

# Police use of force during public disorder in Huntly

## OUTLINE OF EVENTS

1. At about midnight on Friday 17 November 2017, Officers A and B were patrolling the Huntly West area when they came across a house party on Semple Street which had spilled out onto the road. They estimated there were approximately 50 people, many of whom were fighting each other. The officers requested backup from other Huntly officers and the Hamilton Police Support Unit (PSU).<sup>1</sup>
2. Officers A and B observed the crowd from approximately 40 metres away on the corner of Fraser and Semple Street, and were soon joined by the Huntly officers (Officers C, D, and E). They continued to observe the crowd until Officers F, G, H, I, J, and K arrived from Hamilton 30-40 minutes later. A Hamilton dog handler, Officer L, also attended the incident.<sup>2</sup>
3. The Hamilton sergeant, Officer F, took command of the incident and formulated a plan which he conveyed to the officers:
  - a) Officers A, B, D, E, J, and K were to form a skirmish line and walk side by side towards the crowd.<sup>3</sup> Officer L positioned himself a few metres behind the skirmish line with his dog on a lead.
  - b) Officers G, H, and I were to drive closely behind the skirmish line in the Police van. They would form an arrest team to detain anyone involved in the disorder.
  - c) Meanwhile, the Huntly sergeant, Officer C, was to remain with the Police cars for security.

<sup>1</sup> Police Support Units are specialised teams trained to deal with public disorder events.

<sup>2</sup> At the time of this incident, all the officers involved had current training certifications for all relevant tactical options (ASP baton, first aid, OC spray, and Police Integrated Tactical Training).

<sup>3</sup> A skirmish line involves advancing in a formation (in this instance a horizontal line) towards a crowd with the purpose of dispersing them.

4. The officers began to advance in the skirmish line, telling the crowd to “go home” and “move along” while members of the crowd swore, shouted abuse, and threw glass bottles at them. The officers moved the crowd onto Smith Avenue, where some people began setting off fireworks in the direction of Police.
5. As the officers approached Webb Street, still in the skirmish line, the crowd had reduced from approximately 50 to 10. The officers ran towards the remaining crowd into Armstrong Street, a cul-de-sac. The crowd dispersed into nearby properties and down an alleyway at the end of the street.
6. During this incident, Police arrested:
  - Mr W, who was found in a bush by a residential property on Armstrong Street;
  - Mr X and Mr Y, who had run down an alleyway into a park behind Armstrong Street; and
  - Mr Z, who officers believed to be in possession of a weapon on Semple Street.
7. Complainant Officer D alleged that he saw several of his colleagues (who he was unable to identify) use excessive force while arresting Mr W and Mr Z. He also said Officer E had made some concerning comments about his actions during the incident.
8. The officer made a formal complaint to his supervisor and Police undertook an investigation into the incident. Police also notified the Independent Police Conduct Authority of the complaint. Following initial enquiries into all four arrests (set out in paragraph 6), the Authority independently investigated the force used during the arrests of Mr W, Mr X, Mr Y and Mr Z, and the comments Officer E allegedly made.

### Police investigation outcome

9. The Police investigation into the allegations of excessive use of force against Officers E, G, H, I, and J determined they were not at fault. No further action was taken.
10. Officer E used reportable force during Mr W’s arrest but did not submit a Tactical Options Report (TOR) as required by the Police’s ‘Use of Force’ policy. Police considered this a performance issue and Officer E received an appropriate outcome.

## THE AUTHORITY'S INVESTIGATION

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11. As part of its investigation the Authority interviewed Officers A-L,<sup>4</sup> Mr W, Mr X, and Mr Z. Mr Y was unavailable for interview. The Authority also monitored the Police investigation throughout and reviewed all the documentation produced by the Police investigation team.
12. The Authority identified and considered the following issues:
  - 1) Was the force Police used during Mr W's arrest justified?
  - 2) Was the force Police used during Mr X's and Mr Y's arrest justified?
  - 3) Was the force Police used during Mr Z's arrest justified?
  - 4) Did a Police officer use pain compliance on Mr Z when at the station?
  - 5) Did the officers complete tactical option reports following the incident?

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<sup>4</sup> Except Officer I, who at the time of writing, is overseas for an extended period and unavailable for interview with the Authority.

## THE AUTHORITY'S FINDINGS

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### Issue 1: Was the force Police used during Mr W's arrest justified?

#### *Arresting officers' accounts*

13. As they entered Armstrong Street, Officers E and J heard the dog handler, Officer L, call out that there was a male, Mr W, hiding in a bush outside a residential property. Officer L noted Mr W may have something in his hand (which they believed was likely to be a glass bottle). Officer J ran over to Mr W with Officer E close behind.
14. Officer J told Mr W to come out of the bush but he did not comply. He said Mr W was attempting to "lash out" and resisted Police attempts to pull him out of the bush and restrain him. Officer J said he attempted to remove an item from Mr W's hand. However, the officers did not find anything in Mr W's hand and no item was later retrieved or recorded.
15. Officer E told the Authority he assisted Officer J to pull Mr W out from under the bush. He said he was concerned Mr W may have something in his hand so he grabbed hold of Mr W's shoulders to control his upper body and prevent an assault.
16. According to Officer E, Mr W kned him in his right thigh as Mr W was attempting to get up off the ground. So Officer E kned Mr W in the thigh, hooked his right leg over Mr W's right leg and applied his body weight to control him. He said Mr W tried to get up by arching his back, so he kned him in the back two to three times to push him flat on the ground and gain control. Officer E also pulled Mr W's left arm behind his back in preparation to lift him off the ground while maintaining control.
17. Officers E and J said they attempted to lift Mr W off the ground but he continued to resist. Officer E kned Mr W in the thigh again "because he was trying to bolt [escape] and fight". Meanwhile, Officer J placed Mr W's right arm in an 'arm bar'.<sup>5</sup>

#### *Allegations against the arresting officers*

18. Officer D walked past and observed Mr W lying face down on the ground, with his hands behind his back and the officers on top of him. He saw that Mr W was not handcuffed and believed he was not struggling. Officer D told the Authority:

*"It must've been only about five to ten seconds... I didn't stop for long... There were about five constables on him, including [Officer E] and... yeah, they were beating the shit out of him basically. There were... elbow strikes, knee strikes, kicks, and punches and the male was screaming..."*

19. Officer D specifically recalled Officer E using "quite a few... knee strikes to the side of his body as well as kneeling on him... and he had... the offender's left arm behind his back and he was also doing elbow strikes as well".

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<sup>5</sup> Arm bars consist of holding a person's arm out straight behind their back to control a person. This is a Police approved manual restraint.

20. Mr W said he felt a kick to his left ribs and a punch to his face. He also recalled being told to “get up” while the officers were kicking him, but said he did not struggle or resist Police.
21. Mr W told the Authority there were five or six officers assaulting him. However, neither Officer D nor Mr W were able to identify the specific officer, or officers, responsible for using this force.

#### *Arresting officers’ responses to allegations*

22. There is a discrepancy in relation to the number of officers involved in the arrest. Officer D and Mr W believed there were four to six officers involved. The accounts provided by the attending officers confirm their locations and involvement in other arrests during this incident. By process of elimination the Authority has determined that only Officers B, E, and J were involved in Mr W’s arrest. There is no available evidence to support the assertion that more officers were involved.
23. Officer E said he did not punch, kick or elbow Mr W, and did not see Officers B or J do so either. When asked if he struck anyone with his hands, Officer E said “100 per cent, never”. He told the Authority: “I did not strike [Mr W] in any way, shape, or form.” He said his actions (restraining Mr W’s shoulders and kneeling him) were an attempt to gain compliance, as Mr W was resisting arrest and attempting to get up.
24. Officer J said, “I didn’t personally kick anyone or see [Officer E] doing anything like that at all.” When asked if he kicked or punched Mr W, Officer J said “it was definitely not me and I didn’t see [Officer E] doing anything like that.” He told the Authority “we would’ve been kneeling on [Mr W] to keep him under control and to make sure the arm bars were in place”.
25. Officer B told the Authority “I didn’t see any punches or kicks thrown and I certainly didn’t punch or kick anyone.” None of the three officers recalled Mr W screaming but Officer B told the Authority he heard Mr W say, “I’m not resisting”.
26. Officer K also briefly witnessed the incident. He saw Mr W “half kneeling” and struggling while being handcuffed. He did not observe any of the officers punch, kick, or knee Mr W.

#### *Concluding comments*

27. Officers B, E, and J all accepted that they participated in the arrest and used force, but denied Officer D’s allegations that they punched and kicked Mr W.
28. It is evident that, in part, Officer E’s account supports that of Officer D and Mr W. Officer E admitted he used knee strikes on Mr W’s thigh and back in order to gain control and effect the arrest.

29. Sections 39 and 40 of the Crimes Act 1961 provide for Police officers to use reasonable force to carry out an arrest, and to prevent the escape of a person who *“takes flight in order to avoid arrest”*.<sup>6</sup>
30. When Officers E and J found Mr W in the bush, he was not immediately compliant with their requests to get up. The Authority accepts that it was appropriate to use force to remove him from the bush.
31. However, the Authority has also considered the following factors in relation to the force used during Mr W’s arrest:
- The officers had timely support with colleagues close by; and
  - The dog handler was in the vicinity, mitigating the risk that Mr W would escape.
32. For these reasons, the Authority has determined that Officer E was not justified in using knee strikes. The force Officer E used was not proportionate to the threat Mr W posed.
33. Officer D and Mr W also reported that Mr W was punched. However, as neither Mr W or Officer D were able to identify the officer, or officers, responsible (and Officers B, E and J deny the allegation) the Authority is unable to determine whether Mr W was punched or by who.
34. Later the same night, Officer D spoke to Officer E about the incident. In his complaint to Police, Officer D said:
- “[Officer E] informed me that he had ‘dealt to them’. He continued to tell me that it’s about time some of these kids got what they deserved. He then suggested that he believed he had deliberately torn [Mr W’s] rotator calf [sic] muscle and that it should put him out of action for six months.<sup>7</sup> He continued to state that he knew based on his physiotherapy experience how to hurt him in ways not to leave any marks.”*
35. Officer E told the Authority that, to his recollection, he did not make any such comments: *“I do not think I would say something like that... If I was to say something like that it would be ‘I’ve done Judo’... I wouldn’t be saying ‘because I’m a physio’. It doesn’t make any sense”*. Officer E later said the allegation was an *“absolute fabrication”*.
36. However, the allegation is supported, in part, by Officer E’s account that he restrained Mr W’s shoulders and pulled his arm behind his back before lifting him off the ground (see paragraphs 15-16). Furthermore, given Officer D’s recollection was specific and detailed while Officer E’s response to the allegation was somewhat equivocal, the Authority considers that, for whatever reason, it is likely Officer E made such a comment.
37. Nonetheless, Mr W did not complain about any injuries sustained during his arrest, nor were any detailed in his custody record. The Authority is therefore unable to determine whether or not Officer E actually acted as per his comment to Officer D.

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<sup>6</sup> See paragraphs 102-103.

<sup>7</sup> The rotator cuff is a group of muscles and tendons that surround the shoulder joint.

38. There is insufficient evidence to support Officer D's allegations that kicks, punches and elbow strikes were used during the arrest.

#### FINDINGS ON ISSUE 1

Officer E was not justified in using knee strikes during Mr W's arrest.

Officer E made concerning comments to Officer D.

There is insufficient evidence to support Officer D's allegations that kicks, punches and elbow strikes were used during the arrest.

#### Issue 2: Was the force Police used during Mr X's and Mr Y's arrest justified?

##### *Arresting officers' accounts*

39. While Mr W was being arrested, several men from the crowd ran down an alleyway into a park at the end of Armstrong Street. Officers G, H, and I exited the Police van and ran after them. They saw the men jumping a fence to escape but two of them failed to do so.
40. Officer H shone his torch on the two remaining men (Mr X and Mr Y). Officers G and H told them to stay where they were and stop trying to jump the fence. Officer G said both Mr X and Mr Y raised their fists in a fighting stance.
41. According to Officer H, the smaller male who was standing nearest to the fence, Mr X, turned around to look at him. As Mr X's arms were in the air, Officer H could see he did not have any weapon in his hands.
42. Officer H tackled Mr X to the ground, rolled him onto his front and pulled his arms behind his back. Mr X was arrested for disorderly behaviour and handcuffed.
43. Meanwhile, Officer G tackled Mr Y to the ground. Officer G said Mr Y was kicking his legs out but Officer I pinned his legs in order to restrain him. Mr Y ceased resisting.
44. Officer H waited while Officers G and I arrested Mr Y for disorderly behaviour. The three officers then walked Mr X and Mr Y out to the Police van on Armstrong Street together.

##### *Allegations against the arresting officers*

45. Mr X told the Authority he had not been part of the public disorder but was walking home with a friend. He recalled that he ran down the alleyway because other people were doing so. Mr X told the Authority he "gave up" in the park, and stood still, but Officer H tackled him to the ground. He said he was not resisting but Officer H told him to "just fuck up, stay the fuck down".
46. Mr X also believed he was kicked in the ribs by a "Māori fella" (possibly Officer I). Shortly after, he felt an elbow to his head from Officer H (the person shining the torch on him), which he believed knocked him out. Mr X remembered "waking up while standing up" leaning on a fence in the park.

47. Mr Y said he saw an officer ‘clothesline’ Mr X and tackle him to the ground.<sup>8</sup> He also said he saw *“a Māori cop stomping on the... back of [Mr X’s] neck. The bro [Mr X] looked really not with it.”*
48. Both Mr X and Mr Y recalled a *“Māori”* using force against Mr X. The only Māori officer in attendance was Officer I. However, Mr X recalled a Māori officer kick him in the ribs, while Mr Y reported the Māori officer standing on Mr X’s neck. In contrast to both of these accounts, Officers G and H say Officer I was actually involved in restraining Mr Y, and not Mr X. The Authority is unable to reconcile these accounts or determine Officer I’s involvement in this incident as, at the time of writing, he is overseas for an extended period and unavailable for interview with the Authority.
49. In his Police statement, Mr Y said he was unable to get through a gate so he turned to face the three officers and put his hands up in surrender. He said an officer *“slammed”* him into the fence and told him to stop resisting before punching him in the face *“a couple”* of times. Mr Y then put his hands up in a fighting stance but said he *“never swung back [at Police]”*. He said another officer came to assist and he was taken to the ground.
50. According to Mr Y’s Police statement, as he was being walked out to the car, a tall white officer grabbed him, pulled his head down and kned him in the face three times. He recalled the officer saying: *“You gotta earn respect.”*
51. Mr Y said that once he was in the Police van he was hyperventilating and panicking. His friend, Mr X, had *“...what looked like an asthma attack, it freaked me out”*. He also said one of the other arrested people in the Police van was unresponsive and that he tried to tell the officers to open the door but they did not react.

#### *Arresting officers’ response to allegations*

52. Officer H told the Authority he tackled Mr X to the ground because he had his hands up in a fighting stance and *“he’d said something antagonistic to me”*. He said he did not elbow, kick or punch Mr X in the head, nor did he see his colleagues do so. He said he struggled to get the handcuffs on but Mr X was not otherwise resistant. Officers G and H recalled Mr X apologising while he was on the ground.
53. Officer G did not see Officer H take Mr X to the ground and did not see any strikes. Officer G denied using excessive force against Mr Y, including punches, strikes, kicks, or kneeling him. He said: *“I definitely didn’t give any strikes out to Mr Y because... the tackle got him to the ground”* and Officer I had his body weight over Mr Y’s feet. Officer H said he did not see Mr Y punched or kicked.
54. Officer K observed Officers G and H exit the alleyway with Mr X and Mr Y. He did not see anything that caused him concern about either arrest.

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<sup>8</sup> To ‘clothesline’ a person means to knock down an approaching person with an outstretched arm at neck level.



### *Independent civilian witnesses' accounts*

55. Two independent civilian witnesses observed the incident from a property on Armstrong Street. They heard Police shout *"get on the ground"* and subsequently saw the officers escorting two men out of the alleyway, handcuffed behind their backs. The two witnesses heard Police shouting and swearing at the youths but did not see any Police actions which concerned them.
56. A third independent civilian witness, who lived in a property on Armstrong St, said he heard the youths calling out from the alleyway: *"You's ain't allowed to fuckin' hit us like this. You's can't fuckin' do this, you just can't fuckin' do this."* He said he saw the two males being *"slammed up against the fence,"* and heard the officers say *"Fuck up, fuck up, stop resisting bro..."* He said one of the males was dragged along the ground and could see they were being *"manhandled"* and punched. However, he also acknowledged that it was dark and there was no light in the alleyway or park, providing limited visibility.
57. A fourth independent civilian witness, a youth living in a nearby property, said Police were *"aggressive"*, yelling and cursing, *"slamming"* people on the ground and dragging them out of the park into the Police van.

### *Concluding comments*

58. The Authority considers that, in accordance with section 40 of the Crimes Act 1961, Officers G and H were justified in tackling Mr X and Mr Y to the ground to prevent their escape.
59. The third independent civilian witness supports Mr Y's account that he was pushed up against the fence, told to stop resisting, and punched (see paragraph 56). The Authority accepts that facing a person towards a surface (in this instance a fence) is often a part of the arrest process.
60. While the independent witness appears to corroborate Mr Y's account that he was punched, the locations indicated by the witness, the conditions prevailing on the night and evidence of other witnesses make it unlikely that the witness actually saw Mr Y being punched. The Authority therefore has set aside the witness' evidence on this point. With no further available evidence, the Authority is unable to determine whether Mr Y was punched.
61. There is no available independent evidence to support Mr Y's allegation that he was kned in the face by a Police officer on the way to the Police van.
62. Mr X recalled being put in the Police van but thought he lost consciousness while inside.<sup>9</sup> Mr Y reported that one of the arrested people was unresponsive in the Police van but did not specify that it was Mr X. Mr X and Mr Y were friends and Mr Y referred directly to him during other parts of his account, so it is unlikely Mr X was the unresponsive person he mentioned. Neither Mr W nor Mr Z reported being knocked out and both recalled being in the Police van.

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<sup>9</sup> He said that following this incident he suffered sharp pains to his right ribs as well as migraines and headaches, but has since recovered.

63. Mr X's custody evaluation makes no mention of any head injuries, nor is there any record of a medical assessment for concussion. The Authority is unable to determine whether Mr X, or any other arrested person, lost consciousness.

## FINDINGS ON ISSUE 2

Officers G and H were justified in tackling Mr X and Mr Y to the ground to prevent their escape.

Due to conflicting accounts and insufficient independent evidence, the Authority is unable to determine whether excessive force was used during Mr X's or Mr Y's arrests.

The Authority is unable to determine whether Mr X, or any other arrested person, lost consciousness.

### Issue 3: Was the force Police used during Mr Z's arrest justified?

#### *Arresting officers' accounts*

64. At approximately 1.30am on 18 November 2017, Officers G, H, I, and K returned to Semple Street in the Police van, where they saw another crowd gathering. The officers got out of the van and walked towards a group of eight to ten people. Officer G said he and his colleagues called out "*Police, go home now, move along*" several times, but the crowd did not comply and was verbally abusive towards the officers.
65. Officer D, who had been assisting with another arrest on Semple Street, observed the incident occurring and caught up to his colleagues as they approached the group. The group subsequently dispersed, apart from two men and a woman.
66. Officer G recalled seeing one of the men, Mr Z, holding a screwdriver with a black and yellow handle and a long shaft. Officer H described Mr Z holding it "*the same way that you would hold a knife if you were going to use it to stab someone.*"
67. Officer G, who had his baton drawn, hit Mr Z in the torso without warning. Mr Z fell to his knees on the ground and dropped the screwdriver. Officers H and J grabbed Mr Z and moved him onto his front, pulled his hands behind his back and handcuffed him.
68. The woman accompanying Mr Z (who was pregnant) approached Officer D. He told her to get back, but she continued towards him. He pushed her in the chest to move her away but she slipped over on the grass next to the footpath and fell to the ground. Officer D said she immediately got up and ran away. According to Officer G, she departed with the screwdriver in her possession.

#### *Use of the baton – self defence*

69. Officer G stated in his Tactical Options Report (TOR) that he struck Mr Z with the baton for the purpose of self-defence and defence of his colleagues, in accordance with section 48 of the

Crimes Act 1961.<sup>10</sup> In order to rely on this defence, Officer G's actions must be assessed on both a subjective and an objective basis. This assessment involves three questions:

- 1) What were the circumstances as Officer G believed them to be (a subjective test)?
- 2) Was Officer G's use of force for the purpose of defending himself and his colleagues (a subjective test)?
- 3) Was the force used reasonable in the circumstances as Officer G believed them to be (an objective test)?

*1) What were the circumstances as Officer G believed them to be?*

70. Officer G told the Authority he considered the only reason for Mr Z to have a screwdriver in this situation was as a weapon. Officer G said Mr Z continued to be verbally aggressive towards Police and was approximately two metres away from him, Officer H and Officer K.
71. Officers D, G, H, and K heard an officer (believed to be Officer I) call out "Screwdriver!" to forewarn his colleagues of the potential danger. Officers G and H also recalled Mr Z saying the female had taken the screwdriver when he was arrested and left the scene with it. However, in his interview with the Authority, Mr Z denied having a screwdriver.
72. Nonetheless, based on the descriptions provided by the officers and the recollection of a verbal warning (including by the complainant, Officer D), the Authority is satisfied that, on the balance of probabilities, Mr Z was holding a screwdriver and Officer G perceived this as a threat to him and his colleagues.

*2) Was Officer G's use of force for the purpose of defending himself and his colleagues?*

73. Officer G considered Mr Z to be 'assaultive' because, if Mr Z used the screwdriver as a weapon, he could have caused significant harm.<sup>11</sup>
74. The Authority accepts that, when Officer G used force, he was acting in defence of himself and his colleagues.

*3) Was the force used reasonable in the circumstances as Officer G believed them to be?*

75. Officer G delivered one strike with his baton to Mr Z's upper abdomen, without warning, causing Mr Z to drop the screwdriver.
76. Under Police policy, the use of a baton is justified when a person is in the assaultive range. Officer G was satisfied that one strike was sufficient, as this had the desired effect of causing Mr Z to drop the weapon and fall to the ground.

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<sup>10</sup> An officer is required to complete a TOR when he or she has used a certain level of force on a member of the public. The report includes each tactical option and a description of the force used and the reasons for using it.

<sup>11</sup> 'Assaultive' in the Tactical Options Framework (a training and operational tool that assists constables to appropriately decide when, how, and at what level to use a tactical option) includes someone who displays intent to cause harm, through body language/physical action.

77. The Authority accepts that in the circumstances, Officer G's single strike of his baton was a reasonable use of force to counter the threat Mr Z posed.

#### *Officer D's and Mr Z's accounts of the force used when Mr Z was on the ground*

78. Officer D saw Mr Z lying on the ground. He said Mr Z was not swearing, being abusive or resistant, but officers jumped on Mr Z and repeatedly punched him in the head. However, he also said, *"If [Mr Z] was trying to threaten [the officers] with a screwdriver then I guess that's probably justified because he's assaultive...."*

79. Mr Z told the Authority there were five or six officers on him. He said he was not struggling during the arrest but was elbowed and punched in the face. He denied that he had been holding a screwdriver and said:

*"They dragged me over onto the grass... cuffed me and that's when they started beating me and... saying stuff like, 'You think you're cool', or, 'you was gonna attack', make sure I had nothing to attack with. I wasn't planning on attacking, I was trying to get away...."*

80. Once Mr Z was handcuffed, he said he felt *"knees into my back, knees on the side of my face squashing it and still getting a beating, I'm not resisting... and [I'm] like screaming for help...."*

#### *Officers' responses to allegations*

81. Officer G told the Authority that once on the ground, Mr Z did not resist arrest. Officer H said he assisted in handcuffing Mr Z. Officers G and I then picked Mr Z up off the ground, placed him in arm bars and escorted him in a Police vehicle. Officer H denies the allegation that excessive force was used by him and said he did not see his colleagues do anything untoward either. Mr Z was subsequently arrested for possession of an offensive weapon and placed in a Police vehicle.

82. Officer G told the Authority:

*"...There is no way we could have, there's virtually no way you can ever justify punching anyone in the back of their head... we're all experienced cops on a specialist unit. We know the limits, we know the boundaries, we know the law and something like that in that environment would just make things so much worse and I, if I was to see that happen I would immediately call out anyone who do such a thing because it's just, it's completely unnecessary and it's illegal."*

83. Officer K, although not directly involved in Mr Z's arrest, said he saw him struggling, twisting and resisting being handcuffed behind his back. He said he did not observe any actions by his colleagues during Mr Z's arrest that caused him concern.

84. Officer D's account is consistent with Mr Z's, in that he was not resisting Police but was punched in the back of the head. However, neither Officer D nor Mr Z were able to identify the officers.

85. Due to conflicting accounts and a lack of independent evidence, the Authority is unable to determine whether Police used excessive force when Mr Z was on the ground.

#### *Alleged comments*

86. During Mr Z's arrest, Officer D reportedly heard an officer, who he believed to be Officer F, say: *"if you are going to do that, don't do it in front of everyone"*.
87. Officer F told the Authority he did not say that and did not hear anyone else say it either. He said he was driving along Semple Street in a Police van at the time. He saw an incident occur in the distance but did not observe the arrest.
88. Officers G, H, and K all said they did not hear the comment or words to that effect.
89. Due to insufficient evidence the Authority is unable to determine whether any officer said *"if you are going to do that, don't do it in front of everyone"*.

### FINDINGS ON ISSUE 3

Officer G was justified in using his baton in self-defence and in defence of his colleagues.

Due to conflicting accounts and a lack of independent evidence, the Authority is unable to determine whether:

- Police used excessive force during Mr Z's arrest; and
- an officer said *"if you are going to do that, don't do it in front of everyone"*.

### Issue 4: Did a Police officer use pain compliance on Mr Z when at the station?

90. At Huntly Police Station the arrested people were taken into the custody unit. Officer D told the Authority he saw an officer squeeze handcuffs into the wrists of one of the arrested people *"deliberately hard enough so the offender yelled out in pain telling him to "'Stop, Stop' and he was almost in tears..."* Officer D said the officer told the arrested person to *"shut up"*.
91. Officer D did not know who the arrested man was at the time but later identified him as Mr Z. Officer D said that, while he was interviewing Mr Z for an unrelated offence, Mr Z disclosed that he had received wrist injuries during the incident on 18 November 2017. Mr Z said he had bruises on his wrists for weeks after the incident, was unable to move them and they were sore. However, he did not wish to make a complaint to Police as he felt they would not listen to him.
92. The Authority was unaware of this at the time the Investigator interviewed Mr Z. Nonetheless, Mr Z did not raise the issue. Furthermore, Mr Z's custody evaluation did not detail any injuries.
93. Subsequently, the Authority asked Officer H, the arresting officer, if he caused any harm to Mr Z with the handcuffs. He said he did not and nor did he witness anybody else doing so.
94. Based on the available evidence, the Authority is unable to determine whether a Police officer used pain compliance on Mr Z at the station.

#### FINDING ON ISSUE 4

Based on the available evidence, the Authority is unable to determine whether a Police officer used pain compliance on Mr Z at the station.

#### Issue 5: Did the officers complete tactical option reports following the incident?

95. Police policy states that, other than touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground, officers must fully report uses of empty hand techniques in a Tactical Options Report (TOR) form.<sup>12</sup>
96. Officer E used knee strikes to gain control of Mr W on the ground. However, he did not complete a TOR as required by Police policy.
97. Officer G completed a TOR in relation to Mr Z's arrest. However, he made no mention of the force used during Mr Y's arrest, despite telling the Authority that he tackled him to the ground. In accordance with Police policy, Officer G should have included this information in his TOR.
98. Officer H tackled Mr X to the ground. He did not complete a TOR as required by Police policy.
99. Officer D pushed a pregnant female and she landed on the ground, but he did not complete a TOR. Officer D told the Authority he was unaware she was pregnant and had forgotten the incident as he was focused on the behaviour of his colleagues at the time. He did, however, acknowledge in hindsight that he should have completed a TOR.

#### FINDINGS ON ISSUE 5

Officers D, E, and H did not complete a TOR detailing the force used during Mr W, Mr X, and Mr Z's arrests, as required by Police policy.

Officer G did not include the force used during Mr Y's arrest as part of his TOR, as required by Police policy.

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<sup>12</sup> 'Empty hand' refers to a weaponless use of force, such as grabbing hold of, pushing, or punching a person.

## CONCLUSIONS

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100. The Authority commends Officer D for raising his concerns about the actions and comments of his colleagues. Due to the serious nature of the complaint, the Authority carefully assessed the competing evidence. It determined that Officer E's use of knee strikes during Mr W's arrest was excessive and that Officer E made concerning comments to Officer D. However, because of the conflicting and sometimes diametrically opposed accounts of witnesses, the Authority has been unable to find to the necessary standard any other use of excessive force or misconduct on the part of any officer.

101. The Authority also found:

- 1) Officer G was justified in striking Mr Y with his baton in self-defence and in defence of his colleagues;
- 2) Officers G and H were justified in tackling Mr X and Mr Y to the ground to prevent their escape;
- 3) Officers D, E, and H did not complete a TOR detailing the force used during Mr W, Mr X, and Mr Z's arrests, as required by Police policy; and
- 4) Officer G did not include the force used during Mr Y's arrest as part of his TOR, as required by Police policy.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

27 June 2019

**IPCA: IPCA: 17-1239**

### Law on use of force

102. Section 39 of the Crimes Act 1961 provides for law enforcement officers to use reasonable force in the execution of their duties such as arrests and enforcement of warrants. 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.”*
103. Section 40(1) of the Crimes Act 1961 provides for Police officers to use reasonable force to *“prevent the escape of that other person if he takes flight in order to avoid arrest.”*
104. Section 48 of the Crimes Act states: *“Everyone 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.”*
105. Under section 62 of the Act, anyone who is authorised by law to use force is criminally responsible for any excessive use of force.

### Police Use of Force policy

106. 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), OC spray, batons, Police dogs, Tasers and firearms.
107. Police policy provides a framework for officers to assess, reassess, manage and respond to use of force situations, ensuring the response (use of force) is necessary and proportionate given the level of threat and risk to themselves and the public. Police refer to this as the TENR (Threat, Exposure, Necessity and Response) assessment.
108. 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).



109. Wherever possible and appropriate, officers should use tactical communication throughout an incident, alone or with any other tactical options. Tactical communication is crucial to safely de-escalating an incident with uncooperative subjects. Tactical communication should be attempted in every incident where Police action is necessary in response to uncooperative subjects, including those that may require force to be used.
110. 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.
111. 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.

#### *Completion of Tactical Options Report forms*

112. Other than touching, guiding, escorting, lifting, and pushing where a person does not fall to the ground, uses of empty hand techniques must be fully reported in a Tactical Options Report (TOR) form.
113. An officer must submit the TOR form to their supervisor before the end of the shift in which they used force, or with their supervisor's approval, within 3 days/72 hours of this shift and prior to any rostered days off or leave during this period.

## 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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