted for an offence punishable by imprisonment.<sup>16</sup> The Act envisaged that the Customs officer would then seek assistance from *“another officer who is authorised”* (including a constable) to question, detain or arrest that person. Police prevented Z from proceeding freely through Customs, but if he had, the Customs

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<sup>16</sup> See sections 148C and 32C of the Customs and Excise Act 1996 (which has since been replaced by the Customs and Excise Act 2018).

officers would have had no reason to stop him and request Police assistance, as there were no alerts against his name (nor should there have been).

223. As noted above, the officers have previously said they were not arresting Z and instead ‘invited’ him to come to the station. Officer E stated that if Z had declined there was nothing Police could do.
224. The Authority considers that the officers should have known that Z would feel forced to comply with their request that he come to the Police station, since he had been called off the plane to be greeted at the door by uniformed and armed officers in advance of the other passengers. The officers should have known they had no legal power to detain Z, and they should have made this clear to him. Their failure to explain why they were there and to obtain Z’s consent to accompany them resulted in Z’s unlawful detention.
225. The officers took Z through a secure area to the airport Police station, and left him with his parents and Officer E. Officer F was later involved in escorting Z to his flight to Sydney.
226. When asked whether Z wanted to return to Australia, Officer G said he did not know as he did not speak with Z. Officer F said:

*“At no stage did [Z] imply or state he did not want to leave New Zealand. And no force or coercion was used or required as far as I can remember.*

*... As far as I was aware [Z] was landed into the country and left of his own accord after meeting with his parents.”*

227. As explained above, it is clear that Police detained Z and compelled him to leave New Zealand. Officers F and G both failed to recognise that their actions were unlawful. Even if they believed they were acting in a ‘prevention’ role, this did not give them the power to detain Z against his will.
228. The Authority finds that Officers F and G unlawfully detained Z without his consent.

### FINDINGS ON ISSUE 3

Inspector Dennis and Officers E, F and G unlawfully detained Z at Auckland International Airport on 10 June 2015.

Officer D directed officers to unlawfully detain Z.

### ISSUE 4: DID THE POLICE’S EMPLOYMENT PROCESSES ADEQUATELY ADDRESS THE ACTIONS OF THE OFFICERS INVOLVED IN DETAINING Z?

#### Categorisation

229. Police initially advised the Authority that they expected the employment investigations into the actions of the officers involved with the detention of Z to run concurrently with the criminal investigation.

230. However, Police did not hold a categorisation meeting to assess the allegations until 4 August 2016, almost a year after commencing the criminal investigation. The Categorisation Committee identified that:
- a) Inspector Dennis, Sergeant Perry, and Officers A, B,<sup>17</sup> D, E, and K had potentially breached the Police Code of Conduct and required employment investigations.
  - b) Officers F and G were not to be subject to employment investigations, but their performance issues needed to be addressed.
  - c) No further action was required for Officer C or Officer J.
231. The Categorisation Committee did not specify who was to conduct the employment investigations and address the performance issues. Nor did Police adequately record the reasoning behind the decisions regarding who did and who did not require an employment investigation.
232. On 2 September 2016, Police re-categorised the employment matters. It appears this was done through emails and telephone calls rather than a meeting. They decided that Officer B, Officer K and Officer D would no longer be subject to employment investigations, but their shortcomings in Z's case would be treated as performance issues. Officer C was also found to have performance issues which needed to be addressed.
233. Only one person involved in the initial categorisation meeting was also involved in the September 2016 re-categorisation. Again, Police did not keep an adequate record of the reasons why they decided to conduct fewer employment investigations and instead address the officers' actions as performance issues.

### Completion of employment investigations and 'expectation-setting' conversations

234. The September re-categorisation appears to have been prompted by the imminent departure of Officer D from New Zealand. His performance issue was addressed through an 'expectation-setting' conversation with an inspector on 7 September 2016.
235. By late September 2016, Police had decided to proceed with 'expectation-setting' conversations for Officer B, Officer C and Officer K. However, there was some confusion about the re-categorisation and whether employment investigations were still required. This was resolved within a few weeks.
236. About this time Police decided to put the employment investigations for Inspector Dennis, Sergeant Perry and Officer E on hold while the criminal investigation continued. In December 2016, after Police had decided to prosecute Inspector Dennis and Sergeant Perry only, they began an employment investigation into Officer E.

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<sup>17</sup> Officer B was included because he was at the meeting where Inspector Dennis and Z's family discussed sending Z to Australia and taking him to the Police cells.

237. From November 2016 to January 2017, ‘expectation-setting’ conversations were held for Officers C, F, G and K. Although Police had also decided to hold an ‘expectation-setting’ conversation with Officer B, this did not happen until October 2017.

#### Officer A

238. Meanwhile, Officer A’s employment investigation began in October 2016 and was completed in April 2017. He received a disciplinary outcome in May 2017 (as noted below, this was downgraded to an ‘expectation-setting’ conversation two years later).

#### Officer E

239. Officer E’s employment investigation was completed by July 2017. The investigator recommended that Officer E receive an ‘expectation-setting’ conversation. In October 2017, the Authority wrote to the Commissioner of Police to express its disappointment that it was not consulted about this outcome, noting that it: *“...fell well short of the response that I believe was required to bring home to the Sergeant the unlawfulness and inappropriateness of the consequences occasioned by his actions.”*

240. While the Authority believes that a criminal prosecution of Officer E would have been justified, it appreciates that this was a matter within the discretion of the Police. A robust employment investigation was a reasonable alternative option to prosecution. However, the Authority found that the employment investigation was far from robust and downplayed the seriousness of Officer E’s actions.

241. While accepting that the outcome could not be changed, the Authority suggested it would be appropriate for the District Commander to have a further informal conversation with Officer E in order to reinforce the seriousness of his conduct. This took place on 19 December 2017.

#### Sergeant Perry

242. Shortly after Sergeant Perry’s acquittal on the kidnapping charge in late November 2017, he was notified he would be subject to an employment investigation. Police completed this investigation within one week. The outcome of the employment investigation was flawed, because it incorrectly applied mitigating factors (such as the stress of being prosecuted) to the finding regarding Sergeant Perry’s level of misconduct, rather than to the sanction he would receive. Police decided Sergeant Perry would have an ‘expectation-setting’ conversation, which was held on 7 December 2017.

243. The Authority considers that this outcome did not reflect the severity of Sergeant Perry’s misconduct, which was significant enough for Police to prosecute him. Police gave too much weight to the argument that Sergeant Perry was just following the orders of higher-ranked officers, and understated Sergeant Perry’s responsibility for Z’s unlawful detention. As the custody sergeant, Sergeant Perry had more experience and knowledge of the legal requirements when detaining a person than Inspector Dennis.

### Inspector Dennis

244. Police formally suspended Inspector Dennis on 21 October 2015, on full pay, and commenced a criminal investigation. In November 2016 Inspector Dennis appeared in court on two charges of kidnapping Z.
245. As Police failed to conduct an employment investigation concurrently with the criminal investigation, Inspector Dennis was unnecessarily kept on full pay for more than two years, up until the trial was concluded in November 2017.
246. Following the trial, Police decided not to proceed with an employment investigation into Inspector Dennis' actions, and instead to negotiate his retirement from Police.
247. In early December 2017, Police reached a settlement with Inspector Dennis. Police did not conduct an employment investigation and consequently made no finding of misconduct against him.
248. Police could and should have commenced and concluded an employment investigation concurrently with the criminal investigation. Inspector Dennis' conduct was clear, and he had admitted it at an early stage. Since any statement he made to Police was not made on the basis that his responses could not be used for employment purposes, there was no reason why the information he had provided to Police investigators could not have been used for an employment investigation process. Postponing a decision on the outcome of the employment investigation until the outcome of the trial was known may have been acceptable, but by doing nothing at all, Police risked a later "*abuse of process*" argument. If the employment investigation had been concurrent, Police could at the very least have made a decision at the end of the trial process.

### Concluding comments

249. Overall, the Authority found a lack of transparency, leadership and co-ordination in respect of the Police's investigations into the officers who were aware of or involved with Z's unlawful detention.
250. The categorisation of the employment matters only took place almost a year after Police began the criminal investigation. Police did not appoint anyone to oversee the resolution of all these related employment matters and ensure the outcomes were consistent and proportionate. In several cases Police downgraded their approach from employment investigations to 'expectation-setting' conversations, without properly documenting their justifications for those decisions.
251. When employment investigations did take place, they were siloed from each other. This meant the decision-makers had to rely on limited information, and were not aware of the outcomes other officers had received. In some cases, the Police investigators were unable to interview the appropriate people and were provided with redacted documents which did not provide the full context of the situation.

252. Altogether, six different senior Police officers delivered ‘expectation-setting’ conversations to eight officers. Some of these conversations were confirmed by email, but no consistent process was followed. The Authority considers that in most cases the use of ‘expectation-setting’ conversations fell well short of properly dealing with the officers’ misconduct.
253. Only one officer, Officer A, received a disciplinary sanction. Inspector Dennis did not receive any sanction at all.
254. The Authority was overseeing the Police’s investigation into Z’s complaint, but was not given the opportunity to provide its view on the final employment outcomes for the officers involved. It is perplexing that Inspector Dennis, Sergeant Perry and Officer E received far more lenient outcomes than Officer A, who, although there is evidence to suggest he knew something of Inspector Dennis’ plans, was not directly involved in unlawfully detaining Z. Police subsequently withdrew Officer A’s disciplinary sanction about two years later, to achieve consistency with the other officers’ outcomes.

#### FINDINGS ON ISSUE 4

Police should have conducted an employment investigation into Inspector Dennis’ actions concurrently with the criminal investigation process.

The Police’s employment investigation processes in respect of all officers involved in this incident were flawed and lacked transparency, leadership and co-ordination. Nobody had oversight of all the outcomes to ensure they were consistent and proportionate.

Police failed to properly investigate the actions of all the officers involved in detaining Z. Only one officer received an appropriate disciplinary outcome, and this was downgraded two years later to achieve consistency with the more lenient outcomes received by other officers.

## Conclusions

255. The Authority found, on the balance of probabilities, that:

- 1) Inspector Dennis and Sergeant Perry unlawfully detained Z at the Auckland Central Police Station on 5 May 2015.
- 2) Inspector Dennis and Officers E, F and G unlawfully detained Z at Auckland International Airport on 10 June 2015. Officer D directed officers to unlawfully detain Z.
- 3) Inspector Dennis' actions in attempting to force Z to comply with his family's wishes were an abuse of his influence, power and authority as a Police inspector and were outside any Police policy applicable at the time.
- 4) Inspector Dennis failed to recognise, report and address the conflict of interest arising out of his relationship with Z's family.

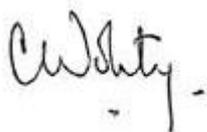
256. When considered alongside the Authority's findings in relation to the misconduct of former Inspector Hurimoana Dennis (which are outlined in a separate report), these findings demonstrate that, when he was an officer, Inspector Dennis engaged in repeated serious misconduct.

257. The Authority also found that:

- 5) Officer A failed to inform Z that Inspector Dennis and his grandfather would be meeting with him. This was inappropriate and led to Z attending the Police station under a misapprehension.
- 6) Officers C, J and K should have further questioned Inspector Dennis' actions.
- 7) Police should have conducted an employment investigation into Inspector Dennis' actions concurrently with the criminal investigation process.
- 8) The Police's employment investigation processes in respect of all officers involved in this incident were flawed and lacked transparency, leadership and co-ordination. Nobody had oversight of all the outcomes to ensure they were consistent and proportionate.
- 9) Police failed to properly investigate the actions of all the officers involved in detaining Z. Only one officer received an appropriate disciplinary outcome, and this was downgraded two years later to achieve consistency with the more lenient outcomes received by other officers.

## Recommendations

258. In December 2015 the Authority made recommendations to the Commissioner of Police concerning the review and amendment of policies concerning the disciplinary process and employment investigation to ensure national consistency. Those recommendations were accepted but are still to be implemented fully.
259. The Authority is aware that Police are currently reviewing the way in which they undertake employment investigations and updating their disciplinary procedures. Pursuant to section 27(2) of the Independent Police Conduct Authority Act 1988, the Authority recommends that the Commissioner of Police ensures the new employment processes, currently under development, include:
- 1) how membership of a categorisation and re-categorisation panel will be determined;
  - 2) clarification of how and in what circumstances matters can be re-categorised;
  - 3) details of what records of categorisation meetings should be kept and the format they should take;
  - 4) a clear process setting out who has responsibility for a particular case in terms of overall responsibility for its progress; and
  - 5) guidelines for the manner in which employment investigations are undertaken, specifying:
    - a) how a decision-maker is determined and the process for ensuring appropriate information is made available to that person;
    - b) when there are multiple investigations relating to the same incident, both within and between Districts, how consistency as to both process and outcome is to be achieved; and
    - c) expectations on timely and thorough investigations being undertaken.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

14 November 2019

**IPCA: 15-0160**

## Appendix One: Table of Officers

Officers involved	Roles/comment
Inspector Hurimoana Dennis	National Māori Strategic Advisor.
Sergeant Vaughan Perry	Custody sergeant at Auckland Central District Custody Unit.
Officer A	Officer on Child Protection Team.
Officer B	Māori Responsiveness Manager.
Officer C	Auckland Central District Custody Unit Manager.
Officer D	Detective senior sergeant in charge of the Auckland Airport Police.
Officer E	Airport sergeant.
Officer F	Airport constable.
Officer G	Airport constable.
Officer H	Māori Responsiveness Manager.
Officer I	Counties Manukau District Commander.
Officer J	Acting officer in charge of operations at Auckland Central Police Station.
Officer K	Custody sergeant at Auckland Central District Custody Unit.

## Appendix Two: Laws and Policies

### CRIMES ACT 1961

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260. Section 209 of the Crimes Act (Kidnapping) provides:

*“Every one is liable to imprisonment for a term not exceeding 14 years who unlawfully takes away or detains a person without his or her consent or with his or her consent obtained by fraud or duress,—*

*(a) with intent to hold him or her for ransom or to service; or*

*(b) with intent to cause him or her to be confined or imprisoned; or*

*(c) with intent to cause him or her to be sent or taken out of New Zealand.”*

### NEW ZEALAND BILL OF RIGHTS ACT 1990

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261. Section 18 of the New Zealand Bill of Rights Act provides that:

*“(1) Everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand.*

*(2) Every New Zealand citizen has the right to enter New Zealand.”*

262. Section 21 of the Act states that everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise.

263. Section 22 of the Act provides that everyone has the right not to be arbitrarily arrested or detained. Arbitrary detention occurs when a person is arrested or detained, the officer does not have the power to arrest or detain the person, and the arrest or detention was unreasonable, unnecessary, or (where the initial detention was appropriate) continued for an unnecessarily long time.

### POLICE POLICY

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#### Managing conflicts of interest policy

264. The ‘Managing conflicts of interests’ chapter of the Police Manual explains that conflicts of interests can occur *“fairly frequently”* in a small country like New Zealand. The policy states that all actual, potential or perceived conflicts of interest must be declared and appropriately managed:

*“All Police employees must be aware of these critical points:*

- *A perceived or potential conflict of interest can be just as damaging as an actual conflict of interest.*

- *All actual, potential or perceived conflicts of interest must be declared to a supervisor by way of the appropriate declaration....*
- *Supervisors must work with employees who declare conflicts of interest to assess the risks involved, and to identify appropriate strategies to manage those risks.”*

265. The policy defines the following terms:

<b><i>“Actual conflict of interest</i></b>	<i>A conflict between our official duties and our other interests that could interfere with our ability to be impartial, objective and independent.</i>
<b><i>Perceived conflict of interest</i></b>	<i>The perception of outside observers that our other interests may interfere with our ability to be impartial, objective and independent, whether or not that is the case. The perception of a conflict of interest can be just as damaging to reputation as an actual conflict.</i>
<b><i>Potential conflict of interest</i></b>	<i>A situation where our other interests have the potential to interfere with our official duties in the future, or where our official duties could affect our other interests in the future.”</i>

266. If an officer has *“an actual, perceived or potential conflict of interest”*, he or she must notify their supervisor as soon as possible and complete a form declaring the conflict. The policy also states:

*“If possible, abstain from involvement in the decisions or actions that could be compromised by your other interests....*

*Discuss the conflict of interest and how it could be managed with your supervisor, and cooperate with the management plan.”*

### People in Police detention

267. Police guidance states that a person will be regarded as *“detained”* if:

- there is physical deprivation of a person’s liberty; or
- the person has a reasonably held belief, induced by Police conduct (or other official conduct) that they are not free to leave.

268. Examples include circumstances where a person is locked in a room or building or put in a place that they cannot leave voluntarily.

269. Police policy directs officers to consider the necessity of an arrest or detention, taking into consideration matters such as whether there is sufficient evidence of an offence, and whether there are alternatives to arrest (for example, to consider whether would a warning, caution, counselling or referral to another Agency in line with the Prevention First focus).

270. Police policy also makes it clear that officers must immediately release a person if:

- the officer discovers there was no power to arrest;
- there is no longer reason to believe the person committed the offence;
- the officer believes the detention is no longer justified for whatever reason;
- the person is arrested on a charge that does not proceed; or
- the person is found not to be the person named in the warrant.

271. In accordance with section 151 of the Crimes Act, for the entire duration of a person's time in Police custody, Police owe them a legal duty of care to take all reasonable of care to take all reasonable steps to ensure their care, safety and wellbeing. Police policy states:

- The arresting or detaining officer is responsible for the detainee's safety and security until they are handed over to custody area staff.
- All Police employees are responsible for the care, safety and security of everyone detained including at scenes, during transport, within Police stations and cells at courts.
- Police responsibility for care, safety and security starts from the moment a person is arrested or detained and does not end until they are released or transferred into the care of another agency, individual or family member.

## About the Authority

### WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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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?

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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.

### THIS REPORT

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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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