

# Use of Police dog in Whangārei justified

## Summary of the Incident

1. On 23 April 2021 at 11:40pm, a car failed to stop at an alcohol checkpoint in Whangārei, causing an officer to jump out of the way. After a short pursuit, the man driving the car stopped and ran away. A Police dog handler was called to attend.
2. The dog handler together with his dog tracked the man for a short distance until he was located. Despite being called to give himself up, the man continued to run. The dog handler released his dog, and the man was detained and arrested.
3. The man's identity was confirmed after he was detained, and it was found he had an outstanding warrant for his arrest. He had been on the run for over a year and was wanted by Police for a number of serious offences, including unlawfully possessing a firearm, possessing an offensive weapon, and various drug charges relating to methamphetamine.

## Finding

The use of the Police dog by Officer A in the arrest of Mr X was justified.

## Analysis

### ISSUE: WAS OFFICER A JUSTIFIED IN USING HIS POLICE DOG IN THE ARREST OF MR X?

#### Officer A's account

4. Police dog handler Officer A was called to track a man who had driven a car through an alcohol checkpoint, and who had subsequently left his car and fled.
5. Officer A was told that a Police officer who had attempted to flag the car down had to jump out of the way as the car accelerated through the checkpoint. Officer A told us that the driver's

actions indicated that he may have been wanted by Police or affected by drugs or alcohol, and that he was determined to escape from Police.

6. Officer A considered that, even though he did not know the identity of the man driving the car, he posed a potential threat to members of the public and Police officers while he was still at large.
7. Officer A and his dog tracked the man through paddocks, and occasionally crossed and recrossed a creek. Officer A concluded from the path he was tracking that the person he was pursuing was an experienced criminal, and *“even more dangerous than first thought”*.
8. By now, Officer A had followed the man towards a built-up area, and he was concerned that they would reach an area where many people were present. At that point, Officer A spotted a figure up ahead.
9. Officer A told us that he was *“100% confident”* that the man he had spotted was the same person that he had been tracking from the abandoned car. This was because of the manner in which the dog steadily and strongly tracked, including the times when they crossed paddocks and the dog had to swim in a creek.
10. Officer A shouted: *“Police dog handler! Stay there or I’ll release the dog!”* Despite this, Officer A saw the man continue to move away. As Officer A was concerned that the man would escape, he decided to release his dog.
11. The dog caught the man, biting him on his left forearm. Officer A informed the man he was under arrest, and the dog immediately released its hold after being ordered to do so by Officer A.
12. Officer A advised the Northern Communications Centre that the man had been detained, gave their location, and requested an ambulance to treat the man’s wounds.
13. Officer A identified the arrested man as Mr X, for whom there was a warrant for arrest for numerous offences, including theft, and use of or carrying firearms. Mr X had been on the run since February 2020 and had been featured on the television series Police 10/7 as being wanted by Police.
14. We made several attempts to speak to Mr X to obtain his version of events, but he declined our invitations.

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

15. The Police threat assessment methodology referred to as ‘TENR’ (Threat, Exposure, Necessity, Response) is a decision-making process used by officers when deciding whether to use force. The TENR process states that the use of any such force must be considered, timely, proportionate, and appropriate given the circumstances known at the time. The Police policy on the use of force states that excessive force is never justified, and an officer may be criminally liable for using it.

16. The Police policy states that, before a Police 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 from engaging 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. Any force used must be necessary, reasonable and proportionate.
17. Officer A believed that the man he was pursuing was potentially dangerous because he drove through a checkpoint, risking injury to a Police officer, and that this – and the man’s attempts to evade the tracking – meant that he was likely to be an experienced criminal and potentially dangerous. As the man was nearing a built-up area where many members of the public were likely to be found, Officer A decided that the most appropriate tactical option was to deploy his dog.
18. Officer A completed a Tactical Options Report following the deployment of his dog.<sup>1</sup> He relied on sections 39 and 40 of the Crimes Act 1961 as justification for his use of force.
19. Section 39 justifies the use of force against a person who is using force to resist an arrest or the execution of a lawful process. Mr X was not using force to resist at the time the dog was deployed, so section 39 does not apply. However, section 40 does provide a potential justification.
20. Section 40 provides for Police to use “*such force as may be necessary*” to prevent the escape of someone who “*takes to flight to avoid arrest.*”
21. “*Necessary*” force is force that is reasonable and proportionate in the circumstances. It is also the minimum force needed to achieve the objective, since it will not be justified if the escape could have been “*prevented by reasonable means in a less violent manner*”.
22. The proportionality of the force should be assessed against three factors:
  - 22.1 the seriousness of the offence which the person was reasonably suspected to have committed;
  - 22.2 the likelihood that the absence of immediate apprehension would have impeded or prevented the person from being brought to justice (e.g. because evidence would have been lost or there were no other avenues available to effect apprehension); and
  - 22.3 the likelihood and degree of risk the person posed if escape was not prevented.

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<sup>1</sup> An officer is required to complete a Tactical Options Report 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.

### *The seriousness of Mr X's offences*

23. Mr X had driven through an alcohol checkpoint without stopping, during which a Police officer had needed to jump out of the way as the car accelerated. Quite apart from the potential for this manoeuvre to have crossed the threshold of Mr X driving in a dangerous manner, there was also the question of whether he had intended to harm the Police officer, using his car as a weapon. Thus, Mr X had potentially committed serious offences.<sup>2</sup>
24. Officer A was told of the events at the checkpoint and concluded that the man he was tracking was potentially dangerous.

### *The need for immediate apprehension*

25. Although Police could have made further inquiries based on the car registration number in order to apprehend Mr X (whose identity was as yet unknown), Officer A concluded that – because of Mr X's actions at the checkpoint – he needed to be immediately apprehended.

### *The likelihood and degree of risk Mr X posed*

26. Officer A said he believed that he was tracking a person who was an experienced and potentially dangerous person capable of harming members of the public or other Police officers in his attempt to evade arrest. This belief was based on what Officer A had been told of Mr X evading Police at the alcohol checkpoint, and Mr X's actions while being tracked.
27. While we accept Mr X was subsequently found to be wanted by Police for serious offences, Officer A did not know his identity at the time the Police dog was released. His actions must therefore be assessed in the light of what he knew or reasonably suspected, not facts that have subsequently come to light.

### **Conclusion**

28. In assessing the justification for the use of force, of key importance is what Officer A reasonably believed the circumstances to be, based on what he had been told and observed. That he had been informed of the incident at the alcohol checkpoint is significant.
29. We find that the seriousness of Mr X's actions in driving at speed through an alcohol checkpoint, requiring an officer to take evasive action, necessitated Mr X's immediate apprehension. We also find that it was reasonable for Officer A to believe that Mr X posed an immediate risk to others, based on what he was told of the events at the checkpoint, and his own experience as a dog handler as he tracked Mr X.

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<sup>2</sup> Section 202C of the Crimes Act 1961 states that a person is liable to imprisonment for a term not exceeding 5 years who in assaulting any person, uses anything (in this case, a car) as a weapon. Section 36(1)(b) of the Land Transport Act 1998 states that a person commits an offence if the person drives or causes a motor vehicle to be driven at a speed or in a manner which, having regard to all the circumstances, is or might be dangerous to the public or to a person and by that act or omission causes an injury to another person.

30. Accordingly, Officer A was justified in deploying his Police dog under section 40 of the Crimes Act 1962.

## FINDING

The use of the Police dog by Officer A in the arrest of Mr X was justified.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

14 June 2022

**IPCA: 21-7462**

## Appendix – Laws and Policies

### POLICY

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#### 'Use of force' policy

31. 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.
32. 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.
33. 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).
34. 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.
35. 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

36. 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.

37. 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.
38. 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.
39. Everyone bitten or injured by a Police dog must be given appropriate medical attention as soon as practicable.

### Crimes Act 1961

40. 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”*.
41. 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”*.
42. 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.

# 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.

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?

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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

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