

# Auckland man bitten by Police dog

## OUTLINE OF EVENTS

1. On 9 November 2018, two teams of Armed Offenders Squad (AOS) officers executed a search warrant at a commercial workshop in Penrose, Auckland.
2. Police were looking for Mr X, who was believed to be involved in the manufacture and supply of methamphetamine. Mr X had a significant criminal history, gang affiliations, ready access to firearms and outstanding warrants for his arrest.
3. Officers arrived unannounced at the workshop in unmarked vehicles and used their vehicles to block the front and side driveways to the property. The officers were wearing black overalls labelled 'Police', helmets and gasmasks due to the potential presence of dangerous chemicals. They planned to secure the workshop and arrest Mr X.
4. During the execution of the search warrant, officers encountered a workshop employee (Mr Z) who appeared to be calling out to warn others. Police therefore sought to remove Mr Z from the scene.
5. Mr Z resisted the officers who were attempting to handcuff him and remove him from the workshop. As he struggled, Mr Z fell to the ground and curled up his body, preventing access to his hands. Police used a Police dog to bite down on Mr Z's leg and pull it away from his body, which enabled officers to seize Mr Z's hands and attach handcuffs. The officers' interaction with Mr Z was captured on CCTV footage.
6. Once handcuffed, Mr Z was taken from the property to a safe area. He was attended to by a paramedic and then transported to hospital for assessment and treatment of the bite wound.
7. Mr Z complained to the Authority about Police actions and the use of the Police dog when detaining him. He stated that he was already on the ground and handcuffed when the dog was set on him. He said that he received a number of bites on his leg from the Police dog as it was put on and pulled off several times and he has suffered a serious injury that required medical care.

## THE AUTHORITY'S INVESTIGATION

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8. The Authority conducted an independent investigation into Police actions during the execution of the search warrant. As part of its investigation the Authority viewed the CCTV footage of the incident and reviewed all relevant documents.
9. The Authority interviewed Officers A, B and C, together with the Forward AOS Commander and the Operation Commander. The Authority also spoke directly with Mr Z about the incident.
10. The Authority identified and considered the following issues:
  - 1) whether the arrest/detention of Mr Z was justified;
  - 2) whether the use of force (dog bite) was a proportionate response by Police; and
  - 3) whether Police provided appropriate aftercare to Mr Z.

## THE AUTHORITY'S FINDINGS

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### Issue 1: Was the arrest/detention of Mr Z justified?

11. Officers executing a search warrant have the power to detain people in order to ascertain their involvement in the object of the search.<sup>1</sup> If a person does not comply with officers' instructions, they can be arrested for obstruction.
12. In addition, Police may arrest a person if they have "good cause to suspect" that they have committed an offence punishable by imprisonment.<sup>2</sup> The offence of obstruction is punishable by a term of imprisonment of up to three months.<sup>3</sup>
13. When Police drove onto the front driveway, Mr Z was in the process of moving a car from the driveway into the workshop space. Officers quickly got out of the unmarked van and moved towards Mr Z to stop him and remove him from the area.
14. Mr Z refused to comply with the officers' instructions. He called out to his boss and, when officers tried to physically remove him from the property, he wrestled with them, attempting to free himself. The struggle led the group to fall to the ground on the front driveway. Mr Z then curled up, preventing access to his hands so the officers could not apply handcuffs.
15. Mr Z said that he did not know what was happening and panicked when he was yelled at by armed men. He did not initially realise the men were Police officers and said that when he called out to his boss, he was calling for help.
16. Mr Z's actions made it difficult for some officers to quickly enter the workshop, search for Mr X and arrest him if he was there. It may not have been Mr Z's intention, however his actions in

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<sup>1</sup> Search and Surveillance Act 2012, section 118.

<sup>2</sup> Crimes Act 1961, section 315.

<sup>3</sup> Summary Offences Act 1981, section 23.

calling out to his boss provided a warning to him and others inside the workshop. In addition, Mr Z's resistance meant three officers had to concentrate on him and prevented them from securing the front area of the workshop.

17. Officer A stated that because of Mr Z's resistance he initially intended to arrest Mr Z for obstruction.
18. He told Mr Z that he was under arrest when attempting to handcuff him. However, Officer A stated that because of the dynamic nature of the situation, he did not advise Mr Z of his rights or complete the arrest process.
19. Officer C also stated in his interview that when witnessing Mr Z struggling with Officers A and B, he warned Mr Z, saying, *"Stop, stop fighting, roll over and put your hands behind your back, you're under arrest."*
20. The intention of the officers at the time was clearly to arrest Mr Z for obstructing Police from executing their duties, in this case from searching the premises and apprehending Mr X.
21. However, once Mr Z was removed from the property and searched and his behaviour was more controlled, Officer A decided that arrest was not the appropriate measure and instead only detained Mr Z under section 118 of the Search and Surveillance Act 2012 for the purpose of determining his connection to the object of the search warrant.
22. Mr Z's actions (calling to his boss and resisting officers) obstructed the officers' ability to control the scene and execute the search warrant. Therefore, the Authority finds that the detention of Mr Z by Police was lawful and justified in the circumstances.

## FINDING ON ISSUE 1

The detention of Mr Z was lawful and justified.

### Issue 2: Was the use of the Police dog a proportionate response in the circumstances?

23. Officers executing a search warrant may use reasonable force to detain a person during a search.<sup>4</sup> They may also use reasonable force in the execution of their duties, such as arrests.<sup>5</sup>
24. Police dogs may be used to assist officers to apprehend offenders who cannot be apprehended by less violent means. If practicable, the person should be warned and given time to comply with Police instructions before the dog is released.<sup>6</sup>
25. Officer C had seen Officers A and B attempt to escort Mr Z from the premises and had heard Mr Z call out, although he did not clearly hear what he said.
26. While Officers A and B were attempting to handcuff Mr Z, Officer C heard through his earpiece that Mr X was at large in the workshop and carrying a weapon. As the upstairs of the building

<sup>4</sup> Search & Surveillance Act 2012, section 118.

<sup>5</sup> Crimes Act 1961, section 39.

<sup>6</sup> The relevant policy is set out on page 7.

overlooked the front driveway, Officer C felt that Mr X could potentially be a threat to the officers attempting to remove Mr Z, and to Mr Z himself.

27. Officer C's assessment of the situation included the fact that Mr Z was resisting; the two officers trying to handcuff him were struggling to get the handcuffs on; he knew the workshop was not secure with potentially armed people inside; he had seen someone running inside the building and had just heard a colleague call out "*he's got a gun.*" He decided that Mr Z needed to quickly be brought under control.
28. As in paragraph 19 above, Officer C said that he warned Mr Z to stop resisting and to cooperate. He also noted in his Tactical Options Report that he instructed Mr Z to lay face down on the ground and to stop fighting or he would release the Police dog. Officers A and B and Mr Z have said that they did not hear the warning given by Officer C. At the time the warning was given, the group was struggling on the ground, Officers A and B were wearing helmets and gasmasks and Officer C was wearing a balaclava which covered his mouth.
29. When Mr Z continued to resist, Officer C commanded his dog to bite Mr Z's leg. With the dog latched on, Officer C was able to pull the dog back on his lead, which had the effect of stretching Mr Z's leg out. According to Officer C and the other two officers, the dog bite distracted Mr Z temporarily and this enabled Officers A and B to gain control and apply the handcuffs. Once Mr Z was handcuffed, the dog was removed.
30. Although Mr Z believes that he was subjected to multiple bites from the Police dog, CCTV footage shows the dog bit Mr Z once and the bite lasted for approximately 12 seconds. It took this long for officers to ensure that Mr Z was secured.
31. Officer A then quickly led Mr Z away from the property to a safe area.
32. The Authority accepts that the situation was dangerous, and that time was of the essence. Officers were in a vulnerable position with a potentially armed offender at large in a building which may have contained dangerous chemicals. The situation needed to be resolved promptly and Mr Z was not complying with officers' requests.
33. The Authority finds that it was reasonable for Officer C to use the Police dog to apprehend Mr Z because his continued resistance posed a threat to officers and he needed to be brought under control as soon as possible. The use of the Police dog complied with law and Police policy.

## FINDING ON ISSUE 2

Officer C's use of the Police dog was reasonable in the circumstances.

## Issue 3: Did Police provide appropriate aftercare to Mr Z?

34. Once Mr Z was secured and the dog removed, he was escorted from the front of the workshop around the corner to a safe location.
35. Mr Z received several deep puncture wounds to his lower leg from the dog bite.

36. First aid was provided to Mr Z and the wounds on his leg were dressed before he was transferred to the custody of another officer.
37. Mr Z was then taken by ambulance to Middlemore Hospital for treatment and released the same day.

### FINDING ON ISSUE 3

Police provided Mr Z with appropriate and timely medical care after receiving the dog bite.

### CONCLUSIONS

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38. The Authority concluded that Police were justified in using a Police dog to apprehend Mr Z because his continued resistance posed a threat to officers and he needed to be brought under control as soon as possible.
39. The Authority has also determined that:
  - 1) Police had lawful justification to detain Mr Z during the execution of the warrant; and
  - 2) Mr Z was provided with timely and appropriate medical assistance.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

19 November 2019

**IPCA: 18-0936**

### Search and Surveillance Act 2012

40. Section 118 Search and Surveillance Act 2012 allows officers to detain a person for the duration of the search if that person is at the place at the start of the search. The detention is only for the purpose of determining the connection between the person and the place which is the object of the search. Section 118 also allows that reasonable force may be used to effect the detention.

### Law on obstruction

41. Section 23 of the Summary Offences Act 1981 sets out the offence of ‘obstruction’. It includes any act by a person which makes it more difficult for a Police officer to carry out his or her duty. A failure to act (such as a refusal to comply with “reasonable requests made in the course of the lawful exercise of powers”) may also amount to obstruction.

### Law on use of force

42. Section 39 of the Crimes Act 1961 provides for Police officers to use reasonable force in the execution of their duties such as arrests. Specifically, it provides that officers may use “*such force as may be necessary*” to overcome any force used in resisting the law enforcement process unless the process “*can be carried out by reasonable means in a less violent manner.*”
43. Section 62 of the Crimes Act makes a Police Officer criminally responsible for any excessive use of force.

### Police ‘Use of force’ policy

44. 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. Specialist groups, such as the AOS and STG, have additional tactical options available to them.
45. Police policy provides a decision-making methodology 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.
46. Police officers must also constantly assess an incident based on information they know about the situation and the behaviour of the people involved; and the potential for de-escalation or escalation. Officers 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's 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)).

47. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions, or potential actions, of the people involved, and depends on whether they are: cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
48. 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.

### Use of a Police dog

49. 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 implements used by Police, such as firearms, Taser, and batons.
50. 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 kept to a minimum possible in the circumstances.
51. 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.
52. Everyone bitten or injured by a Police dog must be given appropriate medical attention as soon as practicable.

## ABOUT THE AUTHORITY

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### 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.

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

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

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

### What are the Authority's functions?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

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

### This report

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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