



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

# Allegation of punches by officer during Taranaki arrest

## Outline of Events

1. On the afternoon of 7 December 2019, Officer A went to Ms Y's address in a Taranaki town, to locate and speak with Mr X about an altercation that had occurred earlier at a neighbouring address.
2. At Ms Y's address, Officer A arrested Mr X who ran off into bushes at the back of the property. Officer A called for backup before catching up with Mr X shortly thereafter.
3. A struggle ensued as Officer A attempted to handcuff Mr X, during which Officer A used force including a punch to the face to subdue him. With the assistance of Officers B and C, Mr X was taken into custody.
4. Ms Y and Mr X later complained to the Authority that Officer A unnecessarily punched Mr X four times to the face after he had been placed in handcuffs.

## The Authority's Investigation

5. As part of its investigation the Authority interviewed Officers A, B, and C, Mr X, Ms Y, and four civilian witnesses. It also reviewed the Police investigation file.
6. The Authority considered:
  - 1) whether Officer A punched Mr X four times after he was handcuffed; and
  - 2) whether Officer A's use of force to arrest Mr X was reasonable in the circumstances.

# The Authority's Findings

## ISSUE 1: DID OFFICER A PUNCH MR X MULTIPLE TIMES AFTER BEING HANDCUFFED?

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### Circumstances leading up to Mr X's arrest

7. At about 3.30pm on 7 December 2019, a local resident in a Taranaki town (Mr Z), reported to Police that a motorist driving a white Ute (Mr X) was doing burnouts on the road near his home. As Mr X drove past Mr Z's driveway, Mr Z gestured his annoyance at Mr X, before walking into his house.
8. Mr X stopped his Ute and walked up to Mr Z's house where a verbal altercation occurred between the two. Mr X then drove away to a friend's address (Ms Y) further along the road.
9. Officer A responded to reports of the Ute doing burnouts on the road. He was also given the details of the altercation at Mr Z's address, so he made his way there to find out what had happened.
10. Mr Z told Officer A that Mr X's burnouts were a regular occurrence and it annoyed him because they were happening so close to his home with his young children present. Mr Z said he pretended to throw something at Mr X's car as it drove past his driveway, causing Mr X to stop. Mr Z said he returned to his house but then saw Mr X walking up his driveway carrying a baseball bat. He said he managed to talk to Mr X without the situation escalating, and they both walked back out to the roadway before Mr X drove off in his Ute.
11. Officer A's enquiry at Mr Z's address provided him with a description and first name for Mr X, a description of his Ute, a description of the baseball bat and the likely address he had driven to (Ms Y's house). Officer A then drove to Ms Y's place to locate and speak to Mr X.

### Arrival at Ms Y's house

12. Officer A drove into the driveway of Ms Y's address and noticed there were a number of people drinking and socialising in a nearby shed. He saw Mr X's Ute parked on the property. Ms Y came out and spoke with Officer A and he told her he was there to speak with Mr X. Ms Y then went around the back of the house and returned with Mr X.
13. Officer A told the Authority that he asked Mr X to confirm his identity, but he would not comply, responding only that he was the owner of the Ute parked nearby. After repeated requests and the same responses, Officer A took his handcuffs out of his pouch and told Mr X he was under arrest. As Officer A went to grab him by the shoulder, Mr X ran off to the back of the property. Officer A did not have time to tell Mr X what he was being arrested for (the earlier incident at Mr Z's house). At the back of the property Mr X jumped over a fence towards a steep bank.
14. Mr X told the Authority that when Officer A informed him he was under arrest, he replied: *"na, I don't want to talk to you, I don't want to deal with you, na I'm not under arrest... and I just ran round the back....and ended up down the bush"*.

15. Officer A did not immediately chase Mr X because of the other people present, but he called for assistance on his radio. He then looked inside Mr X's Ute in search of the baseball bat, but it was not there<sup>1</sup>.
16. Officers B and C arrived shortly after and Officer A told them what had happened. At about this time, Ms Y yelled out from the back of the property that she had located Mr X. Officer B walked around one side of the house to the back of the property and Officer C around the other. When Officer A appeared at the back of the property, Mr X started yelling, *"I'm not dealing with [Officer A]"*.
17. Officer A told Mr X to *"stop being an idiot... and get [back] over the fence ..."* and reminded him he had no choice who he dealt with and he was under arrest.
18. Believing that Mr X was not going to comply with that instruction, Officer A jumped over the fence to take Mr X into custody. Mr X however ran off again down the bank where he lost his footing and fell over. Officer A quickly caught up with Mr X and took hold of him. He told the Authority *"I caught up and grabbed him and sort of fell on him"*. Officers B and C were not with Officer A at this time. Officer C was still by the fence and Officer B was a few meters away.

### Apprehension of Mr X and use of force

#### Accounts of Officers A, B and C

19. Officer A told the Authority that Mr X had his arms under his body, and he yelled at him to put them behind his back, but Mr X started struggling. He said: *"I grabbed hold of him. He was fighting, struggling, trying to get away, his arms were tensed, he was moving them around and his fists were clenched"*.
20. Officer A said he wanted to get Mr X handcuffed as soon as possible, so he punched Mr X once in the ribs to stun him so he could get his arm behind his back. He told the Authority that *"his ribs were an exposed area and I thought if I can distract him, wind him, something like that, it might relax his arms enough that I could get them in behind his back"*. Officer A said the punch had no effect, however, and Mr X continued to struggle. He said he could not see where Officers B and C were, but he knew they were not far away.
21. Officer A said he then heard Mr X make a noise that sounded like he was preparing to spit, and at the same time turning his face towards him. Officer A then punched Mr X to the face. He said: *"so I punched him once in the face thinking he was going to spit...it was a punch to the left side of the face, and I got him in the cheek area as I punched him. I followed through and put my forearm on his face to push his face away from me so he couldn't spit at me"*.
22. Officer A said that Ms Y then tried to intervene, yelling at him and *"making a nuisance of herself"*, so he pushed her away and yelled at Officer C to keep her away.

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<sup>1</sup> The Authority has determined the search was lawful.

23. When asked by the Authority to describe Mr X's level of resistance when he punched him, Officer A described it as 'assaultive' under the Police tactical options framework. He denied any further punches.
24. Officer B told the Authority that he saw Officer A throw the first punch as he reached them. He described the punch as a short strike to Mr X's mid-section with a closed fist. Officer B said this punch had no effect on Mr X who continued to struggle.
25. Officer B didn't hear Mr X make a spitting sound or see Officer A throw the second punch, but he heard a "smacking sound" which he believed was a punch to Mr X's face. He said after he heard this, "that's when [Officer A] managed to get his right arm and we were then able to handcuff him". Officer B did not see any other punches thrown. He, too, described Mr X's level of resistance as 'assaultive'.
26. Officer C stayed by the fence. She did not see the first punch thrown by Officer A, but she saw the second. She said that Mr X was lying on his stomach with his hands in front of him, "wriggling around trying to avoid being handcuffed". She saw Officer A throw the punch that she thought hit Mr X in the cheek area. She said that Officer B was by Mr X's feet when the punch was thrown, and he (Officer B) then assisted Officer A to handcuff Mr X. She described Mr X as 'actively resisting' under the tactical options framework.
27. Once Mr X was handcuffed, he was escorted up the bank by Officers A and B and assisted over the fence. Once over the fence Mr X ran off again but slipped and fell a few meters away where Officers A and B caught up with him and escorted him to the Police car.

#### Account of Ms Y

28. Ms Y said that when Mr X first fell over, Officer A arrived and put his knee on Mr X's back "to put the handcuffs on". She said that Mr X wasn't resisting, "he was just lying there", and she saw Officer A punch Mr X "a couple of times in the face". Ms Y yelled out, "that's enough," and she heard Mr X say, "I'll deal with anyone but [Officer A]". Ms Y said she then saw Officer A punch Mr X twice more, once to the face and once to the head. She said when this happened, there were only the three of them present [herself, Mr X and Officer A]. She said Officers B and C arrived after the punches were thrown.
29. Ms Y said she went to take hold of Officer A's hand to stop him from hitting Mr X, but Officer A pushed her down the bank into a punga tree. She said Officers A and B then escorted Mr X up the bank and over the fence where he got up and ran away again, only to slip and fall in some bushes.

#### Account of Mr X

30. In Mr X's complaint to the Authority, he said he knew Officer A through previous dealings with him, and he did not want to deal with him again. He said he could remember Officer A arriving at the address and arresting him before he ran off to the rear of the property. He recalled being handcuffed but could not remember a struggle. When asked about the punches, Mr X thought that Officer A punched him five or six times when he ran off after getting over the fence, not

while being handcuffed as described by Ms Y and the officers. Mr X acknowledged however that he could not remember the events clearly: *“I don’t know what happened down there, I was too pissed by then”*. Whilst the Authority accepts Mr X is genuine in his complaint against Officer A, his state of intoxication means the Authority must consider his evidence unreliable.

31. Of the other persons present at Ms Y’s address that day, the Authority has only been able to contact one. That person heard the commotion when Mr X was being handcuffed but he did not see what happened and did not witness any use of force.
32. The Authority notes a discrepancy in the account of events. Ms Y said Mr X was already in handcuffs when punched by Officer A, and that Officers B and C were not present. Yet, Officers A, B and C all say that the punches occurred in order to apply the handcuffs, with the assistance of Officer B. If Ms Y’s account is correct, then Mr X must have been handcuffed by Officer A alone, before the arrival of Officer B. The Authority thinks it unlikely that this was the case.
33. Given the unreliability of Mr X’s account, the only evidence in support of the allegation that Officer A punched Mr X four times after being handcuffed, is the evidence of Ms Y. Her evidence is not supported by Officers A, B and C and there are no independent witnesses. The Authority notes that Mr X received a cut to his left eyebrow, which is consistent with being punched, but this does not assist in determining the number of punches thrown.
34. The Authority finds on balance that Officer A punched Mr X twice and those punches were before Mr X was handcuffed.

## FINDING ON ISSUE 1

Officer A did not punch Mr X multiple times after being handcuffed.

## ISSUE 2: WAS OFFICER A’S USE OF FORCE REASONABLE IN THE CIRCUMSTANCES?

### Was a level of force required to apprehend Mr X?

35. The Authority is satisfied that Mr X was under arrest when he ran away from Officer X to the rear of the property, and Officer A was justified in using force to effect that arrest if the force was reasonable and necessary.
36. In determining whether Mr X was resisting Officer A, there are conflicting accounts. Ms Y said Mr X was not struggling but *“was just lying there”*. Mr X could not remember any struggle at all, while Officers A, B and C said he was resisting, with Officers A and B describing him as ‘assaultive’ and Officer C as ‘actively resisting’. The Authority is therefore satisfied on balance that Mr X was resisting, and a reasonable degree of force was necessary to handcuff him.

### First punch

37. When the struggle started on the ground Officer A said he yelled at Mr X to put his hands behind his back *“I kept yelling at him to put his hands behind his back, but he wasn’t listening”*. Officer

A said he considered but dismissed the idea of using his pepper spray to control Mr X but decided a punch to Mr X's ribs was a more effective way to have him comply.

38. Section 39 of the Crimes Act 1961 enables Police officers making an arrest to use such force as may be necessary to overcome any force used in resisting the arrest. Given that Mr X was resisting, and Officers B and C were not close enough to assist Officer A, the Authority considers the single punch to the ribs was reasonable and proportionate under the circumstances to overcome his resistance.

### Second punch

39. Officer A told the Authority that he believed Mr X was about to spit on him, so he punched him in the face to prevent that from happening. In other words, Officer A was claiming his actions were in self-defence. The law allows that in appropriate circumstances, pre-emptive uses of force can amount to self-defence.

40. Section 48 of the Crimes Act 1961 states:

*“Everyone is justified in using, in the defence of himself or herself or another, such force as, in the circumstances as he or she believes them to be, it is reasonable to use.”*

41. To rely on this justification for his use of force, Officer A's actions must be assessed on the following three questions:
- What did he believe the circumstances to be when he punched Mr X?
  - In light of that belief, did he punch Mr X for the purpose of defending himself?
  - If he did, was the punch reasonable in the circumstances as he believed them to be?

### What did Officer A believe the circumstances to be at the time he punched Mr X?

42. Officer A believed that:
- Mr X was assaultive;
  - he needed to be handcuffed and restrained;
  - Officers B was nearby, but not yet with him to assist;
  - Mr X was about to spit at him.

### Did Officer A punch Mr X for the purpose of defending himself?

43. Officer A believed he was about to be spat on and said he was acting to prevent that from happening. He was therefore acting for the purpose of defending himself.

### Was the punch reasonable in the circumstances as Officer A believed them to be?

44. In the case of pre-emptive force to prevent Mr X spitting at him, it was reasonable for Officer A to have ensured Mr X could not physically face him to deliver the spit. That required ensuring Mr X's face was averted. In the circumstances confronting Officer A they did not require a punch to the face.
45. Officer A said he followed the punch through with his forearm, pushing and holding Mr X's head away to prevent him from spitting. The Authority accepts this latter manoeuvre was reasonable but does not accept there was a need to precede it with the punch. Officer A could have controlled Mr X's head with his forearm and waited for Officer B who was nearby to help with the handcuffing. Therefore, the Authority finds the second punch was unjustified in the circumstances.

### Police training and practice

46. Police have advised the Authority that the application of pain is a taught method of distraction to enable a person to be controlled and many techniques are available. In relation to striking a person to the face, Police advise officers are taught this method can be used when an officer fears death or grievous bodily harm if it is reasonable and proportionate to the circumstances and there is no less violent means available to defend themselves.
47. Officer A told the Authority that his communication with Mr X had failed and he dismissed the option of using his pepper spray. He therefore decided to use an empty hand tactic<sup>2</sup> and the Authority considers this was appropriate. In relation to Officer A's training, he said he had never been told he could not use empty hand tactics to the face or head as a tactical option.
48. Although the Authority accepts Officer A was acting to defend himself, it does not consider Mr X was presenting the threat of death or grievous bodily harm, and in that context Officer A's punch was unjustified.

### FINDINGS ON ISSUE 2

Mr X was resisting, and a degree of force was necessary to handcuff him.

The first punch (to Mr X's ribs) was reasonable and proportionate in the circumstances.

The second punch (to Mr X's face) was unjustified.

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<sup>2</sup> A use of force option in the Tactical Options Framework which can be used to distract or physically control the subject or to defend yourself or another.

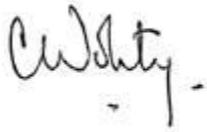
## Conclusions

49. The Authority found:

- 1) Officer A did not punch Mr X multiple times after being handcuffed;
- 2) Mr X was resisting, and a degree of force was necessary to handcuff Mr X;
- 3) The first punch (to Mr X's) ribs was reasonable and proportionate in the circumstances; and
- 4) The second punch (to Mr X's face) was unjustified.

## Subsequent Police Action

50. Police have advised the Authority that work is proposed to ensure the national tactical training manual reflects the risk in applying force to the face, throat and neck areas and that such force must be reasonable and proportionate to the circumstances.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

22 September 2020

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## Appendix – Laws and Policies

### LAW ON USE OF FORCE

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51. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. Specifically, it provides that officers may use *“such force as may be necessary”* to overcome any force used in resisting the law enforcement process unless the process *“can be carried out by reasonable means in a less violent manner.”*
52. Section 40 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force to prevent someone from escaping after being arrested. Officers may use *“such force as may be necessary”* to prevent the escape unless the escape can be prevented *“by reasonable means in a less violent manner.”*
53. Section 48 of the Crimes Act 1961 provides legal justification for any person, including Police officers, to use reasonable force in defence of themselves or another. ‘Legal justification’ in this sense means that this person is not guilty of an offence or liable to any civil proceeding in connection with their use of force.
54. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

### POLICE POLICY ON USE OF FORCE

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55. The Police ‘Use of Force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain or arrest a person, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), OC spray, batons, Police dogs, Tasers and firearms.
56. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR assessment.
57. A key part of an officer’s decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.

58. The policy states that any force must be considered, timely, proportionate and appropriate given the circumstances known at the time. Victim, public and Police safety always take precedence, and every effort must be taken to minimise harm and maximise safety.
59. The authority to use force is derived from the law, not Police policy.

# 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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