

- unlawfully taking a motor vehicle.

Due to his age, Z was referred to Youth Aid.

8. As required, Police notified the Authority of the incident due to Z's hospitalisation following the dog bite. On 9 October 2019, Z's mother, Ms X, also complained to the Authority about a number of matters regarding the pursuit, Z's arrest and his treatment in custody.
9. Ms X believed that Officer C had tried to contact her after the incident and harassed her. From the cell phone number provided by Ms X, the Authority has established that it was Officer C's supervisor who had contacted her to find out how Z was.

Issues examined by the Authority

- Issue 1:** Were Police justified in initiating the pursuit, and did they comply with law and policy during it?
- Issue 2:** Were Police justified in arresting Z?
- Issue 3:** Was the use of force to effect Z's arrest justified?
- Issue 4:** Was Z given timely and appropriate medical assistance after he was bitten by the Police dog?
- Issue 5:** Did Police appropriately notify Ms X of Z's arrest?

The Authority's Findings

10. We found that the use of a Police dog to bite Z was not justified or necessary in the circumstances. The potential offending by Z was not at a level that warranted a Police dog being deployed. The Authority notes that the resulting injury to Z was severe and will have ongoing ramifications for him, especially as he may need skin grafts as he gets older.
11. We also concluded that:
 - 1) The initial decision to signal the Volkswagen to stop was justified. Based on the interpretation of Police policy at the time, the initiation of the pursuit was justified. However, insufficient consideration was given to abandonment as the risk increased due to speed and the manner of driving and it should have been abandoned before it reached the dead-end road.
 - 2) Police were justified in arresting Z under section 214(1)(a)(iii) of the Oranga Tamariki Act 1989.
 - 3) Z's allegation of being punched by Officer A, sworn at, and laughed at is in direct conflict with the accounts of Officers A and C. We prefer the officers' versions of events.

- 4) Z received timely medical assistance at the scene and at the station for his dog bite before being taken to hospital.
- 5) Police appropriately notified Ms X of Z's whereabouts when they took his brother (W, who was also an occupant of the Volkswagen) home. There was no requirement to have a nominated person present during Z's arrest or processing at the station.

Analysis of the Issues

ISSUE 1: WERE POLICE JUSTIFIED IN INITIATING THE PURSUIT, AND DID THEY COMPLY WITH LAW AND POLICE POLICY DURING IT?

12. Principles of the Police 'Fleeing driver' policy are "*fleeing driver incidents will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing*" and "*the fact that a driver is fleeing does not in itself justify a fleeing driver pursuit*". An inquiry phase is preferred over a fleeing driver incident wherever possible.¹
13. The policy also states:

*"the decision to commence, continue, or abandon a fleeing driver pursuit must be continually assessed and reassessed in accordance with the TENR-Operational threat assessment (TENR) risk assessment tool, to ensure the pursuit is resolved as safely and as quickly as possible whilst using the least amount of force".*²
14. At approximately 1.24am Officers A and B responded to a suspected attempted break-in of a Mazda Demio in Sillary Street. The Demio was not taken. However, the officers believed the offenders might be trying to break into other cars nearby.
15. At 1.38am Officers A and B observed the Volkswagen on Grey Street in Hamilton. At the time they believed there were three occupants, and the driver was a male Māori in his early 20s. Officer B checked the Volkswagen's licence plate in the Police database. Although it was registered to a woman in her 50s who lived in Cambridge, it had not been reported as stolen.
16. The officers followed the Volkswagen through several side streets, then activated their lights to get the driver to pull over. The driver did not stop, and Officer A says the Volkswagen sped up to 100kph. Officer A activated the Police car's siren and initiated a pursuit. Officer B radioed the Northern Communications Centre (NorthComms) to advise of the pursuit and acknowledged the pursuit warning from the dispatcher. Officer B provided commentary to NorthComms throughout the pursuit. Officer A can also be heard providing commentary occasionally. When the dispatcher asked for the reason for the pursuit, Officer A said "*it appears to be potentially stolen and we just had that job with three males in the area and it's got three males in it*".

¹ If a fleeing driver is not apprehended at the time of a fleeing driver event, all viable lines of inquiry should be undertaken to identify and hold a fleeing driver accountable. An inquiry phase does not involve urgent duty driving or frontline units actively searching the immediate vicinity for a fleeing vehicle.

² See paragraph 100.

17. The Authority interviewed Z in the presence of Ms X and the family's advocate (Ms V). According to Z, he was followed by Police for approximately 15 seconds before they activated their lights. After the Police car's lights were activated, the other occupants of the Volkswagen were telling him to go faster. He could not recall any detail in relation to the pursuit. He says he did not stop as his friend said he would punch him if he did.
18. Although Y was related to the registered owner of the Volkswagen, the officers did not know this at the time, nor did they know the identities or ages of any of the occupants.
19. Officer A says he used the PA system in the Police car on at least three occasions during the pursuit, directing the driver to pull to the left and stop, and advising that he was under arrest. In response, the occupants made gang signs or "*pulled the fingers*" out of the windows. Officer A took this as an indication that they had heard him.
20. At 1.47am, while the pursuit was ongoing, a dispatcher appears to have called Y to try and obtain contact details for his mother, the registered owner of the Volkswagen. The person the dispatcher spoke to did not provide his name and said that he did not have any contact with his mother. No sirens or other people can be heard in the background to the audio recording of the call, as would be expected if Y had been called during the pursuit. As the dispatcher was unable to establish who she was calling and where that person was, she was unable to pass any information onto the pursuing officers about the occupants of the Volkswagen.
21. During the pursuit, Officer A observed the Volkswagen:
 - fail to give way at an intersection;
 - reach speeds of approximately 120kph on State Highway 1;
 - drive through roadworks (50kph speed limit) at approximately 120kph (see paragraph 28);
 - drive at 150kph in a 100kph zone at the intersection of Airport Road and Mystery Creek Road;
 - fail to give way and move into an oncoming lane;
 - fail to stop at a stop sign and cut a corner; and
 - drive toward Lynd Road (100kph speed limit) at 120kph and fail to give way.
22. Officer A was asked whether in hindsight there was any point at which he thought the pursuit should have been abandoned. He says he did not think there was any unjustified risk based on his Perceived Cumulative Assessment (PCA).³
23. Officer C, a dog handler, joined the pursuit on Mystery Creek Road. He says the ground was wet, but it was not raining; they were on rural roads; he did not see any pedestrians and Z was driving faster than the posted speed limits. However, he says he had no reason to believe they were not justified in pursuing the Volkswagen. He believes the commentary provided was excellent, the

³ See paragraph 107.

pursuit was carried out in the safest manner possible and there was no stage where he thought they should have abandoned it.

24. The pursuit ended after the Volkswagen pulled into a dirt driveway at speed, spun out, stopped close to a deck, and narrowly avoided crashing into a house. Officer A stopped his Police car at a slight angle with the driver's door of the Volkswagen to block any exit from the driver's side but did not make contact with the door.
25. Ms X believes the pursuit should have been abandoned due to the speeds reached, and that Police knew there were teenagers in the car. She says that this was established when the dispatcher called Y. However, as discussed at paragraph 20, the dispatcher may have spoken to Y but did not establish that the person she spoke to was in the fleeing vehicle. There is no evidence to indicate that any information was relayed to Officers A, B or C regarding the identities or ages of the occupants of the Volkswagen during the pursuit.
26. However, Police did know that there were at least three people in the Volkswagen at the start of the pursuit and later revised this to five. The high number of occupants in the Volkswagen should have been an important factor considered when assessing the risks in initiating and continuing the pursuit.
27. At 2.18am, after the pursuit had ended, the dispatcher called Y's mother and established that the Volkswagen, Y and Z were not at her address.
28. As required, Officer A completed a 'Fleeing driver notification' following the pursuit. He said the maximum Police speed recorded was 150kph in a 100kph zone. The pursuit commentary mentions speeds of 80kph in a 60kph zone, 120kph in an 80kph zone, and 90 to 150kph in a 100kph zone. Although Officer A mentioned that the Volkswagen's speed was 120kph near roadworks (in a 50kph zone), the road surface was sealed but not marked. The officers reported there was no other traffic or pedestrians, the road was dry, and they had good visibility. For the most part, they reported Z's manner of driving as good, and that he stayed in his lane.
29. We accept Officer A was justified in attempting to pull the Volkswagen over because of a possible connection to the Sillary Street incident and the possibility that the Volkswagen was stolen. Based on how Police were applying the 'Fleeing driver' policy at the time of this pursuit, we also accept that the initiation of the pursuit was justified. However, with a more risk-averse approach to initiating pursuits now in place, we would no longer expect a pursuit to be initiated based on the potential for similar offending as was involved in this case.
30. We are also of the view that insufficient consideration was given to abandonment once the risks increased due to speed, the manner of driving as outlined at paragraph 21 and the number of occupants in the Volkswagen. The pursuit should have been abandoned before it ended on the dead-end road.

FINDINGS ON ISSUE 1

The initial decision to signal the Volkswagen to stop was justified.

Based on how Police were applying the 'Fleeing driver' policy at the time of this pursuit, the initiation of the pursuit was justified.

Once the pursuit had been initiated, insufficient consideration was given to abandonment once the risks increased due to speed, manner of driving and the number of occupants. The pursuit should have been abandoned before it reached the dead-end road.

ISSUE 2: WERE POLICE JUSTIFIED IN ARRESTING Z?

31. Officers A and B refer to using the PA system in the Police car to tell Z he was under arrest on at least three occasions during the pursuit. Officer A also called out to Z multiple times that he was under arrest as Z fled on foot. When Officer C's dog was tracking Z, Officer C identified himself as a dog handler and called out to Z that he was under arrest.
32. Officer C also advised Z he was under arrest as he apprehended him with the Police dog, and Officer A re-advised Z that he was under arrest as he handcuffed him.
33. Section 214 of the Oranga Tamariki Act 1989 relates to the arrest of a young person without a warrant.⁴ An officer must be satisfied on reasonable grounds that the arrest is necessary for one of a number of purposes, including preventing that child or young person from committing further offences.
34. During the pursuit, Officer B requested NorthComms contact the registered owner of the Volkswagen to find out whether it was stolen. Police records show that Y's mother was contacted at 2.18am, more than 20 minutes after the pursuit ended. She was unaware her car had been taken by Y.
35. As the arresting officer, Officer A completed an 'Arrest of young person' notification and set out the offence reasons as sections 214(1)(a)(ii) and (iii) of the Oranga Tamariki Act. Police had reasonable grounds to suspect Z had committed an offence as he:
 - was believed to be driving a stolen car;
 - had failed to stop when Police activated their lights and siren (and utilised the PA system several times) which is an arrestable offence; and
 - was pursued for 18 minutes over 30kms, then fled from Police on foot, which showed a clear intention to evade Police.

⁴ See paragraph 97.

FINDING ON ISSUE 2

Police were justified in arresting Z under section 214(1)(a)(iii) of the Oranga Tamariki Act 1989.

ISSUE 3: WAS THE USE OF FORCE TO EFFECT Z'S ARREST JUSTIFIED?

36. Section 39 of the Crimes Act 1961 provides that when:

“executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest” Police may use “such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner”.

37. Section 40 provides that Police may use *“such force as may be necessary”* to prevent escape if the offender takes flight in order to avoid arrest, or *“to prevent the escape or rescue”* after their arrest unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner.

38. Police Policy states that the use of any such force must be considered, timely, proportionate, and appropriate given the circumstances known at the time. Excessive force is never justified, and an officer may be criminally liable for using it.

39. The deployment of Police dogs to bite must be justified in law, necessary, reasonable and proportionate. Before releasing a dog, the handler must be satisfied that the use of a dog is justified in the circumstances.

40. Before a dog is deployed to bite a person, the offender must be warned or challenged to surrender. Once challenged, the person must be given reasonable time to comply. A dog handler must have immediate physical or voice control of the dog at all times during a deployment. They must stop their dog as soon as possible after the dog has apprehended a suspect or bitten anyone, and ensure the extent of force used by the dog is kept to the minimum possible.

Z's version of events

41. Z believes he was running for 10 to 15 minutes before Police caught up with him. He says he eventually fell over and could not be bothered getting back up. Officer C arrived first. Z says he did not hear Officer C say anything or call out that he was going to release the dog. He had no warning he was there. The Police dog, who was still on a lead, bit his shoe and was pulling at it. An officer came and *“bowled”* him over and punched his head approximately six times while saying: *“told you to stop, you little c**t”*. He was then bitten by the Police dog.

42. Z says the Police dog was latched onto him for three or four minutes. Officer C was saying *“good boy”* to his dog, and Officer A was watching. Z says he told Officer C to take his dog off *“heaps of times”*, but Officer C just laughed. He did not recall what he was arrested for.

43. Z says he was not given help to walk back to the scene. He did not know how badly he was bitten until afterwards. The back of his leg was the worst, but it was also *“halfway into [his] shin”*. Z

says it took about 20 minutes to get back to the scene. He recalls that as he was being advised of his rights, he “*fainted*” a few times, and “*blacked out and rolled back down the hill*”. He says he was not given help when this happened.

44. When they returned to the scene, Z says he was dizzy and was told to sit on the bonnet of a car. He could not as he was sleepy and tried to lie on it instead. He says he was picked up and put in a chair, and he sat there for about 20 minutes.

Officers’ versions of events

45. Once the Volkswagen came to a stop, Z and Y exited through the front passenger door (because Officer A had blocked the driver’s door).
46. After helping apprehend the four backseat occupants of the Volkswagen, Officer A ran after Z and Y. The sensor lights of the nearby house were triggered and he had his torch, so he could see them running through the paddocks. He yelled at them multiple times to stop, that they were under arrest, and that if they kept running a Police dog would be used to find them. Officer C retrieved and harnessed his dog and commanded him to seek Z and Y.
47. Officer C says that at the time he believed Z may have had instruments used for breaking and entering cars on him, which he could have used as weapons.
48. Officer A fell over multiple times while running after Z and Y and lost his phone. As a result, they gained ground on him. Officer C was slightly behind Officer A. His dog had acquired a scent, and began tracking Z. He came across Officer A who told him Z and Y had entered a creek, so he continued tracking.
49. The dog tracked towards a tree line, through a creek, and over a fence. While Officer C was negotiating the fence, he observed two people running through a paddock. The closest person appeared to be the driver of the Volkswagen, Z. Officer C identified himself as a dog handler, told them they were under arrest and to stop or the Police dog could be used to apprehend them. He says he did so in his “*loudest voice*”, and they would definitely have heard him. However, they both ignored his warning and kept running. Officer C believes there were no more than a few minutes, and definitely fewer than 10, between Z and Y fleeing on foot and the officers catching up with Z. Police records show that the occupants got out of the Volkswagen at approximately 1.53am, and five of them (including Z) had been apprehended by 1.57am. Y was still outstanding at this point.
50. Officer C considered his dog to be the safest tactical option available to him. He believed if Z and Y were not apprehended they would probably engage in further offending to escape. He considered use of the dog reasonable and proportionate under sections 39 and 40 of the Crimes Act. At the time he deployed his dog, his PCA (see paragraph 107) of Z was that he was ‘actively

resistant' because he was running away.⁵ Officer C considered the use of pepper spray but believed Z was too far away for it to be effective.

51. Officer C helped his dog over the fence and let him go, commanding him to apprehend Z.⁶ He saw the dog chase and engage Z on his leg. Z then fell over. Officer C ran over and observed the dog biting Z's calf area. He says it was a single bite, and the dog did not move. Officer C grabbed the dog's harness and, when Officer A arrived shortly afterwards, he deemed it safe to remove the dog. He commanded the dog to 'leave', which he immediately did. Officer C says his dog was engaged for approximately 10 seconds and was under his control throughout the entire incident.
52. Officer C disputes that Z was already on the ground when they caught up to him. He says Z was standing when the dog first engaged, and this caused him to fall over. When he and Officer A arrived, Z was on his stomach with the dog engaged on his leg. The location of the dog bite is consistent with Officer C's previous experience of an offender running away. Z says he was sitting, which is inconsistent with the location of the bite.
53. By the time Officer A caught up to Officer C, Z had been bitten by Officer C's dog and was on the ground. Officer A says this would have been within minutes of the pursuit ending. He believes Officer C was yelling something along the lines of "*stop resisting*".
54. Officer A told Z he was under arrest again, and attempted to secure him in handcuffs. Z had both arms underneath him in a sort of "*press up*" position, and although Officer A told him to put his arms behind his back at least two or three times, he did not. He believes Z was probably yelling at the time, but he could not recall what he was saying. Officer A had to "*physically wrench*" Z's arms out from underneath him to be able to handcuff him. He is unsure how long this took but believes it would have been seconds. Officer C stayed for a minute or two to try and ascertain who the front passenger was, however, Z did not provide any information so Officer C continued tracking Y. Eventually he heard on the Police radio that an officer cordoning the area had located Y on a nearby road. At this point, Officer C returned to the scene where the Volkswagen had stopped.
55. Officers A and C both deny Z was assaulted by anyone, and specifically that Officer A punched Z in the head. They both deny saying "*told you to stop, you little c**t*" to Z, and that Officer C was laughing and praising his dog while Z was being bitten. Officer C refutes that his dog "*mauls*" people and states that he bites people when he is commanded to do so. He could not recall whether he said "*good boy*" after his dog had bitten Z, but says that it is normal for a dog handler to use this phrase when a dog has apprehended someone, as this is a behaviour that it is trained to do.
56. While they were walking back to the scene, Officer A asked Z why he ran and Z responded: "*it's just what happens*". He obtained Z's details and advised him of his youth rights once they returned to the scene.

⁵ According to Police policy, 'active resistance' includes physical actions such as pulling, pushing or running away, that is, "*more than verbal defiance*". See paragraph 108.

⁶ A tracking line was still attached to the dog.

57. Officer A denies putting Z on the bonnet of a car and does not recall anyone else doing so. Officers D and E arrived to offer assistance as Z was being brought back from the paddocks by Officer A. Officer E recalls Z leaning on the bonnet, as opposed to being on it.
58. The varying accounts cannot be reconciled with each other. We prefer the officers' versions of events for two reasons. First, other aspects of the evidence do not support the allegation that Z was punched in the head. In particular, he did not have any of the injuries that might have been expected as a result of heavy blows of that nature and he did not complain he was punched in the head at the time. Secondly, Z's account of the pursuit, his arrest and the medical assistance he received was also incorrect in a number of respects.
59. We have therefore concluded on the balance of probabilities that Z was not punched in the head.

Was the use of the Police dog a justified, necessary and proportionate response in the circumstances?

60. As required, Officer C completed a Tactical Options Report (TOR) following the deployment of his dog.⁷ He relied on sections 39 and 40 of the Crimes Act as justification for his use of force. We find that, although section 39 is not applicable to these circumstances given that Z was not using force to resist arrest at the time the dog was deployed, section 40 does provide a potential justification.
61. In his TOR Officer C stated that prior to deploying his dog, his assessment of Z was that he was actively resistant.⁸
62. Officer C believed Z was running too quickly for him to catch up to, had committed serious driving offences, was likely to re-offend, and had caused a risk to other road users, himself, and his passengers during the pursuit. As Z was the driver of the car, it was more likely he was the one who had taken it rather than one of the passengers. Officer C believed Z was desperate to evade apprehension. He also says that as Z had unlawfully taken a motor vehicle, it was likely he was in possession of instruments for breaking and entering, which could be used as weapons.⁹ Officer C says they had unsuccessfully attempted to communicate with Z on multiple occasions. He believed the deployment of his dog was the safest tactical option at the time and, in any event, he was unable to use other options due to the distance and the fact he was handling his dog.
63. In the Authority's view, section 40 requires that the reasonableness of the force employed be assessed against two factors:
- the seriousness of the suspected offence for which the person is to be apprehended and the public interest in detaining them in order to bring them to justice; and

⁷ An officer is required to complete a TOR when he or she has used a certain level of force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it.

⁸ See paragraph 108.

⁹ An offence under the Crimes Act 1961 with a maximum penalty of seven years' imprisonment.

- the degree and severity of the risk to the public if their escape is not prevented.
64. In this case, the seriousness of the suspected offending was not sufficient to justify the degree of force used. It was only a possibility that Z had been involved in the incident in Sillary Street and only a possibility that the car he was driving was stolen. If he had not been apprehended by the Police dog and continued to flee on foot, the risk to the public in not apprehending him was simply that there was a possibility that he might take another vehicle to escape, although in fact it was Y who originally took the Volkswagen and not Z.
65. We think it was reasonable for Officer C to use his dog to track Z but not to command his dog to bite. Such use of force was disproportionate both to the threat posed by Z and to the public interest in bringing him to justice. While Z's own actions in failing to surrender led to the deployment of the dog, that in itself was not a good enough reason for the use of a type of force that commonly results (and in this case did result) in serious injuries. There were also other lines of inquiry that could have been pursued to apprehend him if he had escaped.

FINDINGS ON ISSUE 3

Z's allegation of being punched by Officer A, sworn at, and laughed at are in direct conflict with the statements of Officers A and C. We prefer the officers' version of events.

Section 39 cannot be relied on to justify the deployment of the Police dog to bite Z in these circumstances.

The deployment of Officer C's dog to bite Z was also not justified or necessary under section 40 of the Crimes Act 1961. The deployment was disproportionate to Z's suspected offending and the risk to the public if he was not apprehended.

ISSUE 4: WAS Z GIVEN TIMELY AND APPROPRIATE MEDICAL ASSISTANCE AFTER HE WAS BITTEN BY THE POLICE DOG?

66. The 'Use of force and Police dogs' policy states: *"People bitten or injured by Police dogs must be given appropriate medical care as soon as practicable"*. In relation to medical attention at the scene following a dog bite incident, dog handlers must: *"provide or direct other staff to provide immediate first aid as necessary in the circumstances"*.
67. In the case of a major injury, a person must be seen by a doctor or at an emergency department as soon as possible. In the case of less serious injuries, a person must be seen by a doctor, paramedic or health professional as soon as practical in the circumstances.
68. The 'People in Police detention' policy requires custody area staff to evaluate a detainee and to call a health professional for advice or assistance if the detainee has been injured.

Z's version of events

69. Z says an ambulance was called to the scene but, as it was taking too long, he was taken to Hamilton Central Police Station. He believes he was the second to last of the Volkswagen's

occupants to leave the scene. He does not recall being asked about his health and wellbeing, or what had happened that night.

70. Z says he sat in a cell for about 20 minutes, then was asked if he could walk to a different room for photos and fingerprints to be taken. He told Police he could not walk because of the dog bite, but was taken into a room and photos and fingerprints were taken. An ambulance officer put a bandage on his leg but did not clean it. He says he was in hospital for a couple of days and needed surgery.
71. Ms X complained that there was a lack of medical assistance for Z, that he was transported to the Police station before getting any medical assistance, that he was allowed to “bleed out” in a cell and that the wound was serious and should have been made a priority. She told us that Z should have been taken straight to hospital. Hospital staff were concerned about Z getting blood poisoning, and he had to be given gas and IV pain relief. He was in hospital for two days and was immobile for three weeks and off school. He will possibly need skin grafts as he gets older.

Officers’ versions of events

72. After Z had been bitten, Officer C told him to keep calm. He does not recall Z being faint or dizzy. He was obviously puffing after running through the paddocks but was conscious and breathing. He did not show any signs, or verbally communicate, that he was unwell.
73. Officer C recalls telling Officer A they would need to organise first aid, and when he returned to the scene, he was told an ambulance was on its way. He says it was apparent immediate first aid was given to Z but he was unsure as to the extent of it.
74. After Z was handcuffed, Officer A was able to stand him up straight away. He saw Z’s leg had been bitten but was unsure of the degree of the injury in the dark. Officer A says he held Z’s right side gently as they returned to the scene, to assist him walking, and prevent him from running. Officer A says it only took a few minutes to return to the scene after Z had been bitten.
75. At the scene Officers D and E administered first aid, and an ambulance was requested. Officer A believes the wound was washed at the scene, but medical treatment was not provided.
76. Officer D described Z as showing “*signs of exhaustion*”, that he was tired and took some time to recover his breath. He recalls an ambulance was requested, although it is unclear who made the request. Officer D examined Z’s wound. He considered that it would need medical attention but did not believe it was life threatening.
77. Officer E says Z was leaning on the bonnet of a Police vehicle saying he felt sick and wanted to throw up but did not. She found Z a chair so his leg could be elevated. This is consistent with Z’s version of events, although Officer E does not refer to him being picked up. Officer E offered to dress the wound; however, Z refused her offer.
78. Officers D and E say once Z had recovered, he complained of pain in his leg, and they observed a small amount of blood running down his leg.

79. Officer F, the custody sergeant, says it would have to be *“pretty extreme”* for them to send someone directly to hospital after a dog bite, rather than going to the station first. He did not receive any information which caused him to think this was necessary in this case.
80. Officer F believes he called the Police doctor at 3.30am, before Z arrived at the station. The doctor advised him to send Z to the hospital once he arrived. Officer F states that when Z was brought to the station his priority was to ensure he received medical attention, and that processing Z was not a priority.
81. Officer F recalls Z being *“a pretty cool customer”*, and saying he was feeling *“all good”*. Officer F says, *“he should’ve been jumping up and down and having a good cry ... it was obviously a nasty injury”*. The wound had been cleaned out *“nicely”* at the scene with water, so he covered and bandaged it.¹⁰ Officer C says he saw Officer F providing Z with first aid prior to the ambulance arriving.
82. Officer F says he advised Z that they would normally take photos and fingerprints and asked if he was up to it. Z jumped up and *“started hopping off”* to be processed. The ambulance arrived while Z was being processed. He believes Z was at the station for no more than an hour.
83. Ambulance records show that an ambulance was called to the scene at 2.16am and was en-route at 2.30am. However, it was diverted to a higher priority incident at 2.47am. Due to the time it was going to take for a second ambulance to get to the scene, Officer F told officers to bring Z to the station to meet it there. A second ambulance was sent to Hamilton Station at 3.51am, arriving at 3.58am.
84. An evaluation of Z completed while he was in custody notes that he had a serious dog bite. We note that Z’s injury was also a *“serious dog bite injury”* as defined by Police policy. It required admission to hospital and notification to the Authority. The severity of the dog bite is also evident from the photographs of Z’s leg provided with the complaint.
85. We find that Z received timely medical assistance (insofar as was possible) at the scene, and at Hamilton Central Police Station. On the balance of probabilities, the Authority considers that Z’s wound was cleaned at the scene and his leg elevated while waiting for an ambulance. The decision to take Z to the station to await the second ambulance was sensible. Z was evaluated while he was in custody, and we accept that his injury was prioritised over processing him. Z’s leg was bandaged by Officer F before ambulance staff arrived, and he was taken to hospital.

FINDING ON ISSUE 4

Z received timely and appropriate medical assistance at the scene and at the station for his dog bite before being taken to hospital.

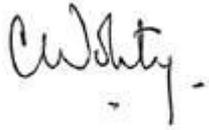
¹⁰ Ambulance records state: *“wound was cleaned by Police at the scene as legs covered with cow dung”*.

ISSUE 5: DID POLICE APPROPRIATELY NOTIFY MS X OF Z'S ARREST?

86. Ms X complained to the Authority that Z was processed by Police and put in a cell without a nominated person being present or her being informed, and that she only found out from her other son W, that Z had been arrested.
87. Ms X says Police arrived at her address at 3.30am with W. However, she says she was not told Z had been arrested or that he had been bitten by a Police dog and would need to be taken to hospital. It was not until she asked W where Z was that he told her Z had been arrested and taken to the Police station. She says she ran after the Police car, and they told her she could collect Z.
88. Ms X says she did not receive a call from Police until 4.30am. She says when she arrived at the hospital Officer B told her Z had a small dog bite.
89. Officer F told us it would be unusual for Police to be able to get hold of family before a young person is brought back to the Police station as the end of a pursuit is usually *"pretty chaotic"*. Police do not normally have a nominated person present when a young person arrives at the station, or while they are being processed. They will do so if they are interviewing the young person, as legally required under the Oranga Tamariki Act 1989. Z was not interviewed while he was at the station. Officer F believes one of the officers notified Z's next of kin of his arrest and the dog bite, and that person must have been told to go straight to the hospital, as they did not turn up at the station.
90. Officer G and another officer took several of the Volkswagen's occupants home. He says he arrived at W's address at 3.28am and spoke to Ms X. He explained to her that Z had been the driver of a vehicle that had fled from Police and he had been bitten by a Police dog. He advised her that Z was going to be transported to Waikato Hospital, and recommended she meet him there. Police records show that Officer G called Ms X's cell phone number at 3.30am, however, he believes that this was put into the Police database by Officer F and related to his contact at the address with Ms X just before 3.30am.
91. There is conflicting evidence about what or when Ms X was advised. Police records show that Z was received at Hamilton Central Police Station at 3.50am on 8 October 2019. Officer G says he spoke to Ms X when he took W home at 3.30am and told her Z had been arrested and been bitten by a Police dog. Ms X says Police did not tell her that Z had been arrested and bitten by a Police dog. Ambulance records show Z arrived at hospital at 4.25am.
92. Given the level of detail he was able to provide, we accept that Officer G told Ms X that Z had been arrested and bitten by a Police dog when he and a colleague took W home.
93. There is no legal or procedural requirement to have a nominated person present when a young person is processed at a station or to advise the next of kin that the young person is being processed. Section 221(2) of the Oranga Tamariki Act does require a nominated person to be present when a young person is being interviewed, but Z was not interviewed.

FINDINGS ON ISSUE 5

Police appropriately notified Ms X that Z had been arrested when W was taken home at about 3.30am. There was no legal or procedural requirement to have a nominated person present during Z's processing at the Police station or to notify his mother that he was being processed.

A handwritten signature in black ink, appearing to read 'C. Doherty'.

Judge Colin Doherty

Chair
Independent Police Conduct Authority

11 May 2021

IPCA: [19-1027]

Appendix – Laws and Policies

LAW

Crimes Act 1961

94. Section 39 of the Crimes Act 1961 provides that when *“executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest”*. Police may use *“such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner”*.
95. Section 40 of the Crimes Act provides that Police may use *“such force as may be necessary”* to *“prevent the escape of that other person”* if they take flight in order to avoid arrest, or *“to prevent the escape or rescue”* after their arrest unless in any such case the escape or rescue can be prevented *“by reasonable means in a less violent manner”*.
96. Under section 62 of the Crimes Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

Oranga Tamariki Act 1989

97. Under section 214 of the Oranga Tamariki Act an officer must be satisfied on reasonable grounds that the arrest of a young person without a warrant is necessary for the purpose of:
 - ensuring the appearance of the child or young person before the court; or
 - preventing that child or young person from committing further offences; or
 - preventing the loss or destruction of evidence relating to an offence committed by the child or young person or an offence that the enforcement officer has reasonable cause to suspect that child or young person of having committed, or preventing interference with any witness in respect of any such offence; and
 - Where the child or young person may be proceeded against by way of summons, that proceeding by way of summons would not achieve that purpose.

POLICY

‘Fleeing driver’ policy

98. The overarching principle of the Police fleeing driver policy is that: *“public and Police employee safety takes precedence over the immediate apprehension of a fleeing driver”*.
99. Additional principles of the policy are:

- an inquiry phase is preferred over a fleeing driver incident wherever possible;
 - fleeing driver incidents will only be commenced and/or continued when the seriousness of the offence and the necessity of immediate apprehension outweigh the risk of pursuing; and
 - the fact that a driver is fleeing does not in itself justify a fleeing driver pursuit.
100. The policy also states that *“the decision to commence, continue, or abandon a fleeing driver pursuit must be continually assessed and reassessed in accordance with the TENR-Operational threat assessment (TENR) risk assessment tool, to ensure the pursuit is resolved as safely and as quickly as possible whilst using the least amount of force”*.
101. It is the responsibility of the lead vehicle driver, or Police passenger, to notify Police Communications as soon as practicable and when it is safe to do so, that a vehicle has failed to stop, the location, direction, fleeing vehicle description, and reason that it is being pursued (failure to stop is not a reason). The pursuit warning given by the dispatcher must be acknowledged.
102. During a pursuit, warning lights and siren must always be activated.
103. Police officers responsible for the fleeing driver communications should provide the Pursuit Controller with timely and uniform situation reports (when safe to do so).
104. Unless there is an immediate threat to public or staff safety, a pursuit must be abandoned if the identity of the offender becomes known, the fleeing driver does not pose an immediate threat to the public or Police, and they can be apprehended later.

‘Use of force’ policy

105. The Police ‘Use of force’ policy provides guidance to Police officers about the use of force. The policy sets out the options available to Police officers when responding to a situation. Police officers have a range of tactical options available to them to help de-escalate a situation, restrain a person, effect an arrest, or otherwise carry out lawful duties. These include communication, mechanical restraints, empty hand techniques (such as physical restraint holds and arm strikes), pepper spray, batons, Police dogs, Tasers, and firearms.
106. 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 (Threat, Exposure, Necessity and Response) assessment.
107. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of people involved; and the potential for de-escalation or escalation. The officer must choose the most reasonable option (use of force), given all the circumstances known to them at the time. This may include information on: the incident type, location and time; the officer and subject’s abilities; emotional state, the

influence of drugs and alcohol, and the presence or proximity of weapons; similar previous experiences; and environmental conditions. Police refer to this assessment as an officer's Perceived Cumulative Assessment (PCA).

108. 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 activity); actively resisting (pull, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat or 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.
109. 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.

Policy regarding use of a Police dog

110. Police dog handlers must consider all tactical options in situations that require use of force. They must consider whether a lesser, more appropriate use of force is available before deploying a Police dog. The law sees little difference between dogs, when used as a means of force, and other methods and tactical options used by Police, such as firearms, Taser and batons.
111. Police officers operating a Police dog are personally responsible for the use of force by the dog. They must be satisfied, before releasing the dog, that the use of force is justified in the circumstances. They must call on the person to desist unless impracticable to do so and ensure that the extent of the force used by the dog is the minimum possible in the circumstances.
112. Police dog handlers must have control of their dog at all times during deployment. Control means that the dog is under immediate physical or voice control and the dog responds to that control.
113. Everyone bitten or injured by a Police dog must be given appropriate medical attention as soon as practicable.

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

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

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

WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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

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

THIS REPORT

This report is the result of the work of a multi-disciplinary team 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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