



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

# Use of force on youth in Auckland justified

1. On 30 May 2022, a Police officer in Auckland arrested a 17-year-old youth (Mr X) who claimed that the officer tackled him causing abrasions to his face and injuries to two vertebrae in his lower spine; one was fractured and the other dislocated.
2. Ms Y (a relative) complained to us about Mr X's arrest, saying that:
  - He was 'spear-tackled' down a steep hill.
  - The officer accused Mr X of lying, when he told the officer his back was injured, and
  - the officer forced his knee into Mr X's injured back.
3. Mr X and a friend had earlier tried to steal a motor scooter in Karangahape Road, Auckland Central. A witness in a nearby building phoned Police and gave them a description of the youths' clothing.
4. A witness near the motor scooter told the youths that she was going to phone Police (she did not). This caused them to run away from the scene of the attempted theft.
5. Officer A was off-duty and dressed in civilian clothes. He was driving a marked Police car on Hopetoun Street. He saw two males crossing the road in front of him. Officer A heard the description of the males over the Police radio and was told that they had just tried to steal a motor scooter.
6. He followed the youths as they ran down Greys Avenue. Officer A got out of his patrol car and ran after Mr X. He caught up to Mr X and grabbed hold of his shoulders. Officer A says they both lost their footing and fell to the ground, and he fell onto Mr X's back.
7. Officer A informed the Northern Communications Centre (NorthComms) of the arrest and asked for an ambulance to be called as Mr X had injured his back. Officers B and C arrived soon thereafter and took custody of Mr X.

8. Officers B and C were told by NorthComms that ambulance staff were busy, and that there would be a delay in an ambulance attending. Mr X did not want to wait and asked the officers to take him to the hospital, which they did.
9. Mr X underwent surgery to stabilise the vertebrae in his lower spine. After his surgery, he discharged himself from hospital against the advice of medical staff.
10. Police notified Mr X's whanau and his Oranga Tamariki social worker of his arrest. He was subsequently given a written warning for the attempted theft and referred to Youth Aid.

## The Authority's Findings

### Issue 1: Was the force used to arrest Mr X justified?

Officer A was justified in using the force he did to arrest Mr X.

### Issue 2: Did Officer A force his knee into Mr X's back?

Officer A did not fall with, or force, his knee into Mr X's back.

### Issue 3: Should Officers B and C have transported Mr X to hospital?

It was reasonable, in the circumstances as they were, for the officers to take Mr X to the hospital.

## Analysis of the Issues

### ISSUE 1: WAS THE FORCE USED TO ARREST MR X JUSTIFIED?

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#### What does Mr X say about the force used to arrest him?

11. Mr X told us that he and a friend tried to steal a motor scooter in Karangahape Road and that they ran away after being confronted by members of the public.
12. Mr X noticed an unknown Pakeha man in civilian clothes (Officer A) running after him. He initially tried to hide behind a pillar, in front of a hotel on Greys Avenue. He saw the man, whom he describes as a "big fella", running towards him. Officer A is of a medium but sturdily build, and Mr X is small and of thin build. Mr X abandoned his attempt to hide and ran further down Greys Avenue.
13. Mr X says that the man did not identify himself as a Police officer. While running away, the man 'spear tackled' him from behind. In explaining what he means by a 'spear tackle'; Mr X says that the man dived at him from behind with his shoulder impacting the right-hand side of his back. Mr X says the man had one arm around his waist and one hand on his shoulder as he tackled him. They both fell to the ground; Mr X landed on his stomach and the man landed on Mr X's

back. According to Mr X they slid over the concrete footpath, with the man pushing his head into the footpath.

14. When they came to a stop, the man told him he was under arrest. Mr X says this is when he learned that the man was a Police officer.

#### What does Officer A say about the force used to arrest Mr X?

15. Given the youth's matching clothing descriptions, and his close proximity to the scene of the attempted theft, Officer A believed that they were the same persons described by NorthComms.
16. Officer A describes them as young looking but says he could not specifically tell that they were youths.
17. Officer A believed that he had just come across offenders that Police were looking for, and although he was off duty, he was driving a marked Police car and believes he had a duty to try and apprehend them. According to policy, off duty officers may still take lawful actions where it is necessary and appropriate for them to do so. We agree that it was appropriate for Officer A to try and arrest the youths, who were, after all, right in front of him.
18. Officer A saw the youths running down the road. He briefly switched on his car's siren and flashing lights to warn them to stop. Officer A says both of them turned around and looked at him; and after seeing him, they sprinted away at increased speed. Officer A saw the youths taking off and discarding clothing, as they ran. He followed them into Greys Avenue where he stopped and got out of his patrol car. Officer A started running after Mr X. It is unknown where Mr X's friend had run to, or who he was.
19. According to Officer A, he yelled at Mr X: *"Stop! Police! You're under arrest!"* but Mr X did not stop. Officer A recalls that he had to run at full speed to catch up to Mr X, he placed his hands on Mr X's shoulders to grab hold of him. This is when he noticed Mr X had a screwdriver in one hand and a metallic object (later identified as pliers) in the other. Officer A says that due to the momentum of running at full speed and downhill, both he and Mr X lost their footing and fell forwards and onto the ground.
20. Officer A recalls Mr X falling with his face to the ground and landing on his stomach. Officer A remembers falling on top of Mr X's back and being flung, or bounced-off, due to the momentum of the fall.
21. Greys Avenue has a relatively steep gradient. Officer A considered that it would have been dangerous, for both of them, if he tackled Mr X down that steep decline, and on a hard surface. Officer A insists that the only force he used was to grab hold of Mr X's shoulders with the intention to stop him from running away. According to Officer A, the fall was an accident and unintended.

## What do the witnesses say about the force used to arrest Mr X?

### Mr W's account

22. Mr W was walking up the hill on Greys Avenue, towards where Mr X was arrested. He was about 190 metres away from him.
23. Mr W heard shouting in front of him and looked up. He saw Mr X running from the road, crossing the concrete footpath, and being tackled on it. Mr W describes the tackle as forceful in that it moved Mr X from one position on the footpath to a different position. He doesn't recall much about the position of the persons when the tackle took place, but he thinks Mr X was tackled around his mid-section.
24. When asked if it was possible that Officer A grabbed hold of Mr X and they fell to the ground because they lost their footing, Mr W said he did not think so: *"It did not look like (Mr X) was being pulled down, it looked like (Mr X) was rather being pushed."* Mr W accepts that this all happened quite far ahead of him.

### Mr V's account

25. Mr V was a construction worker on the sixth floor of a building next to Greys Avenue; opposite from where Mr X was arrested. He was about 40 metres away and looked down at what happened.
26. Mr V noticed Officer A's patrol car coming to a stop on Greys Avenue and the officer getting out. He recalls Officer A and Mr X standing and looking at each other before Mr X started running down the hill. Mr X got to a hotel and tried to hide behind a pillar in front of it. The officer saw Mr X, who started running down the hill again. Mr V heard Officer A yelling and shouting at Mr X but did not hear what exactly he was yelling.
27. According to Mr V, Mr X was initially a lot further ahead of Officer A. During the pursuit, Officer A managed to quickly catch up to Mr X. The officer made a leaping tackle, *"almost like a rugby kind of dive tackle from behind."* According to Mr V, the officer impacted the upper torso of Mr X's back, below his shoulder line. He recalls they both, *"went over face-first"* and the officer landing on Mr X's back.
28. When asked if it was possible that Officer A grabbed hold of Mr X's shoulders and they both fell forward to the ground Mr V said: *"Potentially, from what I could tell it looked more like a tackle, but I wouldn't have been surprised as well, if it had been more of a collision, as the officer was definitely running a lot faster than the young male."*

### Mr U's account

29. Mr U was at the entrance of the construction site on Greys Avenue, opposite the road from where Mr X was arrested. He was about 20 metres away from Mr X.
30. Mr U did not agree to an interview with us but spoke to Police about what he saw. Mr U told Police that he heard a shriek coming from across the road and he looked up to see Mr X being

tackled by Officer A. He described Officer A grabbing hold of Mr X by the shoulders and pulling him backwards. He recalls that it occurred at high speed and that the ground was wet. Mr U described the tackle as a 'slide tackle' where Officer A pulled Mr X backwards but slid as he was doing so, taking Mr X to the ground in the process.

### Legal analysis

31. The law empowers Police to use "such force as may be necessary" to prevent the escape of someone who takes to flight in order to avoid arrest.<sup>1</sup>
32. Section 40 is a wholly objective test. This means that, if the officer believed that Mr X was fleeing to avoid arrest, we must determine both whether that belief was reasonable and whether the force used to prevent the escape was reasonable.

### *Did Officer A believe on reasonable grounds that Mr X was fleeing to avoid arrest?*

33. Even though Officer A was in civilian clothes, we do not believe that Mr X was unaware that he was a Police officer.
34. Officer A told us that he used his Police patrol car's siren to signal the men to stop and that they noticed him when he did so. It is more likely than not, that an officer would indicate for someone to stop before undertaking the effort of a foot pursuit.
35. Officer A told us that he stopped his patrol car with its flashing lights switched on, on Greys Avenue. According to Mr V, when Officer A got out of the patrol car, Mr X looked at him before running away again. In these circumstances (i.e., Mr X fleeing after attempting to steal property), it is very unlikely that he would not have noticed the marked patrol car with its flashing lights on.
36. Officer A also says that he yelled: "*Stop! Police! You're under arrest!*" This is normal practice and to be expected when an officer is in pursuit of someone. Mr V and Mr W both heard yelling; Mr V specifically heard Officer A yelling at Mr X. It is likely that this is what he heard.
37. On balance, we believe Mr X knew that the person who was running after him was a Police officer.
38. Mr X admitted that he removed clothing as he was running away, saying: "*I took off one jumper and then I threw it...*" This supports our belief that Mr X knew the person pursuing him was a Police officer. Officer A thought Mr X did this to try and disguise his appearance to evade arrest.
39. Mr X says he hid behind a pillar because he thought he would get away by hiding. When he was discovered, he again started running away. Mr X told us that he did not throw away the screwdriver and pliers as he ran, because he thought: "*I would get away while I was running... I would have got me a car to get away, I thought I would lose somebody who was behind me, but then I didn't...*"

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<sup>1</sup> Section 40 of the Crimes Act 1961, see appendix paragraph 79.

40. We conclude that Officer A reasonably thought that Mr X was fleeing to avoid arrest.

*Was Officer A's use of force to prevent Mr X's escape, reasonable and proportionate in the circumstances?*

41. In describing how he was tackled; Mr X says that Officer A dove from behind him to tackle him and that he had one arm around his mid-section. Officer A sustained slight scrape injuries to the skin of his left hand during the tackle. A photo of this injury was taken by Officer D soon after the arrest. Officer A told us that he injured his hand as it slightly moved off Mr X's shoulder to his chest area when he lost his footing and fell forward.
42. If Officer A's shoulder impacted the right-side of Mr X's back, as Mr X described, then Officer A's right hand would likely have been around his middle, and his left hand on his shoulder (it would have been very unnatural for the officer to have had his hands in the reverse position). If Officer A had his right arm around Mr X's middle, he should have sustained scrape injuries to his right hand and arm, which he did not.
43. Mr X also told us that he was running away from Officer A when he was tackled. The witnesses did not say that they saw Mr X looking behind him when he was tackled. We think it is unlikely that Mr X would do so, given his intent to get away from the threat of a "big fella" running close behind him. Mr X's description of how the tackle occurred appears to be based on what he presumes to have happened, rather on what he actually saw.
44. The witnesses each gave a different description of how the supposed tackle occurred. We have to also consider that the witnesses we spoke to, each expressed uncertainty about what they saw, or could still remember about the tackle. We note Mr W was a considerable distance from the incident.
45. Officer A was told of the witnesses' accounts contradicting his own, in response he said: *"I don't think the witnesses are lying about what they saw. I think they're being helpful and I'm very glad, happy they gave accounts of what'd happened... (I have) given my statement and I believe that this is a truthful account, in my eyes, of what'd occurred."*
46. Two witnesses independently mentioned that the ground was wet on that day. Both Mr X and Officer A ran down a steep hill and at high speed. It is therefore plausible that Officer A, or Mr X, or both lost their footing, resulting in the fall as acknowledged by Mr W and Mr U.
47. Given Officer A's risk assessment about the danger of tackling someone in the particular circumstances, we believe that he did not intend to tackle Mr X. Officer A presented as credible during the interview and we accept his account that the fall was an unfortunate and unforeseen accident rather than a deliberate tackle.
48. The force Officer A used to apprehend Mr X is more likely to have consisted of him grabbing hold of Mr X's shoulders to stop him. We think this force is entirely reasonable and proportionate in the circumstances at play here.

## FINDING ON ISSUE 1

Officer A was justified in using the force he did to arrest Mr X.

## ISSUE 2: DID OFFICER A FORCE HIS KNEE INTO MR X'S BACK?

### What does Mr X say happened?

49. Mr X says his back immediately felt sore when they fell onto the ground, and he yelled: *"My back! My back!"* He specifically told Officer A that he hurt his back, and thought it was broken.
50. Mr X says that Officer A told him to stop lying and he dropped his knee onto the middle of his back, on top of his spine, where the broken vertebrae were located. He says Officer A then forced his knee into his back, moving it from side to side as he did so.
51. Mr X says he again told the officer that his back was hurt but Officer A again dropped his knee onto his back several more times. He thinks Officer A did this about four times.
52. Mr X says that Officer A still had his knee on his back when Officers B and C arrived saying: *"Yeah, he was still on my back, and then he told them: 'Yeah can youse take it from here?'"*
53. Mr X says that the officers laughed at him, and that Officers B and C also did not believe him about his back injury. He says that they handcuffed his hands behind his back as he was lying on the ground. Mr X says that Police did not want to call an ambulance for him because they did not believe he had a back injury, he had to plead with them to do so.

### What does Officer A say happened?

54. According to Officer A, at no time did he place his knee on Mr X's back.
55. After they fell to the ground, he got up and knelt with his right knee on the ground, next to Mr X. Officer A says he grabbed hold of one of Mr X's arms to restrain him with an armbar. This is a trained technique officers use to restrain someone. Officer A says he moved Mr X's arm behind his back, holding him by the wrist.
56. According to Officer A, Mr X started to move and said that he suffered from asthma. He noticed that Mr X seemed to be in pain, and he released his arm and told him to stay lying on the ground. Several members of the public approached and started to gather around them. Officer A borrowed a phone from a construction worker (Mr U) and contacted NorthComms to tell them of the arrest. Officer A says that Mr X first complained of a back injury during this call to NorthComms. Officer A relayed the information about Mr X's injuries to NorthComms and asked for an ambulance to be called.

### What do the witnesses say happened?

57. Mr W or V do not recall seeing Officer A falling, or kneeling, with his knee on Mr X's back. Mr U also did not describe this to Police.
58. Both Officers B and C told us that when they arrived, Mr X was lying on the ground. There was no one else next to him. Officer A was standing about 10 metres away from where Mr X was lying.
59. We have listened to a recording of Officer A's phone call to NorthComms; Officer A appears genuinely concerned for Mr X's wellbeing. He told the operator to call an ambulance as Mr X was in pain and might have hurt his back. Officer A tried to reassure Mr X that an ambulance had been called, saying: *"Okay, don't worry an ambulance will come soon, okay?"* The operator specifically asks Officer A if he has Mr X pinned to the ground; the officer responded saying: *"No I'm not pinning him, he's in pain... he says he can't feel his head."*
60. Officer A denied that he laughed at Mr X saying that to the contrary he was very concerned with his injuries. It is evident, from listening to this call, that Officer A was serious about Mr X's wellbeing. Officer A thinks that some of the construction workers who had gathered around Mr X might have laughed at him, and that Mr X is confused about who was laughing.
61. The evidence does not support Mr X's claim that Officer A forced his knee into his back. Mr X is mistaken about Police not wanting to phone an ambulance for him when Officer A can be heard reassuring him that an ambulance was on the way. Officers B and C further contradict Mr X's evidence where he says they arrived with Officer A still kneeling on his back. Officers B and C do not personally know Officer A, and we have no reason to think they are not telling the truth about what they saw when they arrived.
62. We prefer the evidence of Officer A and accept that he did not fall with his knee onto Mr X's back.

### FINDING ON ISSUE 2

Officer A did not fall with, or force, his knee into Mr X's back.

### ISSUE 3: SHOULD OFFICERS B AND C HAVE TRANSPORTED MR X TO HOSPITAL?

63. Officer A reported to NorthComms that Mr X had pain coming from his tailbone, and the bottom of his spine, and that he could not feel his head. Police records show that this information was passed on to ambulance staff. The records also show that there were significant delays in the response times of ambulance staff.

### Mr X's account

64. Mr X told us that he was on the ground for about two hours, waiting for an ambulance to arrive. He eventually asked the officers if they could take him to hospital. Mr X says the officers tried to



stand him up, but he was shaking and could not stand. He told the officers he was unable to move. They told him to stop pretending and insisted they were going to move him.

65. Mr X says the officers picked him up by his arms and threw him into the back of the patrol car. Mr X says that his hands were handcuffed behind his back, and he could not sit up properly. He asked the officers to reapply the handcuffs to the front of his body, but they refused. In response, one of the officers pushed him to the side, and he laid in that position on the way to the hospital.
66. According to Mr X, the officers were, *“just getting smart and laughing at me, yeah, saying: ‘Hahaha, stop lying bro!’”* He recalls the patrol car driving from side-to-side causing him to move around on the back seat.

### Police’s account

67. According to Officer C, when they arrived, Mr X told him that he injured his back and that he was in pain. He told Mr X to try and stop moving, as he was rolling from side-to-side, and to try and keep still until the ambulance arrived.
68. Officer B told us that they were told that it could be up to four hours before an ambulance could attend to Mr X. He was concerned as it was cold, and Mr X was lying, without a shirt on, on top of the concrete footpath.
69. Mr X was told about the delay in ambulances attending and he told the officers that he was not going to wait; he needed to get to the hospital immediately. Mr X insisted that Officers A and B take him to the hospital themselves.
70. Officer B says Police could not do anything to get an ambulance to attend sooner. In his experience Police routinely have to transport people to hospital when there are delays with ambulance attendances. Officer B says that he was aware it could be dangerous to move Mr X in light of his back injury.
71. Officer B asked Mr X if he was able to walk and he said that with some assistance he could. According to Officer B, this eased his concern somewhat about the seriousness of Mr X’s injury. Senior Police staff present also agreed that Officers B and C should take Mr X to the hospital if he was able to move safely.
72. Officer B gave his hand to Mr X, who carefully pulled himself up. Both officers supported Mr X as he carefully walked to the patrol car. At the time, Mr X was also wanted on a warrant to arrest for escaping from lawful custody. Officer B decided to handcuff Mr X, but says he carefully handcuffed his hands to the front of his body. He then drove Mr X to the hospital, avoiding bumps in the road and keeping the acceleration and breaking of the car as smooth as possible to keep Mr X still.
73. Officer C sat in the rear of the patrol car with Mr X, and also said that the drive to the hospital was careful and uneventful.

## Analysis

74. The officers and Mr X gave conflicting accounts about how he was handled and taken to the hospital.
75. Officer D who arrived after Officers B and C, independently told us that he heard Mr X telling Officer C that his back was hurt; and in response, Officer C asked him to try and keep still and assured him that an ambulance was on the way.
76. Officer D's evidence indicates that the officers did not think Mr X was lying about his injuries, nor were they minimising the situation. We do not believe that Officers B and C, knowing that Mr X was in pain from a possible back injury, would carelessly handle, or treat him in a way that could worsen his injuries. We also find it unlikely that they would do so with senior Police staff present.
77. Police records show that Officer A arrested Mr X at about 3.32pm; and Officers B and C took him to the hospital at about 4.05pm. Mr X was therefore not lying on the ground for two hours as he believes.
78. Although it is not ideal for a person with a back injury to be moved, the circumstances were such that Mr X could not be left exposed, and in pain, for an extended period of time. On balance of the available evidence, Mr X asked to be taken to the hospital, and the officers acted reasonably to facilitate this.

### FINDING ON ISSUE 3

It was reasonable, in the circumstances as they were, for the officers to take Mr X to the hospital.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

**7 March 2023**

22-13790

## Appendix – Laws and Policies

INSERT ANY RELEVANT POLICY

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79. Section 40 of the Crimes Act 1961.

(1) Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification, or protection, as the case may be, shall extend and apply to the use of such force as may be necessary –

(a) to prevent the escape of that other person if he or she takes to flight in order to avoid arrest; or

(b) to prevent the escape or rescue of that other person after his or her arrest –

unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner: provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this subsection shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

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## 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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