

Allegation of excess force during enforcement of alcohol ban in Whangamatā

1. On 12 January 2023, Police made the Authority aware of an incident that occurred on 31 December 2022 in Whangamatā. It was alleged that a 16-year-old male (Mr Z) had suffered a broken wrist while being detained by Police.
2. On 18 January 2023, the Authority received a complaint from Mr Z and an associate (Mr Y) concerning events of 31 December 2022. In addition to concerns about the force used to detain Mr Z, concerns regarding the officers' enforcement of an alcohol ban, which was in force at the time, were also raised.
3. Mr Z and Mr Y did not believe that their actions amounted to a breach of any alcohol ban, and that Police had no lawful grounds to dispose of unopened alcoholic drinks that were in a chilly bin in the boot of their car. They also believed that they were targeted and dealt with in a heavy-handed manner because of their race and gang associations.
4. The Authority completed enquiries with Mr Z and other occupants of the vehicle he was travelling in (Mr Y and Mr X), and also spoke with all officers assigned to the Police Support Unit (PSU) that stopped Mr Z and his associates on 31 December 2022.

The Authority's Findings

Issue 1: Were there lawful grounds to stop the vehicle Mr Z was travelling in?

Police stopped Mr X's Holden for the purpose of enforcing TCDC's alcohol ban. Although members of the PSU appear to have held a genuine belief that they had the power to stop vehicles for this purpose, there is no such statutory power. The vehicle in which Mr X was traveling was therefore stopped unlawfully.

Issue 2: Did Police comply with the provisions of the Local Government Act 2002 when enforcing the alcohol ban that was in force at the time?

Mr X's Holden was stopped unlawfully. The enforcement of the alcohol ban in respect of the vehicle and its occupants was therefore without lawful basis. Even if the vehicle stop had been lawful, Police did not comply with the provisions of the Local Government Act 2002. Mr X, and anyone else believed to be in possession of alcohol, should have been told that they had the opportunity to remove it, and given a reasonable chance to do so, prior to a search of the vehicle taking place.

Issue 3: Was the force used to detain Mr Z lawful and reasonable?

There was no lawful basis to arrest Mr Z, or use force for that purpose, as the suspected breach of alcohol ban stemmed from an unlawful vehicle stop. However, the level of force used to detain Mr Z was reasonable, with Officers F and G using recognised restraint techniques.

Issue 4: Did Police treat Mr Z and Mr Y appropriately after they had been detained?

Mr Z and Mr Y were detained for a very short time. However, Mr Z's complaint of a sore wrist, along with any treatment provided or sought, should have been recorded.

Issue 5: Was sufficient reliable evidence gathered by Police to establish any breach of the alcohol ban?

No photographs of the alcohol that was discovered in Mr X's car were taken. Comments allegedly made by Mr X and his passengers were not recorded contemporaneously. The first written accounts were completed almost three weeks after the incident, and following complaints from Mr Z and Mr Y. The accurate and timely recording of information may have helped put beyond doubt many of the issues examined by the Authority in relation to this matter.

Analysis of the Issues

ISSUE 1: WERE THERE LAWFUL GROUNDS TO STOP THE VEHICLE MR Z WAS TRAVELLING IN?

5. At about 6.45pm on 31 December 2022, Mr Z was a rear seat passenger in a silver Holden Commodore driven by Mr X. Mr W was also in the rear of the car. Mr Y was a front seat passenger.
6. At this time, the Holden was travelling along Port Road, Whangamatā in a south-westerly direction. A PSU van was travelling towards it from the opposite direction.
7. The PSU van performed a U-turn after the Holden had passed before signalling it to stop.
8. Officers discovered alcohol in the Holden, in contravention of an alcohol ban that was in force at the time.

9. Mr Z was arrested for breaching the ban after refusing to give his details to an officer. Mr Y was arrested when he attempted to interfere in Mr Z's arrest.
10. Police removed a large number of sealed bottles and cans from the Holden. Officers opened these containers and poured their contents onto the road.
11. Officers transported Mr Z and Mr Y the short distance to Whangamatā Police Station and detained them there for a short time before being released.
12. Mr Z sought medical assistance following his release from custody. His right wrist was found to be fractured.

Alcohol Ban

13. Whangamatā is subject to an alcohol ban from 4pm on 23 December until at least 4pm on 6 January.¹ The ban forms part of the Thames Coromandel District Council's (TCDC) Alcohol Control Bylaw 2018, made under section 147 of the Local Government Act 2002.
14. For the purpose of enforcing the restrictions contained in the TCDC's Bylaw, section 169 of the Local Government Act 2002 empowers a constable to search, without warrant and for the purpose of establishing the presence of alcohol:
 - 14.1 a container in the possession of a person who is in, or entering, an area where an alcohol ban is in force; or
 - 14.2 a vehicle that is in, or is entering, that area (although there is no power to stop a vehicle specifically for the purpose of establishing whether alcohol is present).
15. The constable is also permitted to:
 - 15.1 seize and remove any alcohol that breaches the conditions of the alcohol ban; and
 - 15.2 arrest any person found to be committing an offence under this section.
16. A constable may also arrest any person who, after being directed to do so, refuses to leave the area, or surrender alcohol that is in their possession.
17. The population of Whangamatā swells significantly in the lead up to New Year's Eve, and alcohol-fuelled disorder has previously received significant media attention.
18. Police deploy additional resources to the Whangamatā area at this time of year as part of efforts to reduce alcohol-related harm and violence. The primary role of the PSU involved in this matter was the enforcement of the alcohol ban made under TCDC's Alcohol Control Bylaw.

¹ If 6 January falls on a Friday, Saturday, or Sunday the ban is extended to 4am on the following Monday.

Why did Police stop Mr X's Holden?

Police power to stop a vehicle

19. Officer A, the sergeant in charge of the PSU, was a front seat passenger in the Police van. Officer A told the Authority that he instructed the driver of the van, Officer B, to conduct a “*Land Transport stop*” on the approaching Holden.
20. Section 114 of the Land Transport Act 1998 empowers Police to signal a vehicle to stop. A driver stopped by Police in accordance with this section must remain stopped for as long as is reasonably necessary for Police to exercise powers, or duties, conferred by the Land Transport Act 1998. Section 114 does not give the Police a general power to stop vehicles for any purpose (eg, as a pretext to undertake a search), only for purposes genuinely connected to the Land Transport Act 1998.²
21. Section 314B of the Crimes Act 1961 formerly empowered Police to stop vehicles where a statutory search power existed (such as that contained in section 169 of the Local Government Act 2002). However, section 314B was repealed when the Search and Surveillance Act 2012 was enacted, and section 169 of the Local Government Act 2002 is not an enactment to which section 121 of the Search and Surveillance Act 2012 (stopping vehicles for the purposes of a search) applies.
22. Police have submitted that section 113 of the Land Transport Act gives Police the power to stop vehicles under section 114 for the purpose of conducting alcohol checks under the Local Government Act. We disagree with their interpretation of that section. Section 113(1) provides that an enforcement officer may enforce the provisions of the Local Government Act 2002, among other statutes. Section 113(2) provides a range of powers to enable an enforcement officer to do this. The power to stop a vehicle is not listed. The only power to stop in the Land Transport Act is section 114, but that only relates to powers conferred by the Land Transport Act, not by any other statute.
23. The Police interpretation of section 113 is untenable, because it would amount to an argument that Police could do anything they please in order to enforce the acts listed under section 113(1), without limit. It would render section 113(2), which lists specific powers, redundant. Such an interpretation would also be contrary to the Bill of Rights Act (BORA). Section 18 of the BORA provides for freedom of movement in New Zealand. Section 6 states “*wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning*”. By reading into section 113 of the Land Transport Act a power to stop vehicles, where no such power is explicitly stated (and other powers are), Police are not interpreting the law consistently with the provision for freedom of movement and are therefore in breach of section 6 of BORA.

² See *R v Fletcher* (2002) 19 CRNZ 399 (CA); *Jones v Attorney-General* [2003] UKPC 48, [2004] 1 NZLR 433, (2003) 16 PRNZ 715; *McGarrett v R* [2017] NZCA 204 at [18]; *R v Bailey* [2017] NZCA 211 at [22].

24. A further reason we believe the Police interpretation is incorrect, is that such a reading would render section 121 of the Search and Surveillance Act 2012 redundant to the extent that it applies to the Local Government Act 2002.
25. Therefore, the only legal basis on which officers could have relied in this case was section 114 of the Land Transport Act 1998. However, we acknowledge that Police have a different view. This raises the need for clarification of the law, as set out in our Recommendations section at the end of this report.

Road-worthiness

26. Officer A told the Authority that Mr X's car had large wheels and low-profile tyres, with the wheel guard appearing to be just on the tyre. Officer A considered that Mr X's car might be illegally modified with after-market suspension requiring LVVTA³ certification.
27. Officer C was a front seat passenger in the PSU van. He confirmed that Officer A directed that Mr X's silver Holden be stopped and that the Land Transport Act was relied on for this purpose. Officer C was unable to recall any conversation concerning the decision to stop the Holden although he had noticed that it was slightly modified. Officer C described the Holden as a red "muscle car...like a modified sports car...lower to the ground". Officer C was adamant that the vehicle was "definitely red, definitely a Holden". All other aspects of his account accord with information known to the Authority.
28. Officer C stated that the role of the PSU was to enforce the alcohol ban in Whangamatā and that traffic stops under the Land Transport Act were a tool used to achieve that objective.

Enforcement of alcohol ban

29. Officer B told the Authority that the Land Transport Act was used to stop Mr X's vehicle. He further stated:

"...we are trying to reduce alcohol-related harm...we've worked [previous operations] where we've had less effort put into early prevention and early intervention around alcohol-related harm, and that has exploded at the end of the night...the reason why we stopped that vehicle, that was part of our job. We were trying to reduce alcohol-related harm..."

30. Officer B stated that he did not see the occupants of the vehicle prior to it coming to a stop, after being signalled to do so. As it was relatively early in the evening, near the start of the officers' shift, Officer B told the Authority:

"We need to make our own work, so that means stopping a vehicle. We can talk to them, we can check to make sure they're not drink-driving, make sure they're not breaching the alcohol ban, educate them about the alcohol ban...If we're just driving around...that just means we are not doing something, which is a waste of our time."

³ Low Volume Vehicle Technical Association.

31. Officer B summarised the PSU's approach as: *"...see a car, pull it over...carry on, see the next car, pull it over."*
32. Officers D, E, F and G were in the back of the PSU van when Mr X's Holden was signalled to stop. When spoken to by the Authority, Officers D, E and G were not aware of the grounds for the traffic stop, nor could they recall seeing the Holden or its occupants prior to a decision being made to stop it.
33. Officer F believed that someone in the front of the van might have seen the driver drinking or wearing a gang patch or vest. None of the officers located in the front of the van (Officers A, B and C) told the Authority that this was the case, with all officers telling the Authority that they did not see the Holden's occupants until after it had come to a stop.
34. Officers D and F framed the PSU's role in broader terms, including maintaining public order and supporting local Police. Vehicles might be stopped as part of these duties.
35. Officer E told the Authority that the Land Transport Act was used to stop vehicles during patrols performed by the PSU to ensure that vehicle occupants were *"complying with the rules"* (eg TCDC's alcohol ban, see paragraph 38).
36. Officer G told the Authority that the PSU's objective during the early evening of 31 December 2022 was to pull over as many cars as possible to enforce the alcohol ban. Echoing Officer B's comments, Officer G stated that early intervention led to reduced disorder later in the evening.

The stop according to Mr X and his passengers

37. Officer E approached the driver's side of the Holden and dealt with Mr X after Mr X had brought his vehicle to a stop.
38. Mr X told the Authority that he *"asked [Officer E]...why did you pull us over? And he says: "We're just pulling everybody over, it's a liquor ban.""*
39. Officer D engaged with Mr Y, while Officer A initially approached the rear left passenger door where Mr Z was sitting. Officer C dealt with Mr W (who declined to speak to the Authority). Mr Y told the Authority that officers told them to get out of the Holden because they had breached an alcohol ban. Mr Y was wearing a gang patch and believed that to be the reason why Mr X had been signalled to stop.
40. Mr Z, who was sitting behind the rear left passenger door, told the Authority:

"[An officer] walks up, tries, tries to open the door. I'm looking at him: "What are you doing?" Closed the door. He's like trying to force it back open and he's like, looks in: "Oh, looks like we have a breach of liquor ban team, everyone up.""
41. Mr Z's comments are consistent with Officer A's description of his actions after seeing alcohol in the Holden: *"I've then told the other members of my team that there is a breach of the alcohol ban...From there, basically I've stepped back and taken a command position"*. Officer G has engaged with Mr Z from this point.

42. None of the Holden's occupants indicated that Police had concerns regarding the vehicle's roadworthiness. According to Mr X, Police did not "*check my licence or [conduct a] breath test*".⁴

Analysis

43. Port Road, Whangamatā is subject to a 50kph limit. The PSU van and Mr X's Holden were travelling towards each other immediately prior to the PSU van performing a U-turn and signalling Mr X's Holden to stop.
44. Given that the PSU van and Holden were travelling towards each other, it is difficult to see how the Holden's large wheels and low-profile tyres could have become apparent until the vehicles were in relative proximity and at a less acute angle in respect to each other.
45. However, a cursory glance at a passing vehicle may be sufficient for someone to form an opinion on its roadworthiness.
46. The Authority has several observations regarding the stopping of Mr X's Holden:
- 46.1 A significant number of the officers spoken to by the Authority stated that the PSU's objective was the reduction of alcohol-related harm and violence. All foot and vehicular traffic were proactively stopped to achieve this aim, with the Land Transport Act being relied upon to stop vehicles. A significant proportion of the officers have previously been deployed as part of this annual operation.
- 46.2 No reference has been made by Police to Mr X's standard of driving. There has been no suggestion that any suspected modifications affected the Holden's handling. Therefore, if Officer A's concerns related to the roadworthiness of the car, and not a desire to enforce the alcohol ban, then those concerns must have been based solely on the Holden's physical appearance.
- 46.3 Officer C was the only other officer to refer to modifications ("*a modified sports car...lower to the ground*"). These were his own observations, as he recalled no discussion with other team members in respect of the decision to stop the Holden. Although Officer C was unable to say why the Holden was stopped when interviewed by the Authority, it can be inferred that he thought modifications may have been the reason as these were discussed in the context of the Holden being signalled to stop.
- 46.4 From images of the Holden captured on 31 December 2022, there is no doubt that it has large wheels and low-profile tyres. These characteristics are not dissimilar to those exhibited by countless vehicles on New Zealand roads. The Authority is not in a position to assess whether these features alone would merit further investigation by Police in other circumstances.

⁴ The Authority was told that the PSU's Dräger alcohol screening device was not calibrated and could not therefore be deployed.

47. Based on the available evidence, our assessment is that the purpose of vehicle stops conducted by the PSU was to enforce TCDC's alcohol ban. It is possible that this practice has continued since the inception of the Police operation, as several officers spoken to in respect of this matter have previously been deployed in the same role, some on multiple occasions.

48. A statement prepared by Officer A prior to being spoken to by the Authority contains the following:

"As I alighted from the front passenger door, I initially looked at the vehicle's roadworthiness. It appeared to have large after-market mags with low profile tyres and lowered where the rims sat just above the tyre. Initially I believed that it could have been not up to Warrant of Fitness standard. As I approached, I was comfortable that it did not have after-market adjustable or similar type coil over shocks and was simply sitting on lowering springs."

49. In interview, Officer A said that the Holden "*had very large wheels on it, at least 19-to-20-inch wheels with low profile tyres, and the top of the guard was only just on the tyre, if that. As such I wasn't comfortable that it didn't have after-market suspension. Whilst captive springs are legal and don't require [a] LVVTA certificate, things like adjustable suspension do and I wasn't comfortable that it wasn't an illegal vehicle.*"

50. Officer A's concerns were resolved by his visual examination as he approached the Holden. There was no discussion with Mr X regarding possible after-market modifications to his car. As discussed above, none of the other officers spoken to by the Authority were able to articulate the grounds for stopping Mr X's Holden beyond a routine stop for the purpose of enforcing the alcohol ban.

51. Officer A "*looked in*" to the Holden and saw three bottles of alcohol in the pocket ("*map compartment*") behind the front passenger seat. According to Officer A, two of these bottles were a third full. With reference to paragraph 40, Officer A would have had no grounds to open the rear left passenger door prior to discovering that the alcohol ban had been breached. If observing from outside the Holden, Officer A would have sighted the bottles – partially obscured by virtue of being in the 'map compartment' – through the tinted windows of the Holden. Officer A's actions strongly suggest that his purpose was the enforcement of the alcohol ban.

52. The Authority is satisfied that Officer A's observations and direction (see paragraphs 40 and 41) led to the enforcement actions of the other officers. All officers left the PSU van and attempted to engage with the Holden's passengers as soon as it came to a stop. None of the officers had grounds to demand the details of the Holden's passengers or search the vehicle prior to a breach of the alcohol ban being established (alcohol was discovered *after* officers engaged with the Holden's passengers and examined the interior of the vehicle). The manner in which Mr X's Holden was approached by the officers therefore suggests it was stopped for the purpose of enforcing the alcohol ban, as opposed to any genuine purpose under the Land Transport Act (see paragraphs 38 and 42).

53. There is no statutory power to stop a vehicle for the purpose of enforcing an alcohol ban. Therefore, the vehicle stop was unlawful. However, the unlawfulness appears to result from a

gap in the law because of the way the Local Government Act 2002 and the Search and Surveillance Act 2012 have developed (see paragraph 21 above). We agree that a power to stop a vehicle for the purpose of performing an alcohol check under section 169 of the Local Government Act is reasonable and recommend in paragraph 125 that Police seek that power.

54. If Mr X's Holden had been stopped for a genuine Land Transport Act purpose, then Police would have had grounds to search it for alcohol if a suspected breach of the alcohol ban came to light during the course of that Land Transport Act stop.

FINDINGS ON ISSUE ONE

Police stopped Mr X's Holden for the purpose of enforcing TCDC's alcohol ban. Although members of the PSU appear to have held a genuine belief that they had the power to stop vehicles for this purpose, there is no such statutory power. The vehicle in which Mr X was traveling was therefore stopped unlawfully.

ISSUE 2: DID POLICE COMPLY WITH THE PROVISIONS OF THE LOCAL GOVERNMENT ACT 2002 WHEN ENFORCING THE ALCOHOL BAN THAT WAS IN FORCE AT THE TIME?

55. Mr X's Holden was stopped unlawfully. Members of the PSU were therefore unable to lawfully exercise the powers conferred by the Local Government Act 2002. However, for the sake of completeness, and accepting that the officers were acting in good faith, the Authority will examine whether Police complied with the relevant provisions of the Local Government Act 2002.

How did the officers know the alcohol ban was being breached?

56. Although conflicting accounts were provided by the occupants of Mr X's Holden and the members of the PSU, the Authority is satisfied that, on balance, the TCDC alcohol ban was being breached by Mr X and his passengers.
57. It is not possible to determine with any accuracy how many open, or sealed, alcohol containers were present within the passenger compartment of Mr X's Holden at the time it was stopped. Officer C, who dealt with Mr W, told the Authority that there were at least two empty bottles of alcohol in Mr W's footwell, and two bottles in the seat pocket in front of him. One of these bottles was empty, the other was half-full. In respect of the bottle that was half-full, Officer C said:

"...it had frothed and bubbled up that particular bottle...But definitely it was frothing and you could see condensation just at the top end on the bottle, yeah."

58. Officer C further stated that Mr W admitted that the alcohol was his and he suspected that Mr W was slightly intoxicated. As well as smelling alcohol on his breath, Officer C said Mr W had bloodshot eyes, repeated himself, and was easily distracted.
59. Officer A told the Authority that he, like Officer G (see paragraph 39), approached the left rear passenger door after visually examining the Holden's wheels. He recalled seeing possibly three open bottles of alcohol, with a couple of these containing what he described as a "useable"

quantity of alcohol (about a third of each bottle's contents remained), in the "map compartment" behind the front passenger seat.

60. Officer G, who dealt with Mr Z following Officer A's discovery of alcohol, told the Authority that he also saw a couple of loose bottles in the pocket behind the front passenger seat. Officer G thought that Mr Z's refusal to engage with him indicated that he had recently consumed alcohol.⁵
61. Officer F, who helped Officer G detain Mr Z (see paragraphs 85-95), was also of the view that Mr Z demonstrated behaviours that were consistent with recent alcohol consumption: "*The aggression, the non-compliance, unable to follow instruction*".
62. The presence of bottles containing what was reasonably believed to be the remnants of recently consumed alcohol led officers to complete a search of Mr X's Holden in accordance with section 169(2)(a)(ii) of the Local Government Act 2002.

Search of Mr X's Holden

63. Mr X and his passengers were asked to get out of the Holden prior to the search commencing, and for officers to establish everyone's details so that enforcement action (the issue of Alcohol Infringement Offence Notices) could be taken. Mr X and his passengers appear to have voluntarily left the Holden without issue.
64. The Local Government Act provides Police with the power to require that a person committing an offence for which an infringement notice may be issued (such as a breach of an alcohol ban) to provide their details.⁶
65. Mr Z's refusal to provide personal details led to his arrest, which is examined in more detail below (see Issue 3). Officer A told the Authority:

"We have a power of arrest...we will arrest them, take them back to a place of safety, i.e., custody where we can talk to them...on the side of the road is not where we're gonna have a discussion with someone trying to ask them for their details."

66. A chilly bin was discovered in the boot of the Holden during the search. According to Mr X, the chilly bin had a 40-litre capacity and contained about 50-60 unopened bottles of alcohol.
67. Section 147(4)(a-d) of the Local Government Act 2002 provides exemptions in respect of alcohol in unopened containers. In general terms, the regulation of such alcohol in a restricted area does not apply if any of the following four conditions apply:

67.1 The alcohol is promptly removed from the restricted area after being purchased from a licensed premises (if bought for consumption off those premises);

⁵ Police use the subjective 'SCAB' test to assess an individual's level of intoxication (Speech, Coordination, Appearance and Behaviour).

⁶ Section 245A Local Government Act 2002.

- 67.2 The alcohol is being transported for the purpose of delivery to a licensed premises;
- 67.3 The alcohol is being transported for the purpose of delivery to a premises within the restricted area (including by a resident of the premises, or a visitor);
- 67.4 The alcohol is promptly removed from a premises by a resident of those premises to a place outside the restricted area.
68. After speaking to Mr Z, Mr Y and Mr X, the Authority is satisfied that none of the above conditions applied in the circumstances. Consequently, the unopened containers of alcohol in their possession fell under the ambit of the alcohol ban. The Authority accepts the view conveyed by some of the PSU officers: that the containers of alcohol had been prepared for consumption by virtue of being removed from their packaging and placed in a chilly bin full of ice.

Disposal of the alcohol

69. The alcohol in the containers that were discovered in the chilly bin was disposed of at the roadside by members of the PSU. Mr X provided the Authority with a photograph showing two officers (believed to be Officers E and F) pouring the contents of up to about 50 bottles and approximately five cans onto the road.
70. Section 169(3) of the Local Government Act 2002 states:
- “Alcohol or a container seized [by virtue of being in a restricted place in breach of an alcohol ban] is forfeited to the Crown if the person from whom the alcohol or container is seized pays the infringement fee.”*
71. As detailed above, alcohol seized in the above circumstances is retained by Police and disposed of upon payment of the infringement fee (it is presumably returned to the person from whom it is seized if the legality of the seizure is successfully challenged). Mr W, Mr X and Mr Z were issued Alcohol Infringement Offence Notices that day and were in the process of contesting the notices when spoken to by the Authority. The disposal of the alcohol by the PSU does not therefore appear to be compliant with section 169(3) of the Local Government Act.

Search without notice

72. Section 170(1) of the Local Government Act 2002 states that before a constable exercises the power to search a vehicle conferred by section 169(2), they must:
- 72.1 Inform the driver of the vehicle, or the person who possesses the alcohol in the vehicle, that they have the opportunity to remove the alcohol or vehicle from the public place; and
- 72.2 Provide the person with a reasonable opportunity to remove the alcohol or vehicle from the public place.
73. However, where a pre-planned alcohol ban is in force, section 170(2) permits a search without affording the relevant person the above opportunities.

74. For this to apply, a Local Authority must:
- 74.1 Specify the public place within which the section 170(2) search power applies by issuing a public notice 14 days in advance;
 - 74.2 Specify where and when the section 170(2) power may be exercised by Police in the public notice; and
 - 74.3 Indicate the location of the public place by affixing 1 or more clearly legible notices in appropriate places which are on, or adjacent to, the place to which the notice relates, unless it is impracticable or unreasonable to do so.
75. A relevant section 170(2) notice was not in force at the time Mr X's Holden was stopped, so the exemption did not apply.⁷ Police were therefore obliged to give Mr X, or those believed to be in possession of alcohol, a reasonable opportunity to remove it from the restricted area. The Authority considers that this was especially the case given the quantity of alcohol in the chilly bin. Consequently, even if the vehicle stop had been lawful, the search of Mr X's Holden was unlawful and the disposal of all alcohol in the chilly bin was unnecessarily punitive, in our assessment.

FINDINGS ON ISSUE 2

Mr X's Holden was stopped unlawfully. The enforcement of the alcohol ban in respect of the vehicle and its occupants was therefore without lawful basis. Even if the vehicle stop had been lawful, Police did not comply with the provisions of the Local Government Act 2002. Mr X, and anyone else believed to be in possession of alcohol, should have been told that they had the opportunity to remove it, and given a reasonable chance to do so, prior to a search of the vehicle taking place.

ISSUE 3: WAS THE FORCE USED TO DETAIN MR Z AND MR Y LAWFUL AND REASONABLE?

Mr Z's arrest

76. Officer G arrested Mr Z for refusing to provide his details. It was Officer G's intention to issue Mr Z with an Alcohol Infringement Offence Notice ('infringement notice'). As discussed at paragraph 65, Mr Z's refusal to provide his details precluded this, and he was arrested so that his details could be obtained in a more controlled environment.
77. Mr Z was non-compliant during his arrest. Force was used to control him and place him in a secure compartment at the rear of the PSU van.
78. As previously stated, there was no lawful basis to take enforcement action in respect of any breach of the alcohol ban. Consequently, there were no lawful grounds to arrest Mr Z.
79. Notwithstanding this, the Authority will examine the circumstances of Mr Z's arrest.

⁷ Confirmed by Thames Coromandel District Council's Licensing and Compliance Manager and emphasised in JF v R [2011] NZCA 645, where Police failed to give the defendant an opportunity to remove liquor from their car or move their car out of the restricted area. The search was deemed unlawful, and the evidence obtained from it was inadmissible.

Was Mr Z's arrest justified?

80. Section 169(2)(c) of the Local Government Act 2002 empowers a constable to arrest a person found committing an offence in respect of an alcohol ban.
81. Officer G told the Authority that he advised Mr Z that he was in breach of the alcohol ban and that he needed his details. According to Officer G, Mr Z repeatedly told him that he didn't need to speak to him and would not give his name. After warning him of the consequences of failing to provide his details, Officer G arrested Mr Z.
82. Mr Z confirmed to the Authority that he refused to provide his details. According to Mr Z: *"I have never been through any of this before, I kept on declining because I obviously don't know or understand what is going on. They didn't explain anything to me."*
83. If the vehicle stop had been lawful, the arrest would have been justified under section 169(2)(c) of the Local Government Act 2002.

What force did Officer G use when arresting Mr Z?

84. Video footage captured by Mr X shows the moment of Mr Z's arrest. It is not possible to determine how long Officer G had been in conversation with Mr Z prior to arresting him, but it is apparent that Officer G was attempting to discover Mr Z's age and identity immediately beforehand.
85. Following Mr Z's arrest, Officer G applied an 'escort' hold to Mr Z's right arm. This involved taking Mr Z's right wrist in his right hand, while his left hand cupped the rear of Mr Z's right bicep. Officer G's left shoulder was behind Mr Z's right shoulder as he attempted to walk Mr Z to the nearby PSU van. Officer F told the Authority that he applied the same style of hold to Mr Z's left arm.
86. Video footage provided by Mr X shows Mr Z forcefully pulling his right arm from Officer G's grasp as soon as Officers G and F attempt to escort him to the PSU van. Officer G is seen attempting to regain control of Mr Z's right arm before being obscured by Officer E, who is conversing with Mr X.
87. Officer G told the Authority that Mr Z instantly resisted when he took control of his right arm, pulling it from his grip. Officer G was not perturbed by Mr Z's reaction, regained control of his right arm, and continued walking to the rear of the PSU van. Both Officer F and Officer G considered that Mr Z was actively resistant at this time.
88. Upon reaching the rear of the PSU van, Officer F described an escalation in Mr Z's behaviour that he described as *"irrational"*:

"...we've gone from... "No, I'm not giving my details" and then trying to pull away. That's...policing life sometimes. But then to just escalate in that manner, to be flailing and pulling away and kicking out just absolutely, yeah, absolutely bizarre..."

As detailed at paragraph 61, Mr Z's behaviour fed into Officer F's assessment that he may have consumed alcohol.⁸

89. Officer G told the Authority that "*as soon as we got to the back of the van [Mr Z] started resisting real heavily so that the level of resisting increased.*" According to Officer G, Mr Z pulled his hips back and down towards the ground, wresting his right arm from Officer G's escort hold and landing on the ground, where he kicked out, hitting Officer G in the stomach.
90. Both Officer F and Officer G considered Mr Z to be assaultive at this point. Officer G also considered that Mr Z posed a risk to Officer F, who still had control of Mr Z's left arm.
91. Officer F described Mr Z's descent to the ground as a controlled, "*slow release*". Officer F released his escort hold as Mr Z went to the ground before trying to regain control of him. Officer G told the Authority that he leant down, re-gathered Mr Z's right arm, and applied a 'gooseneck' wristlock before bringing Mr Z to his feet.
92. This involved Officer G placing the palm of his right hand across the knuckles of Mr Z's right hand and holding it securely. Officer G used his left hand to bring Mr Z's right elbow against his chest before applying pressure to the back of Mr Z's right hand:

"...my hand that's across his knuckles is then able to apply pressure to his wrist joint and the idea was to gain pain compliance to stop myself or [Officer F] being assaulted any further. It seemed to be effective, I kept that grip and used that to lift him up onto his feet."

Officer G also told the Authority that he immediately released the pressure he was applying when Mr Z responded to the technique (i.e., by offering less physical resistance).

93. Officer F mirrored the restraint applied by Officer G but did not apply pressure (to achieve pain compliance) to Mr Z's wrist. Maintaining the 'gooseneck' wristlocks, Officers F and G were able to bring Mr Z's hands behind his back and place him in one of two secure compartments (cells) at the rear of the PSU van.⁹
94. Officer G told the Authority that Mr Z was given a small amount of upwards and forwards momentum as he was placed in the secure compartment. This was to help Mr Z "*step up*" into the van and to give them sufficient time to withdraw and secure the compartment door.
95. At the time of their interaction with Mr Z, neither Officer F nor Officer G were alerted to anything that suggested he had sustained an injury.
96. According to Mr Z, he was initially 'double-teamed' by two Police officers who manhandled him and tried to take him to the ground, causing him to roll to prevent his face from hitting the road surface. Mr Z told the Authority that the officers then lifted and twisted his wrists in an attempt

⁸ Mr Z told the Authority that he had consumed alcohol (2-3 bottles of Long White) enroute to Whangamatā but had not consumed alcohol in the short time he had been in the alcohol ban/restricted area.

⁹ Officer F also relied upon section 40 of the Crimes Act 1961 to justify the force used to detain Mr Z (prevent escape).

to place his hands in the small of his back before pushing him towards the rear of the PSU van. The officers did not apply handcuffs.

97. Mr Z described a step at the rear of the PSU van. He believed that this step was about 30cm above the ground, and he recalled having to jump up to avoid ‘smashing’ his shins as he was “thrown in the van” by Officers F and G. Although the extent of his injury was not immediately apparent to him, Mr Z believes that he was hurt at this time.
98. Although the other PSU officers were peripherally aware of a scuffle at the rear of the van, none of them witnessed what occurred. Mr Y gave an account that was consistent with that provided by Mr Z.

Was the force used justified?

99. It is highly probable that Mr Z was injured while being restrained by Officers F and G. The Authority accepts that the types of restraint utilised by the officers are those taught as part of Police Integrated Tactical Training (PITT), and, due to conflicting accounts, it is not possible to demonstrate any significant deviation from best practice in this instance.
100. What must also be borne in mind is the level of resistance offered by Mr Z. The Authority notes that video of Mr Z’s arrest shows him forcibly removing his right (dominant) arm from Officer G’s grasp. It appears that Mr Z has continued to resist at the rear of the PSU van and it is likely that, in attempting to release his right wrist from Officer G’s grasp for a second time, coupled with the officers’ attempts to place him in the van, the threshold beyond which a restraint hold is capable of causing injury has inadvertently been crossed.
101. Officer F told the Authority that he considered that section 39 of the Crimes Act 1961 applied (force used to execute process or arrest) when Mr Z was escorted to the rear of the PSU van.
102. The use of force up to this point was, in our view, unlawful because the vehicle stop was unlawful. However, if the vehicle stop and subsequent arrest had been lawful, the force used by both Officers F and G at this time would not have been excessive and would have been justified under section 39 of the Crimes Act 1961.
103. From the point when Mr Z freed himself from Officer G’s grasp at the rear of the PSU van and kicked out, Officers F and G were entitled to use reasonable force to defend themselves under section 48 of the Crimes Act 1961.

Mr Y’s arrest

104. Mr Y attempted to intervene in Mr Z’s arrest and was arrested for obstruction by Officer D. Mr Y told the Authority that he was restrained by two officers (Officer D and Officer B), who applied the same ‘gooseneck’ wristlocks that were applied to Mr Z at the rear of the PSU van. Mr Y intimated that sufficient pressure to cause discomfort was applied by the officers and referred to a pre-existing wrist injury.

105. Officer D told the Authority: *"I...haven't put [Mr Y] into a... wrist lock, one, because I didn't think that it was necessary but also, yeah, he was pretty quick to say that he had a previously injured wrist."*
106. Officer B told the Authority: *"[Mr Y] resisted arrest, as in he tensed up and didn't want us to place his hands behind his back. So, I was talking to [Mr Y] explaining to him, you know, "you need to relax" those sorts of things and we actually got there in the end, and he complied."*
107. Mr Y was uninjured following his interaction with Officers D and B. He was taken to the rear of the PSU van and placed in the compartment adjacent to Mr Z. Both were then transported the short distance to Whangamatā Police Station, where they were processed.

FINDING ON ISSUE 3

There was no lawful basis to arrest Mr Z, or use force for that purpose, as the suspected breach of alcohol ban stemmed from an unlawful vehicle stop. However, had the arrest been lawful the level of force used to detain Mr Z was not excessive, with Officers F and G using recognised restraint techniques. It goes without saying that it was unfortunate that Mr Z sustained an injury during his interaction with Police.

ISSUE 4: DID POLICE TREAT MR Z AND MR Y APPROPRIATELY AFTER THEY HAD BEEN DETAINED?

108. Whangamatā Police Station is located about 200m from where Mr X's Holden was stopped. Mr Z and Mr Y were therefore received in custody a very short time after their arrests.
109. In the absence of any information to the contrary, and as a consequence of Mr Z's refusal to provide details, Mr Z was initially believed to be a young adult. Officer A told the Authority that Mr X, although unwilling to give Mr Z's name, had indicated that Mr Z was 18 years old. However, Mr Z's driver licence was found amongst his property as he was being booked in and his age and identity were quickly established.
110. Mr Z suggested that the attitude of Police changed significantly when they realised who he was: *"this guy, this isn't like a normal person, he, yeah, got to get him out."*
111. The Authority is unable to substantiate Mr Z's claim that officers treated him differently upon establishing his identity and realising to whom he was connected.

Mr Z's wrist injury

112. Mr Z told the Authority that he realised that something was wrong with his right wrist by the time he arrived at Whangamatā Police Station. He further stated that he tried to bring this to the attention of officers at the station, but they did not hear him.
113. Officer C recalled Mr Z holding one of his wrists and saying: *"...it hurts, it hurts."* Officer C assumed that Mr Z had been handcuffed and that any discomfort was associated with the handcuffs. He did not realise that Mr Z had not been handcuffed and did not consider that Mr Z had sustained an injury beyond the usual discomfort associated with being handcuffed.

114. Officer F told the Authority that: “[Mr Z]’s complained that he’s had a...sore wrist and I’ve, yeah, had a wander around to see if I can find some ice and help him out in any way.” Officer F further stated that he brought Mr Z’s condition to the attention of custody staff but did not know what assistance was rendered as the PSU was redeployed shortly afterwards.

115. Officer G told the Authority:

“So we were back in custody and...I was aware that [Mr Z] said he had a sore wrist. I wasn’t...dealing with him at this stage, I was just off trying to...do my alcohol infringement notice, look through links trying to figure out who he was. I am aware he said he had a sore wrist and I remember...the Youth Aid Officer saying...“Do you want us to call you an ambulance or anything like that?”...and he said... “Nah, I just wanna get out of here.””

116. The above PSU members only became aware of the extent of Mr Z’s injury when they saw a 1News news bulletin about his arrest in the days after the event.

117. Mr Y and Mr Z remained in custody for a very short period of time (about 12 minutes appears to have elapsed between Mr Z being received in custody and his release). Mr Z was issued with an infringement notice and released into the care of Mr X. No record of Mr Z’s injury was made by custody staff. Mr Y was issued with a warning for obstruction.

118. Due to ongoing discomfort, Mr Z attended a medical facility later that evening. His right wrist was x-rayed and a ‘distal radius fracture’ was identified. Mr Z was required to wear a cast and take painkillers for several weeks after the event.

FINDING ON ISSUE 4

Mr Z and Mr Y remained in Police custody for a very short time. It is not possible to determine what exactly happened during the period of their detention due to conflicting accounts. However, it is clear that Police were aware that Mr Z was experiencing discomfort.¹⁰ In our assessment, Police should have made a note of this on Mr Z’s custody record and documented how the situation was addressed.

ISSUE 5: WAS SUFFICIENT AND RELIABLE EVIDENCE GATHERED BY POLICE TO ESTABLISH ANY BREACH OF THE ALCOHOL BAN?

119. This incident occurred on 31 December 2022. None of the officers attached to the PSU completed contemporaneous notebook entries detailing their interactions with Mr X and his passengers. According to Officer E, Mr X made incriminating remarks regarding ownership of the alcohol, the circumstances of its consumption and the group’s future intentions. Mr X’s account did not correspond with Officer E’s recollection.

120. No photographic evidence to support the alleged breach was obtained.

¹⁰ The officer who assessed Mr Z when he was received in custody indicated that he had complained of a sore wrist. This information came to light after Police had prepared a draft media response denying any use of force and stating that Mr Z had not complained of any injury.

121. Jobsheets were completed after the event, between 19 January and 16 February 2023, with Officer A reviewing and endorsing those completed by the other PSU members (Officer A's jobsheet was one of two completed on 16 February 2023). A Tactical Options Report¹¹ appears to have been initially submitted by Officer G on 8 January 2023 and was reviewed by Officer A prior to being further reviewed by a Senior Sergeant.
122. As discussed at paragraph 70, alcohol or containers seized by virtue of being in a restricted place in breach of an alcohol ban are forfeited to the Crown upon payment of the infringement fee. Consequently, and using this incident as a representative example, if an infringement is contested, Police would be obliged retrospectively to complete a file of evidence/statements relying upon an individual's best recollection of events that may have occurred weeks, or months, earlier. Worse, a group of officers involved in an event may jointly endeavour to recall the episode in question, resulting in the contamination of the evidence and the creation of a consistent narrative that may not reflect reality.
123. Also of relevance is the general consensus amongst the officers spoken to that Mr X's Holden was one of a significant number of vehicles stopped as part of efforts to enforce TCDC's alcohol ban. Conflation of a wide range of vehicle stops may explain Officer C's belief that Mr X's Holden was red.
124. In any event, the infringement notices issued to Mr Z and Mr W were withdrawn in accordance with Police diversion policy. Mr X's infringement notice was not withdrawn and was being contested at the time the Authority spoke to him about this matter.

FINDING ON ISSUE 5

Evidence supporting the alleged breach of alcohol ban, including comments made by Mr X and his passengers, was not contemporaneously recorded or gathered by the attending officers. Jobsheets were completed between 19 to 47 days after the event and in response to Mr Z and Mr Y's complaint. The accurate and timely recording of information may have helped put beyond doubt many of the issues examined by the Authority in relation to this matter.

¹¹ A Tactical Options Report should be completed where a person falls to the ground following the application of empty hand techniques, such as touching, guiding, escorting, lifting, and pushing.

Recommendations

125. We recommend that Police:

- 1) Through liaison with other agencies, takes active steps to seek statutory power to stop a vehicle for the purpose of searching for alcohol under section 169 of the Local Government Act 2002.
- 2) Develop standard operational orders that clearly outline what powers can be used when policing locations subject to an alcohol ban, liaising with Local Authorities, where necessary, to ensure relevant powers are invoked (e.g. the power to search without notice in accordance with section 170(2) of the Local Government Act 2002);
- 3) Ensure that consistent and regular training is delivered to those tasked with enforcing alcohol bans, both in relation to specific operations, and as part of general policing activity; and
- 4) Endeavour to capture sufficient evidence of any alleged breach of an alcohol ban, thereby reducing the likelihood of Alcohol Infringement Offence Notices being successfully contested.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

22 October 2024

IPCA: 23-16386

Appendix – Laws and Policies

CRIMES ACT 1961

Section 39 – Force used in executing process or in arrest

“Where any person is justified, or protected from criminal responsibility, in executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest, that justification or protection shall extend and apply to the use by him or her of 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:

provided that, except in the case of a constable or a person called upon by a constable to assist him or her, this section shall not apply where the force used is intended or likely to cause death or grievous bodily harm.”

Section 40 – Preventing escape or rescue

“(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.

(2) Where any prisoner of a prison is attempting to escape from lawful custody, or is fleeing after having escaped therefrom, every constable, and every person called upon by a constable to assist him or her, is justified in using such force as may be necessary to prevent the escape of or to recapture the prisoner, unless in any such case the escape can be prevented or the recapture effected by reasonable means in a less violent manner.”

Section 48 - Self-defence and defence of another

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

Use of force

126. The Police's '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), OC spray (pepper spray), batons, Police dogs, Tasers and firearms.
127. Police policy provides a Tactical Options Framework (TOF) 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 assessment as the TENR (Threat, Exposure, Necessity and Response).
128. 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. 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).
129. A key part of an officer's decision to decide when, how, and at what level to use force depends on the actions of, or potential actions of, the people involved, and depends on whether they are; cooperative; passively resisting (refuses verbally or with physical inactivity); actively resisting (pulls, pushes or runs away); assaultive (showing an intent to cause harm, expressed verbally or through body language or physical action); or presenting a threat of grievous bodily harm or death to any person. Ultimately, the legal authority to use force is derived from the law and not from Police policy.
130. The policy states 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.

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 Kenneth Johnston KC.

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. 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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