

*Independence*

*trustworthiness*

*accountability*

*vigilance*

*integrity*

Serious injury to Shane Legg following arrest

August] 2013



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August 2013

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# Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. On 19 April 2012, just before 9pm, a Police pursuit started near Whangarei, Northland, after the driver of a blue Nissan Skyline car was signalled to stop and failed to do so. The driver of the Skyline was Shane Legg, aged 28 at the time. He drove the Skyline into a rural area, then abandoned the car near a house and tried to escape on foot in a steep, wooded hill area nearby.
2. Mr Legg was soon tracked by a Police dog and handler, together with another officer, an acting Sergeant. Near the top of the hill, the handler and dog found Mr Legg and the dog bit him, causing injury. Mr Legg was arrested and put in handcuffs behind his back and escorted by the acting Sergeant down the hill to a wire fence near the house.
3. The acting Sergeant asked Mr Legg to climb the fence while he was still handcuffed behind his back and was being held from behind. As he was attempting to do this, Mr Legg fell to the ground. Although Mr Legg complained that he was hurt, two officers on the other side of the fence then picked him up and carried or dragged him about 30-40 metres towards waiting patrol cars.
4. Once it became clear that Mr Legg was not supporting his own weight, the officers laid him on the ground and an ambulance was called. Mr Legg was taken to Whangarei Hospital, where he was found to have a serious spinal cord injury, which has left him partially paralysed.
5. As required under section 13 of the Independent Police Conduct Authority Act 1988, Police notified the Independent Police Conduct Authority on 20 April 2012 of the injury to Mr Legg. The Authority assessed the matter as category 1 (requiring IPCA independent investigation) and assigned an investigator.
6. On 23 April 2012 Mr Legg's barrister faxed a letter of complaint to the Authority, alleging that Mr Legg had been "*forcibly propelled*" over the fence and that his injuries had resulted from Police misconduct. The complaint has been considered as part of the Authority's overall investigation.
7. This report sets out the Authority's findings and recommendations.

**Officers involved**

<b>Officer</b>	<b>Rank/role</b>	<b>Nature of involvement</b>
<b>Officer A</b>	Senior Constable	Drove primary pursuit vehicle.
<b>Officer B</b>	Constable	Passenger in primary pursuit vehicle.
<b>Officer C</b>	Acting Sergeant	Went with Officer D to track Mr Legg. Escorted Mr Legg down the hill and instructed him to climb the fence while handcuffed and being held from behind.
<b>Officer D</b>	Constable	Dog handler. Tracked Mr Legg to the hilltop, then followed Officer C and Mr Legg down the hill.
<b>Officer E</b>	Constable	Carried or dragged Mr Legg towards patrol cars after he had fallen from the fence.
<b>Officer F</b>	Constable	Carried or dragged Mr Legg towards patrol cars after he had fallen from the fence.



# Executive Summary

INDEPENDENT POLICE CONDUCT AUTHORITY

8. On 19 April 2012, just before 9pm, a Police pursuit started near Whangarei, Northland, after the driver of a blue Nissan Skyline car was signalled to stop and failed to do so. The driver of the Skyline was Shane Legg, aged 28 at the time. He drove the Skyline into a rural area, then abandoned the car near a house and tried to escape on foot in a steep, wooded hill area nearby. Police searched his car and found a small plastic bag containing white powder, which was later found to weigh 34 milligrams and to contain methamphetamine, a class A controlled drug.
9. Mr Legg was soon tracked up the hill by a Police dog and handler (Officer D), together with another officer (Officer C, an acting Sergeant). The terrain was very difficult: it was steep, slippery, and the hillside was covered in gorse and felled trees. Near the top of the hill, Officer D and the dog found Mr Legg. Mr Legg says that he surrendered at this point. The two Police officers say that the dog located Mr Legg beside a tree but he did not come out when Officer D asked him to do so. Officer D then sent the dog forwards and it bit Mr Legg, causing injury to his lower leg. He was put in handcuffs behind his back, placed under arrest, and escorted by Officer C down the hill. On the way down, the officers and Mr Legg had to climb over felled trees and other obstacles.
10. At the bottom of the hill there was a 1.08-metre-high nine-strand wire fence. The top wire was usually electrified but on this occasion it had been turned off. Officer C told Mr Legg to put his foot on the top wire of the fence and jump down the other side. There were two other officers (Officers E and F) on the other side of the fence, and Officer C told them to stand back. Mr Legg was still handcuffed behind his back, and Officer C was holding his shirt from behind. The officer was confident that Mr Legg could climb the fence because he had negotiated other obstacles without apparent difficulty. Mr Legg was reluctant to put his foot on the top wire as he believed the fence was electrified. Officer C and other officers verbally assured him that it had been turned off.
11. Mr Legg then put his foot on the second wire and attempted to swing his other foot over. Mr Legg says that Officer C then pulled sharply down on the back of his collar, causing him to fall and land on his head, leaving him unable to move. Officer C says that Mr Legg launched himself over the fence. Because Officer C was holding Mr Legg's shirt,

the officer says he was pulled towards the fence. He tried to hold Mr Legg, but as Mr Legg fell the shirt was pulled from his grip. The officer said Mr Legg landed on his shoulder.

12. Mr Legg says he told Police he could not move. The officers present say he complained of a sore arm or sore leg or both. None of them believed the fall was serious. When Mr Legg did not move, Officers E and F – believing he was being uncooperative – picked him up under the shoulders and moved him 5-10 metres with his feet dragging on the ground. When they saw he was not moving his legs, still assuming he was being uncooperative, they picked him up by the arms and legs and carried him another 25-30 metres. At that point Mr Legg complained of soreness and a burning sensation in his back. The officers laid him on the ground and an ambulance was called shortly before 10:00pm.
13. The ambulance arrived at 10:22pm. Mr Legg was taken to Whangarei Hospital, where he was found to have a serious spinal cord injury. Mr Legg has continued to have medical treatment for his injuries. While initially paralysed he has regained some limited movement of his limbs.

#### **Summary of conclusions**

14. Shane Legg went to considerable lengths to evade Police, first by fleeing in his car and then by running up a steep hill in darkness. The actions the officers took to pursue and arrest him were justified and consistent with policy. The care he received as he was being escorted down the hill while handcuffed was also reasonable.
15. The Authority does not believe that Officer C intentionally pulled Mr Legg downwards as he was crossing the fence. Rather, the evidence supports the officer's version of events: that Mr Legg jumped, pulling the officer forwards into the fence, and the officer then lost his grip on Mr Legg's shirt as Mr Legg fell. In the Authority's view, Officer C did not give adequate consideration to the potential risks arising from his instruction for Mr Legg to climb the fence while his hands were restrained behind his back. The officer failed in his duty of care towards Mr Legg, and his actions were unreasonable. Officer C did not intend to cause harm, but he made an error of judgement that has proven to have serious consequences.
16. The Authority accepts that Officers E and F did not believe that Mr Legg was seriously injured. They believed that he was being uncooperative and may have been preparing for another attempted escape. Given Mr Legg's previous actions, these beliefs were understandable. However, with the benefit of hindsight, having seen him fall and heard him complain of soreness in his arms and/or legs, the prudent approach would have been to stop and check his condition at that stage, and to consider alternative options. Their failure to do so was undesirable.



## Section 27 opinion

17. Section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable. In the Authority's view:
- i) Officer C did not adequately consider possible risks and alternative courses of action before instructing Mr Legg to climb the fence. In that respect, the officer did not fulfil his legal duty of care to Mr Legg, and his actions were therefore unreasonable. However, in the circumstances these actions were not so grossly negligent as to give rise to criminal liability.
  - ii) Officers E and F did not consider possible risks and alternative courses of action before moving Mr Legg after he had fallen. Their failure to do so was undesirable. However their actions were not unreasonable, given the information known to them at the time, and did not amount to a breach of their legal duty of care.

## Section 27(2) recommendations

18. Pursuant to section 27(2) of the Act, the Authority recommends that the Police:
- i) Reconsider their decision not to take action under the Code of Conduct in relation to Officer C.
  - ii) Amend the 'Mechanical Restraints' chapter of the Police Manual to require specific consideration of potential risks to the safety of handcuffed offenders due to their restricted mobility.
  - iii) Amend the Arrest and Detention chapter of the Police Manual and the 'overview' and 'general principles' sections of the Mechanical Restraints chapter to ensure officers are given clear and consistent guidance about the factors they must consider before deciding whether to use mechanical restraints.





# Background

INDEPENDENT POLICE CONDUCT AUTHORITY

## SUMMARY OF EVENTS

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### The pursuit

19. On Thursday 19 April 2012 at about 8.30pm, Officers A and B (both of Whangarei Police) were on patrol in a marked Police vehicle. Officer A was driving.
20. While driving north along State Highway 1 in Ruakaka in an 80kph zone, both officers saw a speeding Nissan Skyline travelling towards them. Officer A activated the radar, locking the Skyline as travelling at 136kph.
21. Officer A did a u-turn with the intention of catching up to the Skyline to request the driver to stop. The Skyline was still travelling at 136kph. After the u-turn there were two other vehicles between the Police car and the Skyline. As Officer A tried to pass one of those vehicles, the Skyline cut a right-hand corner at high speed.
22. Eventually, Officer A got up behind the Skyline on Loop Road, Otaika, and Officer A activated the patrol car's red and blue lights and siren requesting the driver to stop.
23. At 8:52:13pm, Officer A radioed the Police Northern Communications Centre (NorthComms) giving his vehicle call sign and saying "*Failing to stop*". Officer B then took over the radio giving a location (now Otaika Valley Road) and the Skyline's speed (81kph) and informing the Police Northern Communication Centre (NorthComms) that the Skyline had been seen doing excessive speeds on State Highway 1. The NorthComms operator gave the warning required under the Police fleeing driver policy (see paragraphs 233-237):

*"If there's any unjustified risk to any person you are to abandon the pursuit immediately. Acknowledge?"*

24. Officer B acknowledged the warning and continued to provide updates on location (now Tavinor Road, a 3.9km-long dead-end extension of Otaika Valley Road), and the Skyline's speed and driver behaviour. At about 8:55pm, after NorthComms had informed the officers that Tavinor Road was a dead-end, Officer B asked for another

unit to be sent. Other units – including Officer C, and the dog handler Officer D – responded to that request by making their way to Tavinor Road. As the pursuit was reaching the end of Tavinor Road, Officer B provided NorthComms with an update on the Skyline’s speed (100kph) and said the road was deserted and there were no concerns for safety.

25. At the end of Tavinor Road there is a house with wide expanses of land both in front and behind. Parts of the land behind the house are encircled by electrified wire fences, and beyond them there is a large, steep hill covered in gorse and trees, some of which had been felled. The Skyline stopped near the house. Officers A and B were a short distance behind, and as they turned into the driveway they asked NorthComms to tell the other units of their location. Mr Legg got out of the Skyline and ran to the back of the house. He jumped over the fences (to avoid the electrified wires) and began walking and running up the hill.
26. Once the Police car had stopped, Officer A initially went after Mr Legg, shouting after him to stop while shining a torch in his direction. Officer B asked NorthComms to check the Skyline’s vehicle registration. Officer A, realising that a dog unit had been called, decided not to follow Mr Legg as he did not want to spoil the track.
27. Officer C (the acting Sergeant) then arrived, followed shortly afterwards by Officer D. Officer D put his dog on a lead and told it to track the offender. He and Officer C, who were both carrying torches, then began to follow the dog as it tracked Mr Legg’s scent.
28. Officer A meanwhile began searching the vehicle to establish the offender’s identity. The constable found a wallet, and a backpack on the rear seat. Inside the backpack were a bail bond in the name of Shane Legg and a ‘snaplock’ plastic bag containing several capsules of white powder. Later analysis by the Institute of Environmental and Scientific Research (ESR) found the white powder weighed 34 milligrams and contained methamphetamine, a class A controlled drug.
29. At 9:03.49pm Officer A – who had remained with the cars near the house – asked NorthComms to call a tow truck to take the Skyline from the scene. The tow truck arrived at the scene shortly after 9:40pm, before Mr Legg sustained his serious injuries. The decision to call a tow truck will be considered in more detail in paragraphs 168-169.

### **Tracking and arrest**

30. As they tracked Mr Legg up the hill, Officer D had to throw his dog over electric fences at least twice. Officers C and D had to negotiate felled trees and thick gorse. Mr Legg also made his way up the hill, through the rough terrain. At some point near the top of the hill he lost his shoes, which were never found. Mr Legg could hear the dog and see the torchlight, and so knew he was being tracked.

31. At about 9:25pm Officer E informed NorthComms: *“There’s a very very good chance that you’re chasing ah Mr Shane Legg... last pursuit he just kept running.”* Officers C and D were aware of this transmission.
32. According to Officers C and D, as they were nearing the ridge, the dog began to indicate that the offender was nearby. Officer D said that he heard rustling and when he shone his torch in its direction he saw the outline of Mr Legg, squatting down in some scrub. What occurred next is disputed. In his statement to the Authority, Mr Legg said he told the officers he gave up, and asked them not to release the dog. Officer D said he warned Mr Legg to come out or he would let the dog go, and when Mr Legg did not move or speak he instructed his dog to apprehend the offender. The dog, still on the lead, then engaged Mr Legg and bit him on the right leg, just above the foot. Officers C and D told the Authority that Mr Legg kept kicking out at the dog. However, once the dog was called off Mr Legg did not move, and the officers were able to handcuff him, locking the cuffs behind his back. The statements of Officers C and D and Mr Legg about the arrest are considered in more detail in paragraphs 70-80.
33. Officer C said that once Mr Legg was under control, he informed Mr Legg that he was under arrest for failing to stop and gave him his ‘rights’. During the arrest, Officer D asked Mr Legg why he had run from Police and Mr Legg replied it was because he was disqualified from driving. Officer C also asked NorthComms to find out if the house owner had a quad bike to help with transporting Mr Legg down the hill. When it became apparent that was not possible, the decision was made to walk Mr Legg down the hill. Officer C soon afterwards acknowledged that the prisoner was Shane Legg.
34. At 9:37:08pm, a doctor was called to the Police station to examine the dog bite (as is required under Police policy when anyone is bitten). This action is considered in more detail in paragraphs 166-167.

### **The journey downhill**

35. After the arrest, Officer C said he took Mr Legg by the back of his shirt, bunching it up tightly to form a *“harness”*, allowing him to guide and direct Mr Legg as they returned down the hill. Mr Legg still had his hands cuffed behind his back. Officer C gave Mr Legg instructions about where to step, and also physically guided him and shone his torch where he wanted Mr Legg to step. The terrain was difficult and there were felled trees and other obstacles in the way. According to Officer C, sometimes the pair went under obstacles and sometimes they went over, with the officer helping Mr Legg to maintain his balance. Where they came to felled trees, Officer C said either Mr Legg sat on the tree and swung his legs over or, if it was prudent to do so, the officer and Mr Legg stood on the tree and jumped over. Mr Legg says that he was pushed during this journey and sustained cuts from gorse; he also says that he lost his balance several times. The

statements of Mr Legg and Officers C and D will be considered in more detail in paragraphs 90-101.

36. As Officer C and Mr Legg went down the hill, Officer D followed several metres behind with his dog, keeping it a safe distance away from Mr Legg as required by Police policy.

#### **Crossing the fence**

37. At the foot of the hill there is a wire fence, 1.08 meters high with nine horizontal wires; the top wire is electrified. Mr Legg and Officers C and D had to cross the fence to get to the area where the Police vehicles were parked. The fence was on a slope, with Mr Legg and Officers C and D on the uphill side.
38. Before attempting to cross the fence, Officer C checked on Mr Legg and they took a short rest. Officer D, with his dog, remained a few metres behind them. Officer C then instructed Mr Legg to climb the fence, standing on the top wire and jumping over, while the officer kept hold of his t-shirt from behind. Officer C told the Authority that he was confident Mr Legg could negotiate this obstacle just as he had negotiated other obstacles on the way down the hill. Officer C told Officers E and F, who were on the other side of the fence, to step back, leaving room for Mr Legg to jump down.
39. Mr Legg, fearing that the fence was electrified, put his left foot on the second wire. Officer C then told him to put his foot on the top wire and, when Mr Legg protested, assured him that the fence was turned off. Mr Legg alleges that as he put his right foot over the fence, Officer C then pulled sharply downwards, causing him to fall and land on his head, seriously injuring himself. All of the officers present say that he jumped or fell. Mr Legg's statement and those of the Police officers and other witnesses are considered in detail in paragraphs 108-130.

#### **Dragging and carrying Mr Legg from the fence**

40. Mr Legg told the Authority that, after his fall, he could not move. He said he told the officers that he could not move and that he believed he had broken his back. However, they were dismissive and threatened to set the dog on him if he did not move. Mr Legg said that one officer then grabbed his arm and dragged him across a paddock towards the Police cars, picking him up and then dropping him. After a time another officer came over and the two officers took his arms and legs and took him further towards the house. Another officer then asked what was wrong and was told that Mr Legg was saying he could not move. That officer then decided to lay Mr Legg on the ground and call an ambulance.
41. Officers E and F have since been identified as the officers who dragged/carried Mr Legg. Both told the Authority they did not believe Mr Legg was seriously hurt, although according to Officer E he complained of having a sore leg and according to Officer F he

said he had a sore arm. Officer E said she believed Mr Legg was being intentionally unhelpful. The officers say they lifted Mr Legg from the ground and carried or dragged him for 5-10 metres, then took him by the arms and legs and carried him some about 25-30 metres further. According to Officer E, when Mr Legg started to complain more forcefully about the pain, she and Officer F put him on the ground. Officer C then made a decision to remove the handcuffs and call an ambulance.

42. At 9:56.01pm Officer F asked NorthComms to call an ambulance. The ambulance was dispatched at 10:01pm. While the ambulance was on its way, Officer C asked Mr Legg if he had taken any alcohol or drugs as medical staff would need to know. According to the officer, Mr Legg said he had *“had one line”* of the white powder in the car, which he identified as *“MDMA or NDMA”* (MDMA is an abbreviation for the chemical name of the drug methylenedioxymethamphetamine, commonly known as ecstasy; as noted in paragraph 28 the substance found in Mr Legg’s car was found to contain methamphetamine). Officer C in a brief phone call with NorthComms shortly after 10:10pm asked them to tell ambulance staff that Police had been getting Mr Legg over a fence and *“he’s decided that he’s... gonna try and jump... he’s fallen, fallen over and now he’s complaining... that he can’t feel his... feet”*.
43. Mr Legg’s statement and those of the Police officers and other witnesses are considered in detail in paragraphs 143-157.

#### **Arrival of the ambulance**

44. After Officers E and F had placed Mr Legg on the ground a blanket was obtained from the house and used to cover him. He was made comfortable until the ambulance arrived at 10:22pm. Mr Legg was put in a neck brace and a scoop (stretcher) was used to lift him into the ambulance. He was then taken to Whangarei Hospital.

#### **Mr Legg’s injuries**

45. After admission, the hospital found that Mr Legg had suffered a traumatic spinal injury to the 6<sup>th</sup> and 7<sup>th</sup> vertebrae of his neck, resulting in quadriplegia (loss of use of all limbs). According to the orthopedic surgeon who subsequently treated him, the injury was caused *“by a flexion injury to the neck... consistent with a blow to the head”*. This type of injury was most often seen in motor vehicle accidents or when someone dives into a shallow-water swimming *“pool, and was consistent with Mr Legg falling or being pushed over”* the fence and landing on his head.

#### **SHANE LEGG**

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46. Shane Legg was 28 years old at the time of this incident. In January 2012 he had been disqualified from driving for an indefinite period. He had previous convictions for driving and other offences.

47. As a result of this incident, he was initially charged with driving while disqualified, operating a motor vehicle recklessly, and failing to stop. Police subsequently decided not to proceed with the charges, due to Mr Legg's condition.
48. A blood specimen taken from Mr Legg was analysed by ESR and found to contain methamphetamine.
49. At the time of writing Mr Legg is living with his parents. He continues to have medical treatment for his injuries. While initially paralysed he has regained some limited movement of his limbs.

#### POLICE INVESTIGATION

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50. The Police investigation into this matter was assigned to an Inspector from the Northland Professional Standards Office at Whangarei.
51. In letters dated 26 April 2012, the Inspector told Officers C, D, E and F that they were under investigation for allegedly causing Mr Legg's injuries, and that the investigation aimed to determine whether there was any criminal liability or any breach of the Police Code of Conduct.
52. The investigation included:
  - a preliminary reconstruction, with the assistance of Officer A and witnesses from the house, on 20 April 2012;
  - interviews with eight independent witnesses who were at the house during the incident (initial interviews were conducted between 24 and 30 April; some witnesses were subsequently re-interviewed);
  - obtaining audio and video recordings from witnesses' mobile phones and a camcorder;
  - interviews with ambulance and hospital staff, and examination of medical records;
  - videotaped scene reconstructions with Officers C, D, E, and F;
  - formal statements from Officers A, B, D, E and F, between 8 May and 28 June 2012 (the Inspector determined that Officer C's video reconstruction was so comprehensive that it was not necessary to also take a formal statement);
  - consideration of job sheets, tactical operations reports, NorthComms logs and other Police documents;



- obtaining ESR reports on Mr Legg's blood sample and the powder found in his car; and
- a videotaped interview with Mr Legg on 17 August 2012.

### Mr Legg's previous history

53. In a final report to the Northland District Commander in December 2012, the Inspector noted that Mr Legg had been involved in a previous fleeing driver incident in March 2010, in which he had run from Police on a motorbike and then been pursued on foot and found by a dog handler. In that incident, the arresting officer had been Officer E who, as noted earlier, informed other officers that it was likely they were pursuing Shane Legg.

### Police investigation conclusions

54. In his final report, the Inspector concluded:

- that the Police response was appropriate and proportionate to the offences Mr Legg had committed, and the use of a Police dog and handcuffs during the arrest was consistent with Police policy
- that Mr Legg's injuries were caused by his own *"poor decision making and non compliance with directions provided by the detaining Police Officer"* – instead of complying with Officer C's instructions, Mr Legg pushed away from the officer, causing himself to roll forward and land on his head and shoulders
- that the officers on the other side of the fence did not immediately realise that Mr Legg had sustained serious neck injuries, but after carrying him for about 20 metres they realised he may have suffered an injury
- that the level of care of the attending Police *"was appropriate and, once they realised there was a possible injury, the level of care was escalated."*

55. The Inspector found that there was *"no credible evidence to substantiate any criminal charges in respect of the Police activity at this incident"*; nor was there any breach of Police practice, policy or procedure during the apprehension of Mr Legg.

56. The Inspector recommended that the district commander note his conclusions, seek an independent legal opinion and possibly a peer review of that opinion, and take steps to inform the Legg family, Police staff and independent witnesses of the investigation outcome.

57. In accordance with the Inspector's recommendation, Police obtained a legal opinion. This opinion was confined to the civil and criminal liability of the officers concerned.

58. Police took no action against the officers involved, either criminally or under the Police Code of Conduct.



# The Authority's Investigation

INDEPENDENT POLICE CONDUCT AUTHORITY

## THE AUTHORITY'S ROLE

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59. Under the Independent Police Conduct Authority Act 1988, the Authority's functions are to:
- receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and to
  - investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, incidents in which a Police employee acting in the execution of his or her duty causes, or appears to have caused, death or serious bodily harm.
60. Under section 27 of the Act, the Authority's role on completion of an investigation is to determine whether Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable.

## NOTIFICATION AND COMPLAINT

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61. As required under section 13 of the Independent Police Conduct Authority Act 1988, Police notified the Independent Police Conduct Authority of the injury that occurred to Mr Legg while he was under arrest. The Authority categorised the matter as 1 and assigned an Authority investigator.
62. On 23 April 2012, Mr Legg's barrister Mr Mina Wharepouri faxed a letter of complaint to the Authority, alleging that Mr Legg's injuries were caused by Police misconduct. More specifically, the complaint alleged that:
- After he had been arrested and handcuffed, Mr Legg was told to walk downhill. Although he complied with his order he was *"pushed and pulled in an overly aggressive manner by one or other of the officers who accompanied him"*.

- When he was told to climb the fence, Mr Legg hesitated because he feared it was electrified. However, after Police insisted, he began to *“clamber over the wire. At this point, suspended off the ground and with his hands restrained behind his back, Mr Legg was forcibly propelled by one officer head first into the ground over the fence.”*
  - Mr Legg landed directly on his head and *“immediately felt pins and needles throughout his body from the neck down and feared that he had been paralysed”*. He said this to Police when he was unable to take his feet, but *“Despite his protests the officers picked Mr Legg up from the ground and then let him fall to the ground repeatedly.”*
  - Mr Legg again told the officers around him that he thought that his neck was broken and that he needed medical help. *“Ignoring his pleas the Police then took Mr Legg by his feet and dragged him further distance across a paddock for approximately 20 meters.”* It was only at that point that Police decided to call an ambulance.
63. Mr Wharepouri continued: *“While the level of force used in handling Mr Legg will always be a question of degree, at the very least the police failed to provide Mr Legg, while he was in their custody with the proper level of care.”*
64. His letter also noted that infringement notices and a summons under the name of Officer A had been *“slipped into Mr Legg’s clothing and discovered by Whangarei Hospital staff on his admission to hospital”*.
65. The Authority considered all of the issues and allegations raised by Mr Wharepouri in the course of its investigation.

#### THE AUTHORITY’S INVESTIGATION

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66. The Authority assigned an investigator and a reviewing officer (a qualified lawyer) to independently investigate the incident.
67. The Authority’s investigation included:
- a visit to the scene;
  - an interview with Mr Legg at Whangarei Hospital on 9 May 2012;
  - interviews with Officers A, B, C, E and F, conducted on 4 July 2012;
  - interviews with eight people who were at the Tavinor Road house during this incident;

- an interview with Officer D, conducted on 27 August 2012;
- interviews with the two St John ambulance staff who attended Mr Legg;
- interviews with eight hospital staff who attended and treated Mr Legg; and
- independent examination of all evidence in the Police investigation file.

## ISSUES CONSIDERED

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68. The Authority considered the following issues:

### Use of force/duty of care issues

- 1) Were Police actions during the arrest of Mr Legg reasonable and in compliance with all relevant policies? In particular, was the force used to arrest Mr Legg (i.e. the use of a dog) reasonable?
- 2) Were Police actions as Mr Legg was being escorted down the hill reasonable and in compliance with all relevant policies? In particular: (i) Was force used against Mr Legg while he was being escorted down the hill, and if so was that force reasonable? (ii) Did the officers take reasonable care of Mr Legg as he was being escorted down the hill?
- 3) Were Police actions in relation to Mr Legg crossing the fence reasonable and in compliance with all relevant policies? In particular: (i) Was force used against Mr Legg as he was crossing the fence, and if so was that force reasonable? (ii) Did the officers take reasonable care of Mr Legg as he was crossing the fence?
- 4) Were Police actions towards Mr Legg after he had crossed the fence reasonable and in compliance with all relevant policies? In particular, did the officers take reasonable care of Mr Legg after he had fallen and complained of being hurt?

### Issues raised by Mr Ray Legg (Shane Legg's father)

- 5) Why was a doctor called at the time of Mr Legg's arrest?
- 6) Why was a tow truck called before medical assistance was sought, and why did it arrive before the ambulance?
- 7) Why did Police leave infringement notices with Mr Legg at the hospital?

### Conduct of the pursuit

- 8) Did Police comply with the law and the Police fleeing driver policy in their conduct of the pursuit?





# The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

## USE OF FORCE DURING THE ARREST OF MR LEGG

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### **Issue 1: Were Police actions during the arrest of Mr Legg reasonable and in compliance with all relevant policies? In particular, was the force used to arrest Mr Legg (i.e. the use of a dog) reasonable?**

69. Sections 39 and 40 of the Crimes Act 1961 (paragraphs 198-199) authorise Police officers to use *“such force as may be necessary”* to carry out an arrest or prevent a person from escaping arrest, provided the arrest cannot be carried out or the escape prevented *“by reasonable means in a less violent manner”*. Further guidance is provided by the policies contained in the Police Manual. Policies specifically relevant to this incident include those on use of handcuffs/mechanical restraints (paragraphs 206-214), use of force with Police dogs (paragraphs 215-226), and the Tactical Options Framework (paragraphs 201-205) which guides officers on the appropriate tactical option to use in any given situation.

#### *Mr Legg's account*

70. Mr Wharepouri's complaint did not make any allegations about use of the Police dog during the arrest. However, Mr Legg in his interview with the Authority's investigator on 9 May 2012 alleged that the dog was set on him and bit him after he had surrendered.
71. In that interview, Mr Legg acknowledged that he had run from Police up the hill, through ground that was swampy and covered in felled trees. Once he had got almost all of the way up the hill he became too tired to go on. He yelled out to the Police, saying: *“I'm here, I give up, just don't set the dog onto me.”* The officers told him not to move and to put his hands on his head. Mr Legg said the officers then instructed him to get down on the ground.

*“...and I'm like 'yeah, yeah' and they let the dog go and the dog started trying to get me... I was trying to get the dog off of me and he [the officer] was going 'stop trying to hit my dog' and I [was saying] 'please sir, take it off me, I'm not resisting, I'm not resisting, I give up'.”*

72. An officer then jumped on his back, pulled his arms behind his back, and started handcuffing him. At that point the dog handler let the dog go again *“and it got onto my foot. I’ve still got some scabs and markings on there now.”*

#### *Police accounts*

73. In his interview with the Authority, Officer D gave a detailed account of how he used his dog to track Mr Legg up the hill. He said that Officer C accompanied him as visibility was poor, he was uncertain what the terrain would be like, and he was uncertain whether the offender had a weapon. After about 15 minutes *“zig-zagging”* up the hill, past felled trees and gorse, the dog quickened its tracking as it does when the trail becomes fresher.

*“...at this stage I could hear rustling from just above me. I shone my torch at that situation just ahead of [the dog] and I could see a partial outline of a person squatting down in scrub. I’ve yelled at him, ‘Police dog handler, come out from behind the bush or I’ll let the dog go.’ This is a standard response when coming up to an offender. There was no response. This shape didn’t move or speak. I gave him a second to respond but he didn’t, so I immediately gave [the dog] the command to apprehend him.”*

74. Officer D explained that his reasons for using the dog:

*“..I took into account the previous actions of the offender and his determined efforts to evade Police. I considered that any delay in taking this opportunity would have led him to making his escape and I did not want to compromise my safety or that of [Officer C]. At this time I did not know whether the man was armed and in my opinion we were obviously dealing with an offender desperate to escape.”*

75. Officer D said the dog went forward and lunged at Mr Legg, causing him to lose his footing and fall backwards. Officer D yelled at Mr Legg *“basically to stop, stop hitting out at the dog”* and to show his hands, as Mr Legg was fighting with the dog. Officer C, who was also yelling at Mr Legg to stop resisting, then approached Mr Legg from a downhill position and handcuffed him, *“and at that stage I’ve released [the dog] from the offender’s left foot area”*. The dog immediately released and was pulled back from the offender.
76. The dog bites caused four or five puncture wounds to Mr Legg’s lower left leg, the largest of which was 2cm long.
77. On 25 April 2012, Officer D submitted a Tactical Options Report to his supervisor about this incident. In that report, his description of events was consistent with what he told the Authority. Officer D noted in his report that it was very dark and Mr Legg would have been impossible to locate without using a Police dog. The report also gave reasons



for using handcuffs, which included preventing escape, bringing Mr Legg under control, and reducing the likelihood of Mr Legg assaulting the officers. Officer C confirmed that the dog remained harnessed at all times during the arrest.

78. Officer C, in his interview with the Authority, said that as he and Officer D reached the ridgeline they came to a steep bank with a large pine tree growing from it. Officer D, who was about 1.5-2 metres from the tree, called out *“that he was a Police dog handler, he had a Police dog and that that person was to show themselves or make some noise and basically alert us where that person was.”* Officer D gave the instruction *“two or three times”* in a loud voice, but there was no sound or any other response to indicate where the offender was. Officer D moved closer to the tree and the dog gave another indication that the offender was nearby. Officer D again gave the warning, and when there was no response he let the dog move forward (while still on the lead). Officer C said he then heard someone cry out as if he had been bitten.
79. Officer C then scrambled up the bank, calling out to Mr Legg to stop kicking the dog. Mr Legg was saying *“get your fucking dog off me”*. Officer C said he could see Mr Legg lying on his side with his legs against the tree, facing uphill, kicking against the dog. (According to the NorthComms radio log, Officer C relayed to NorthComms at 9:30:03pm, *“Yeah NorthComms this guy’s just. The dogs on, but he’s just resisting.”*). Officer C told the Authority that Officer D called off his dog and Mr Legg *“just lay there”*. At that point Officer C climbed up and handcuffed Mr Legg’s right hand, pulling it behind his back. Although there was *“no real resistance”* from Mr Legg, he did not offer his left hand to be cuffed, as it was underneath his body. Officer C used the cuffed right arm to roll him, then grabbed his elbow, drew it back and cuffed the hand. Officer C said at that stage he noticed that Mr Legg was not wearing shoes. There was a small amount of blood on his right sock, possibly from the dog bite, and his jeans were torn.
80. As it was dark, no other officers witnessed the arrest. Officer E told the Authority she was waiting on the house deck and heard Officer D yelling *“stop kicking my fucking dog”*. Two of the witnesses from the house said she heard Mr Legg yelling *“get the dogs off”*. One of those witnesses heard a Police officer responding *“well lie down and keep still”*, and another heard *“get on the ground”*.

#### *The Authority’s view*

81. Mr Legg had been seen speeding and driving erratically, and had failed to stop when signalled to do so. Under those circumstances, Police were justified in arresting him.
82. The arrest took place after a lengthy vehicle pursuit, and after Officers C and D had tracked Mr Legg in darkness through very difficult terrain. It is clear from Mr Legg’s actions that he was prepared to go to considerable lengths to avoid being caught.

83. There is conflicting evidence over what occurred in the moments immediately before Officer D released his dog, and during the arrest itself, and some of those conflicts cannot easily be resolved. Officers C and D say that Mr Legg was warned to surrender and did not respond; Mr Legg says he gave his location and told the officers he surrendered. By his own account, however, he did not make any move to give himself up, but rather remained in position behind the pine tree. Officer D's reasons for releasing the dog are explained in paragraphs 74-77, and include concern that Mr Legg would escape and concern for his own safety and that of Officer C. Under the Tactical Options Framework Mr Legg's actions would be categorised as 'active resistance'; in general, the framework would encourage communication and open-handed tactics rather than use of a dog against a person who is non-assaultive. However, these circumstances (darkness, terrain, risk of escape, potential risks to officers' safety) were very specific. Even if Mr Legg had called out that he surrendered while remaining in place beside the tree, in the Authority's view it was reasonable for Officer D to conclude that the arrest could not be safely completed without using the dog. The officer was therefore justified under the circumstances in using the dog to apprehend Mr Legg so he could be arrested.
84. Police policy on use of dogs (paragraphs 215-226) requires that before a handler releases a dog the offender must be given a warning and given time to surrender. Both Officers C and D gave detailed descriptions of the warning being given, and the Authority is satisfied that this occurred.
85. Police policy also requires that the handler ensures that the use of force is kept to a minimum. In this case, the evidence is clear that once the dog was sent forward, still harnessed and under Officer D's immediate control, Mr Legg attempted to fight it off. Mr Legg also pleaded with Police to call the dog off while they were telling him to remain still so he could be handcuffed. Mr Legg alleges that after the dog was pulled back and he was handcuffed, the dog was then released and bit him; Officer D denies this. It must be remembered that these events unfolded over a very short time, during which – more or less simultaneously – Mr Legg was kicking out at the dog, Officer C was attempting to handcuff him, and Officer D was bringing the dog under control. It is possible that Mr Legg was bitten as he was being handcuffed, just before the dog was pulled back. The Authority is not convinced however that the dog was intentionally set upon Mr Legg after he had been restrained. Rather, Officer D used his dog only to the extent necessary to ensure that Mr Legg was brought under control and arrested. He kept the dog on the lead, set the dog on Mr Legg only for a short time, and called it off once it was clear that Mr Legg had been brought under control.
86. The policy requires that when someone is bitten, they must be given appropriate medical attention. In this case, as noted earlier, a doctor was called to see Mr Legg at

Whangarei Police Station. The doctor was then stood down after the ambulance had been called in response to Mr Legg's neck injuries.

87. The policy also requires that when someone is bitten, the handler submits a Tactical Options Report; Officer D did this (see paragraphs 227-228).
88. The Authority has also considered the decision to handcuff Mr Legg during the arrest. There are two relevant policies, one covering use of handcuffs during arrest (paragraphs 206-207), and one on mechanical restraints (paragraphs 208-214). These policies explain the circumstances in which handcuffs can be used, and the manner of their use. Though they differ in some details (as explained further in paragraph 140), both policies require officers to consider a number of factors before determining whether handcuffs are appropriate. Under both policies those factors include (among other things) the offender's conduct and temperament, risk of escape, and the safety of Police staff and everyone else involved. In the Authority's view, Officer C was justified in handcuffing Mr Legg based on his previous actions, the risk of him escaping and the likely difficulty in apprehending him again if he did escape. Mr Legg's evidence and that of Officer C are consistent with mild force being used to apply the handcuffs; in the Authority's view, this mild force was justified under the circumstances. The decision to keep Mr Legg in handcuffs during the journey down the hill and as Mr Legg crossed the fence will be considered in the following sections.

#### FINDING

Police actions during the arrest of Mr Legg were reasonable and in compliance with all relevant policies. The force used was necessary to apprehend Mr Legg and prevent further escape.

#### THE JOURNEY DOWN THE HILL

**Issue 2: Were Police actions as Mr Legg was being escorted down the hill reasonable and in compliance with all relevant policies? In particular: (i) Was force used against Mr Legg while he was being escorted down the hill, and if so was that force reasonable? (ii) Did the officers take reasonable care of Mr Legg as he was being escorted down the hill?**

89. Police owe a legal 'duty of care' to all people arrested, detained or placed in their custody. This duty begins from the moment the person is detained and applies until the person is released from custody or transferred into the care of another agency. In essence, this duty requires Police to keep the person safe and protect them from injury. Law and policy relating to this duty of care is explained in more detail in paragraphs 185-197. Mr Legg was handcuffed during his journey down the hill. Relevant policy on the use of handcuffs is set out in paragraphs 206-214. Mr Legg also alleges that he was

pushed during the journey down the hill. Law and policy on use of force is set out in paragraphs 198-231.

#### *Mr Legg's account*

90. In his letter to the Authority, Mr Wharepouri said that, after Mr Legg had been arrested and handcuffed, he was told to walk downhill. Although he complied with this order he was *"pushed and pulled in an overly aggressive manner by one or other of the officers who accompanied him"*.

91. Mr Legg told the Authority's investigator that he had to walk down the hill with his hands cuffed behind his back.

*"...I kept trying to walk through but there's like sticks in the holes I'd get them caught in... they'd just push me like throw me through gorse bushes and stuff, and this was like all the way down the hill, it's a good kilometre at least. And kept trying to make the best way I could, and they kept threatening they'd set the dog onto me again and stuff."*

92. Under further questioning, Mr Legg explained that the obstacles included felled trees, sticks and branches, and *"swampy"* areas. He said Officer C held him by the back of his shirt and pushed him over obstacles or threw him into gorse bushes. At times, Officer C held him by the handcuffs as they climbed over larger obstacles. Officer C kept pushing and saying *"hurry up otherwise I'll set the dog onto you"*. Mr Legg said he slipped *"heaps"* of times. Asked by the Authority's investigator about scratches on his leg, Mr Legg said he sustained those only during the downhill journey, not during his uphill journey as he had walked along tree trunks and *"found my own route"*. Mr Legg acknowledged that the terrain was steep, that he was happy to walk and cross obstacles in front of Officer C, and that Officer C used a torch which allowed him to see where he was going. He said as they came down the hill Officer D was behind Officer C, with his dog on the lead.

#### *The Police account*

93. As noted in paragraph 33, after Mr Legg was arrested Officer C asked if the farmer had a quad bike and could help with transport down the hill. The NorthComms transcript records Officer E saying she would check, but does not record any further response. However, Officer C told the Authority that Officer E informed him it was impossible to get a quad bike up the hill as the terrain was too rugged and overgrown. Officer C then made a decision that it was necessary to walk Mr Legg down the hill.

94. Officer C said he considered undoing Mr Legg's handcuffs and re-cuffing him at the front. However, he decided against that after being informed of Mr Legg's identity, and after being informed (by Officer E) that Mr Legg had previously run from Police and had managed to escape after being captured. Officer C said that as he was considering

whether to uncuff Mr Legg, Mr Legg was looking around the area as if he was looking for an opportunity to escape. Officer C also thought he would have better control of Mr Legg with his hands cuffed behind his back, and that if he cuffed Mr Legg in front this might provide Mr Legg with an opportunity to *“have a go at me with two nice little steel bracelets... I wasn’t too keen on that”*.

95. Officer C said he told Mr Legg his hands would remain cuffed behind his back, and asked if the cuffs were too tight. Mr Legg said they were fine. Officer C said he then told Mr Legg that they would be walking down, told him *“to take his time and gave him the instruction that I would be telling him where he’s going and that he was to follow my instructions and follow my torchlight basically”*. Officer C said they then set off, heading towards the farm house lights. The officer held on to Mr Legg’s t-shirt, bunching it behind his back and holding it tightly to form a kind of *“harness”*, which he could use to *“control and basically direct him where I needed to and also keep him generally on balance”*. Officer C said he held the shirt with his left hand and used his right hand to maintain his own balance and to hold the torch, which he shone where he wanted Mr Legg to go. On the way down they encountered obstacles, which they tried to move around. If that was not possible they would approach the obstacle and see if it was possible to go under or if it was necessary to go over.

*“...in the cases of a tree I’d get him either to sit on the tree and swing his legs around or if it was, you know, prudent to do so I’d get him to stand up on the tree and then I’d hop up and shine the torch over and basically say that’s where you’re going to jump or that’s where you’re going to slide, and I’d then say ‘you right?’. ‘Yeah, I’m right.’ ‘Right, go,’ sort of thing and he’d slide over or jump down onto the area. No problems whatsoever. He never said that he didn’t want to do it. Never made any indication that he was uncomfortable with doing that. I felt comfortable in the fact that we were working together.”*

96. Officer C said that on two or three occasions Mr Legg lost his balance on a concealed branch or patch of gorse or grass, *“but I’ve been able to stabilise myself and hold him... until he’s been able to get his foot and get his balance again”*. Several times, Mr Legg thanked the officer for keeping him on balance, and on some occasions Officer C stopped to let Mr Legg catch his breath. Officer C said he also used his boot to push down gorse, because he was aware that Mr Legg was not wearing shoes.

*“... there’s been no problems the whole way down. He’s been really compliant, following my instructions, not a problem. To the point where... I’ve actually scratched his nose for him. You could see that he was trying to get around to scratch his nose, up on the bridge of his nose, and I’ve held my arm out and he’s just gone like that. I wouldn’t do that for most people, but he was compliant, following my instructions and, you know, it was fine.”*

97. When questioned by the Authority, Officer C said he did not push Mr Legg.

*"...it would be my opinion that he sustained more injury fleeing from us up until the time where we've located him... compared to the time where we've brought him back down where he's come because one, we've gone back down slower, two, I've controlled his movement, I've given him instructions, I've minimised any harm to him by finding alternative routes. I've tried to seek alternative ways out by getting a motor bike. I've given him rests, given him breaks on the way down. I've talked to him, asked him if he's okay. He hasn't given me any indication that he's uncomfortable with what instructions I'm giving him..."*

98. Officer C said as he and Mr Legg came down the hill Officer D with his dog was about 5-10 metres behind.
99. Officer D said he was "knackered" and disorientated before beginning the downhill journey, as it was "one of the... most challenging tracks that I've basically been through, it was a bit of a gut-buster". On the downhill journey, Officer D said he followed some distance behind Officer C and Mr Legg. The dog was pulling forward and Officer D lost his balance and fell "about half a dozen times". Officer D said Mr Legg and Officer C appeared to be having "no problems at all" and he did not see them fall on any occasion. Throughout the journey he remained concerned about the possibility of Mr Legg escaping again and running off; if Mr Legg escaped again he did not believe it would be possible to track him.

#### *Independent witnesses*

100. Several people gathered on the deck of the house and listened to events unfold. Some took video recordings on cellphones and a camcorder. In two of those recordings, comments were made that could be interpreted as suggesting that Mr Legg was dragged as he was coming down the hill. However, when interviewed later, the witnesses confirmed to both the Authority and Police that the night was pitch black and they could see nothing other than torchlight as the officers and Mr Legg came down the hill (indeed, they could see nothing until some time after Mr Legg had crossed the fence).
101. Some witnesses commented on the steepness and difficulty of the terrain. One, for example, said: "This hill is rugged and steep as. It is really hard to walk through." That witness also said: "I wouldn't like to walk it, just going 100 metres and you would be exhausted. It must have been a nightmare in the dark. I wouldn't attempt it in daylight."

#### *The Authority's view*

102. After being informed that there was no way to get a quad bike up to the ridge, Officer C had no choice but to take Mr Legg down the hill, crossing extremely difficult, steep,

slippery, and at times hazardous terrain. Officer D remained a safe distance behind, consistent with Police policy requiring that dogs are kept a safe distance from other people to minimise the risk of unintended dog bites.

103. Although they have interpreted events differently, the statements of both Mr Legg and Officer C are consistent with the officer controlling and guiding Mr Legg as they covered this difficult terrain and crossed obstacles. The officer has said that both he and Mr Legg lost their footing at times; and no doubt at times Mr Legg stepped or fell into gorse. The scratches on his legs are consistent with that. The Authority accepts that Mr Legg may have felt he was being pushed as he moved down the hill. However, in the Authority's view there is nothing in the evidence to suggest that Officer C intentionally used force against Mr Legg, other than to simply control and guide him down the hill, and help to maintain his balance, in what were extremely difficult circumstances.
104. As noted above, having arrested and detained Mr Legg, the Police owed him a duty of care which, in these circumstances, required them to take reasonable steps to protect him from injury. In the Authority's view, there may have been a risk of injury to Mr Legg as he made this journey, owing to a combination of hazardous terrain and Mr Legg being handcuffed behind his back. There was, indeed, also a risk to the safety of the two officers. Officer C has described how, to mitigate the potential risks to Mr Legg, he sought to guide and control Mr Legg's movements, and to help Mr Legg maintain his balance. He said that Mr Legg appeared comfortable with the journey, and Mr Legg has said he was happy to go ahead of Officer C down the hill. It is also noteworthy that on his journey uphill Mr Legg had shown that he was extremely agile and able to negotiate difficult terrain with what appeared to be relative ease. Officer C has said that he considered handcuffing Mr Legg at the front, but rejected this option on the basis that it would increase the likelihood of Mr Legg again escaping, and would also increase the risks to the officer's own safety. Given Mr Legg's actions, that decision was reasonable. In the Authority's view, therefore, under very difficult circumstances Officer C took reasonable steps to protect Mr Legg from injury as they moved from the ridge down towards the fence.

#### FINDINGS

Officer C's actions as he guided Mr Legg down the hill while Mr Legg was handcuffed behind his back were reasonable and consistent with Police policy. The officer had little option but to act as he did, under difficult circumstances which Mr Legg had created by fleeing up the hill. Officer C did not use unreasonable force against Mr Legg.

Officer D acted in accordance with policy by staying a safe distance back from Mr Legg and Officer C as he brought his dog down the hill.

## CROSSING THE FENCE

**Issue 3: Were Police actions in relation to Mr Legg crossing the fence reasonable and in compliance with all relevant policies? In particular: (i) Was force used against Mr Legg as he was crossing the fence, and if so was that force reasonable? (ii) Did the officers take reasonable care of Mr Legg as he was crossing the fence?**

105. After coming down the hill, Mr Legg and Officers C and D arrived at a nine-strand wire fence, which they needed to cross in order to get to the Police vehicles. Although the top wire of the fence was electrified, it and the farm's other fences had been turned off. Other officers, including Officers E and F, were on the other side of the fence. Mr Legg sustained his serious neck injury as he was crossing this fence.
106. As explained earlier, Police owe a legal duty of care to all people arrested, detained or placed in their custody. In this context, the duty of care required the arresting officers to take reasonable steps to protect Mr Legg from injury. Law and policy relating to duty of care is explained in more detail in paragraphs 185-197.
107. Mr Legg alleges that he was pulled downwards or pushed as he was crossing the fence, and this caused his injuries. Law and policy on use of force is set out in paragraphs 198-231.

*Mr Legg's account*

108. Mr Wharepouri's letter of complaint is summarised in paragraph 62. To recap, Mr Wharepouri alleged that Police instructed Mr Legg, who was still handcuffed behind his back, to climb a wire fence at the foot of the hill. Mr Legg was reluctant, because he feared that the fence was electrified. When Police insisted, he began to clamber over:

*"At this point, suspended off the ground and with his hands restrained behind his back, Mr Legg was forcibly propelled by one officer head first into the ground over the fence."*

109. Mr Legg landed directly on his head and *"immediately felt pins and needles throughout his body from the neck down and feared that he had been paralysed"*.





**Figure 1: The terrain**



**Figure 2: The fence**

110. Mr Legg also told the Authority that when he and Officer C reached the fence:

*"...he was [saying] like 'get over the fence' [and] I was like 'hang on it's electric so I'll just make sure I don't stand on the electric wire' because I'd lost my shoes... he kept saying 'stand on the top wire, just stay on the top wire, I will support you'."*

111. Mr Legg explained that the land was higher on the bush side of the fence than on the farm side.

*"And so I stood on the second rung, and I went to lift my leg over and then... the officer just like pulled down on the collar, because he was holding me by the collar of my shirt, and I landed on my head and then all of a sudden I couldn't move anything..."*

#### *Police accounts*

112. As noted in paragraph 42, as the ambulance was on its way Officer C told NorthComms that Mr Legg had *"decided that he's... gonna try and jump"* over the fence.

113. Officer C told the Authority that as they reached the fence, he and Mr Legg stopped for a short break. Officer C then asked Mr Legg if he was okay to continue, and Mr Legg said he was. Officer C then said: *"Rightio, we're just going to do the same thing as we've been doing."* Mr Legg *"was happy with that"*.

114. Officer C said he continued to hold Mr Legg's t-shirt (as described in paragraph 95). He shone the torch over the fence and, seeing an open paddock, told Mr Legg *"that's where we're going to jump"*. Mr Legg acknowledged that and put his foot on to the second wire. Officer C then told him to put his foot on the top wire; Mr Legg asked if the fence was on and Officer C said *"no, the fence isn't on. I turned the fence off."* At that stage Officers E and F were approaching the fence. Officer C said:

*"I was confident at that stage that, you know, this was just another obstacle, we'd been doing this the whole time, he wasn't off balance at that stage or anything like that, it was just another obstacle and that we were just going to get over..."*

115. Officer C told Officers E and F to stand back while he and Mr Legg crossed the fence. Officer C then shone the torch back over the fence so Mr Legg could see where to jump.

*"...that's when he just went... I don't know if it was a lunge or more he sort of went up and over... he pushed off his right leg [and]... I'm pretty sure that he went sort of up before he went out..."*

116. Officer C said he was still holding Mr Legg's shirt. As Mr Legg went up and over the fence:

*"I got pulled into the fence... and as he's gone over I've tried to still hold him, but he's turning, he's turning back away from me and down, and I couldn't go any further because of the fence... I couldn't hold him any further and his shirt's pulled out of my hand."*

117. Officer C said it appeared that Mr Legg had landed on his left-hand side with the brunt of his fall taken between the elbow and his shoulder. Officer C said he:

*"Didn't think that it was a violent fall at that stage... It seemed like quite a minor fall. Mainly because... what I'd been trying to do was hold him, I stopped most of his fall sort of going to the ground."*

118. Officer C said he climbed over the fence and asked Mr Legg *"what the fuck did you do that for?"*, to which Mr Legg replied *"I was just being a dick."*

119. Officer E described seeing Mr Legg and Officer C take a break before attempting to climb the fence. Because of the slope, Mr Legg didn't have to climb much in order to get over the fence. Officer C told Officers E and F to step back. Mr Legg then put his foot on the second wire. Officer C told him repeatedly to put his foot on the top wire but he refused and kept saying *"no, it's electric"*. Officer E continued:

*"And then while we were standing [Mr Legg] just – he had one foot on the second wire and one foot behind him on the grass and it looked like he just pushed himself up and over and as he came over he landed on his shoulder on the grass. I can't even remember which shoulder it was..."*

120. Officer E saw Officer C stumbling forward into the fence and witnessed the exchange described in paragraph 118 above, though she described hearing Officer C saying *"I wasn't even ready."*

121. Officer F, who was with Officer E, also heard Mr Legg saying he didn't want to cross the fence because he was concerned it was electric, though he was told by both Officer C and Officer E that the electricity was turned off. Officer C, while holding the back of Mr Legg's shirt, told Mr Legg to put his foot on the top wire. Then *"within a blink of an eye"* Mr Legg has *"lunged forward and fallen on the ground"*. Officer C lost his grip on Mr Legg, and there was no time for Officers E and F to step forward and catch him. Officer F said that as Mr Legg fell to the ground he took the impact on his right shoulder.

122. Officer D said he remained about five metres behind Officer C and Mr Legg. He heard Officer C tell Mr Legg to get up on the fence, which Mr Legg *"appeared to do with relative ease"*. Though his view was partially obstructed (by Officer C) he could see that Officer C was holding on to Mr Legg from behind. As Officer C pointed his torch over the fence, instead of jumping Mr Legg had *"sort of moved sideways and gone up... like on a springboard"* before landing on his head and right shoulder.

123. Under questioning, Officer C denied pushing or propelling Mr Legg over the fence:

*“He didn’t at any stage say that he didn’t want to cross the fence, he didn’t at any stage make mention that he felt uncomfortable. He gave me every impression that he was confident in the way that we’d been coming down. I hadn’t changed that in any way. We had done it many times on our way down, exactly the same thing. At no stage was he suspended or pushed. The way that it’s happened and he’s gone over the fence, has caused me to be pulled into the fence.”*

124. Officer C said he didn’t consider uncuffing Mr Legg and recuffing him at the front to allow him to use his hands as he crossed the fence. This was due to the risk of Mr Legg escaping. Asked if it would have been better to have Officers E and F support Mr Legg as he climbed over the fence, Officer C agreed that upon reflection *“it would have been a better choice”*.

*“...but at that time with what we had both gone through, with what ground we had covered, him not indicating at any stage that he was uncomfortable not to do it and, you know, the whole situation where I thought he was – well, it appeared that he was confident in doing this because he had put his foot up there, it just seemed at that stage that it wasn’t necessary...”*

125. Officer C also said:

*“It didn’t occur to me that he was going to fall. I mean, hindsight [is] fantastic, but in that situation there if I knew he was going to get injured in any way I wouldn’t have done that. I think from my previous actions I’ve actually displayed not only to him but to other people that I took as much care as I could with this guy as well as keeping myself safe.... Yeah, getting down to the fence if I’d known that it was going to cause him injury I wouldn’t have done that... [but] yeah, I don’t know, apart from having hindsight, what duty of care I could’ve done more as it was progressing.”*

126. Asked if he would have been comfortable crossing a 1.08-metre fence with his hands cuffed behind his back, Officer C said:

*“It’s a hard one to answer... I’m quite confident climbing over fences. In this situation here the fence was, you know, not as high as a normal fence. We were on an elevated sort of area. I don’t know if it’s a – it’s hard to explain really... He didn’t say that he was uncomfortable with it. I’ve asked him, you know, if he’s okay on all these occasions and he’s acknowledged that he was. Same with this one.”*

*Independent witnesses*

127. As noted above, several people gathered on the deck of the house, and some took video recordings. The deck is about 60 metres from where Mr Legg crossed the fence. In one of those recordings (which was transcribed by Police), the following exchange can be heard:

*Witness 1: Oi he went over the fence. Listen. Oi shh listen*

*Unknown: They're gonna come down.*

*Witness 2: I think they chucked him oi. They chucked him.*

*Witness 1: They threw him over the fence.*

*Witness 1: Ohh. I heard him scream eh.*

*Witness 2: Sounds like "ahh".*

128. When interviewed later, the witnesses confirmed to the Authority that they did not in fact see Mr Legg crossing the fence. This was both because it was so dark and because the part of the fence where Mr Legg crossed was obscured from the house by a farm shed and trees. One witness said all that could be seen was torchlight through the trees.

129. Witness 2 (who was aged 16 and said he had consumed two beers before the incident) told the Authority he could not see what was happening at the fence, and nor could he hear any conversation. He recalled hearing "a bit of a thud" and then saying "oh I think they threw him over the fence" to everyone else on the deck. He confirmed to the Authority that he did not see this happen.

130. Witness 1 (who was aged 18 and said he had consumed part of one beer) told the Authority he saw lights near the fence and heard the fence rattle, but did not see Mr Legg crossing the fence. He said everyone was excited and over-reacting, so when one person said something others backed it up and hyped it up. He told Police that the deck was about 80-100 metres from where the fence was crossed, and his view was obscured by the shed; all he could see was torchlight.

*Ambulance and medical staff*

131. The Authority interviewed the ambulance staff who attended Mr Legg at the house. One recalled Mr Legg describing how he received his injury:

*"He said he'd fallen onto his head and the Police said no, you fell on your shoulder and he said – there was a bit of disagreement about whether he'd fallen on his head or on his shoulder but he definitely said he'd fallen...*

*...the Police said no, you fell on your shoulder and he said no, I fell on my, I landed on my head. I fell on my head...*

*... there's no doubt in my mind that if he had been pushed he certainly would not have been backward in saying it. He was disagreeing with the Police, he was, like I say, he was swearing... but he never, at any stage, said that the Police had pushed him. He said he's fallen onto his head."*

132. Other ambulance and medical staff interviewed by the Authority did not recall Mr Legg saying he had been pushed, though one said she overheard him saying Police had dragged him along the ground. Mr Legg's Intensive Care Unit notes recorded: *"Shane allegedly had his hands cuffed behind his back and whilst attempting to negotiate a fence 4-5 ft high has fallen forwards and landed on head and shoulder."* This information is contained in a background section which is recorded as being sourced from the patient, and from ambulance and medical records.
133. However, a nurse told the Authority that the following morning (20 April) at about 7:30am she had a conversation with Mr Legg in which he described being handcuffed and instructed to cross a fence *"...and [he] couldn't get over and so someone gave him a push or a nudge to help him over and he fell forward onto his head and neck"*.

#### *The Authority's view*

134. It is clear from the available evidence that Officer C instructed Mr Legg to put his foot on the top rung of the fence and climb over, while Officer C maintained a grip on Mr Legg's shirt. It is also clear that Officer C instructed Officers E and F to step back, believing that this last obstacle could be reasonably easily traversed in the same manner as others had been. Mr Legg, believing the fence to be electrified, refused to put his foot on the top rung and instead put his foot on the second rung. What occurred from that point is contested. Mr Legg alleged that Officer C intentionally pulled him downwards as he was crossing the fence. However, the Authority is not persuaded for the following reasons. The recorded exchange between Witnesses 1 and 2 can be dismissed, as both admit they did not in fact see this incident. The remaining evidence suggests that events unfolded essentially as Officer C has described. Instead of placing his foot on the top rung of the fence, Mr Legg climbed on to the second rung and then attempted to swing himself over before Officer C was ready. Mr Legg's momentum pulled Officer C forward into the fence. Although Officer C tried to maintain his grip on Mr Legg's shirt, he was unable to and Mr Legg fell to the ground, with the impact taken on his head and shoulder. In the Authority's view, Mr Legg's description of Officer C pulling him down by the collar or shirt is consistent with Mr Legg jumping over the fence but being constrained by Officer C's grip on his shirt. Mr Legg may either at the time or subsequently have formed a belief that Officer C's action was deliberate; in the Authority's view, it was not.
135. Even if Mr Legg's injuries were not the result of intentional use of force, the question remains whether sufficient care was taken to protect Mr Legg from injury as he crossed the fence. Officer C's statements indicate that he saw no need to approach the fence in

a difference manner from the other obstacles he and Mr Legg had encountered on the way down the hill, and did not give much thought to the matter. He also relied on Mr Legg's apparent confidence when he voluntarily put his leg on the fence, and the fact that Mr Legg did not make any verbal objection to crossing the fence. The Authority is certain that, throughout this incident, Officer C acted in good faith. It was also reasonable, given Mr Legg's apparent confidence and ability to traverse obstacles, for him to believe that Mr Legg would most likely cross the fence without incident.

136. However, in the Authority's view, this was not enough. Officer C had a legal duty of care to Mr Legg under section 151 of the Crimes Act 1961 (see paragraph 187) that required him to take reasonable steps to protect Mr Legg from injury. While section 150A of the Crimes Act (paragraph 189) requires a major departure from the required standard of care before there is criminal liability it is nevertheless a breach of the legal duty merely to fail to take reasonable steps. The Authority has concluded that Officer C failed to fulfil his duty in a number of respects.
137. First, even if Officer C was confident that Mr Legg would not fall, it was reasonably foreseeable that there was potential for injury should his confidence prove misplaced. He was, after all, asking Mr Legg to climb a wire fence on sloping ground with only socks on his feet and with his hands restrained behind his back.
138. Second, both the risks and the options for mitigating those risks were different at the fenceline than further up the hill. Many of the obstacles Officer C and Mr Legg had encountered previously had been felled trees, which Mr Legg could sit on and swing over. Where he was required to stand on a log and jump, he was doing so from a relatively flat surface, rather than from a wire; this was potentially hazardous, but on those occasions Officer C had no apparent alternative. As they reached the fence, other options became available. Officer C could have used Officers E and F to support Mr Legg as he crossed the fence. He could have demonstrated to Mr Legg that the top wire of the fence was not electrified, increasing the prospect of Mr Legg complying with instructions. He could have considered having Mr Legg go between the wires rather than over the fence. He could also have considered handcuffing Mr Legg in front, in the knowledge that there were now several officers as well as a dog handler available to provide support if Mr Legg became assaultive or attempted to escape again. All of these options would have markedly reduced the risks to Mr Legg's safety without unreasonably increasing the likelihood of escape or harm to any of the officers.
139. It appears that Officer C has not stopped to adequately consider either the potential risks or these alternative courses of action, and so has not taken reasonable steps to protect Mr Legg from injury. In coming to this conclusion, the Authority acknowledges the very difficult circumstances of this arrest, for which Mr Legg was responsible. It also acknowledges the considerable lengths Officer C did go to in order to fulfil his duties. The officer was not reckless and had no intention to cause harm; he did, however, make

an error of judgement that – together with Mr Legg’s own actions – has proved to have serious consequences.

140. The Authority has also considered the decision to handcuff Mr Legg during the arrest. There are two relevant policies, one covering use of handcuffs during arrest (paragraphs 206-207), and one on mechanical restraints (paragraphs 208-214). These policies explain the circumstances in which handcuffs can be used, and the manner of their use. Officers using handcuffs are required to consider a number of factors before determining whether handcuffs are appropriate, including (among other things) the offender’s conduct and temperament, the risk of escape, and the safety of Police staff and everyone else involved.
141. However, there is no requirement to specifically consider the risk to handcuffed offenders arising from their restricted mobility. In the Authority’s view, there should be. Furthermore, in the mechanical restraints policy, the overriding principle is: *“In the particular circumstances what possible risks are posed by the person?”* This implies that the overriding consideration is the safety of others, not the offender. In the Authority’s view, the overriding principle should be broadened so that the safety of everybody present – Police, offender and others – is the paramount consideration. Furthermore, three similar but not identical lists of factors that officers must consider before using handcuffs exist (see paragraphs 207, 210 and 211-212) which creates potential for inconsistency. The lists should be aligned.

#### FINDINGS

The evidence does not establish that any officer intentionally used force against Mr Legg as he was crossing the fence. Nor is there any evidence of recklessness or intent to cause harm on the part of Officer C or any other officer.

Officer C made an error of judgement by not stopping to fully consider the risks to Mr Legg and options for mitigating those risks. In that respect, the officer did not fulfil his legal duty of care to Mr Legg, and his actions were therefore unreasonable. However, in the circumstances these actions were not so grossly negligent as to give rise to criminal liability.



## CARE FOR MR LEGG AFTER HE HAD FALLEN

**Issue 4: Were Police actions towards Mr Legg after he had crossed the fence reasonable and in compliance with all relevant policies? In particular, did the officers take reasonable care of Mr Legg after he had fallen and complained of being hurt?**

142. Law and Police policy in relation to duty of care is set out in paragraphs 185-197.

*Mr Legg's account*

143. In his letter of complaint, Mr Wharepouri alleges that after Mr Legg had fallen and was unable to get to his feet, he told Police that he felt pins and needles throughout his body and feared he had been paralysed.

*"Despite his protests the officers picked Mr Legg up from the ground and then let him fall to the ground repeatedly.*

*While this was happening Mr Legg again told the police officers around him that he thought that his neck was broken and that he needed medical help. Ignoring his pleas the police then took Mr Legg by his feet and dragged him further distance across a paddock for approximately 20 meters to an area of their choosing. It was only at that point that police decided to call an ambulance."*

144. Mr Legg told the Authority:

*"...I landed on my head and then all of a sudden I couldn't move anything, everything went tingly everywhere and they kept telling me to 'get up' and 'get up or we'll set the dog onto you' and I was like 'please sir, I can't, I can't, I can't move I think I've broken my back, please help me, I'm sorry' and they were like 'oh get up, you're full of shit' and kept trying to pick me up, dropping me, picking me up and dropping me, and saying 'come on you've made it all the way down the hill, hurry up and get up' and [I] was like 'honestly I can't get up, please sir, can't get up' and he [a Police officer] just grabbed me by the arm and started dragging me through the paddock and then he stopped and he was like 'come on, get up' and he was having a bit of a laugh about it, he's picking me up and dropped me again, and then a female cop come over, and they both grabbed my arms and legs and took me... over by the house..."*

145. Another officer then came over and asked what was wrong. One of the officers who had been carrying Mr Legg replied: "oh he's complaining he can't move" and said Mr Legg "fell over the fence". The officer who had asked what was wrong then said: "just lay him out straight, don't put him in the recovery position, and call the ambos".

*Police accounts*

146. Officer E told the Authority that when Mr Legg fell he landed on his front and then rolled on to his back. She and Officer F went to help him up, believing that he was unable to get up because he was handcuffed. She put her arm under one of Mr Legg's shoulders and Officer F put an arm under the other shoulder and lifted him. They were expecting him to take his own weight, but *"he wouldn't"*.

*"We said – coercing him, you know, 'come up, help us out, get up' and he said 'I can't, my leg's sore' and I assumed it was from the dog bite. He had a bit of blood on his leg, ripped pants and that. So I kept trying to convince him, 'come on, man, let's go, get to the cars' and I thought oh, this is Shane, he's just going to start being a twit with us and not help us out."*

147. Officer E said she *"dragged him back probably about five, 10 metres"*; she was supporting his shoulders but his feet were dragging on the ground. She then decided that would take too long as the cars were another 50-70 metres away, so she grabbed Mr Legg's legs and Officer F took his upper body and the two officers started carrying him. After they had gone some distance further, Mr Legg *"really started complaining, saying 'ow, ow, ow', like really screaming out... then he said 'put me down' so we put him down onto the grass on his back."* The officers asked where he was sore and he initially said his collarbone, then his leg, and finally his back. Officer C then said: *"look, mate... you need to tell us, you better not be pulling the wool over us, where the hell are you sore? You need to tell us so we can get you some help if you need it."* Mr Legg replied that his back was sore and his arm was tingling. Officer C then gave an instruction to remove Mr Legg's handcuffs and put them in front, and to lie Mr Legg *"nice and flat"* and call an ambulance. As Officer F undid the handcuffs, Officer E held his arms *"because I've dealt with Shane before and I just thought 'he's going to do a runner, he's going to take off.' I thought he was joking with us. Well, not joking, trying to pull the wool over our eyes."* One of the officers then checked whether Mr Legg could feel his feet, and Mr Legg said he couldn't. Officer E said at this stage the officers were still uncertain where Mr Legg was feeling pain, and whether the injury was genuine or not. Once the ambulance arrived, Police officers helped to get Mr Legg on to the scoop and into the ambulance.

148. When questioned by the Authority's investigator, Officer E said that before Mr Legg complained of having a sore back there was no indication at all that he had a neck injury. She had seen him land on his shoulder, and he complained only of having a sore leg. She added: *"...if he'd mentioned his neck was sore we probably would have treated him a lot differently from the fence line but I had no idea."* Throughout the whole journey from the fence to the place where he was laid flat on the ground, Mr Legg was turning his head and talking to officers, and even as the handcuffs were being removed

*“You could feel his arm contracting... his abs contracting... Not in a spasm sort of way, but they were working... I thought well, he’s just – I was waiting for him to run.”*

149. Officer F told the Authority that after Mr Legg fell he was lying on his side parallel to the fence. He then rolled over on to his back and complained he had a sore arm. He was talking to the officers and moving his head and shoulders as he said that. He and Officer E then tried to help Mr Legg stand, supporting him under the armpits. They got him to his feet and tried to “walk” him a short distance, but he wasn’t using his feet and was too heavy for the two officers to support. The officers then put him back on the ground and decided to carry him, with Officer F holding his arms beneath the armpits and Officer E holding his feet. They carried about 25-30 metres, then placed him flat on the ground and removed his handcuffs. He said he was sore between the shoulder blades and felt a burning sensation. Officer C asked for more detail and Mr Legg responded that he had a sore back, was unable to move his arms, and his legs were sore. Officer C then asked for an ambulance to be called.

150. Officer D told the Authority that after Mr Legg landed:

*“...he hasn’t yelled out, he’s just said aahh, my arms, my legs, something to that effect, it wasn’t a yell out in pain, it was just ah, my arms, my legs, just like that... this was in a normal voice as he lay on the ground.”*

151. Aside from those comments, Mr Legg said nothing about being in pain or seriously hurt. Officer D told him to stand up, *“because I thought he was mucking us around”* and maybe *“trying to buy time to make another escape”*. Officer D said further, *“I didn’t know what his game was. I was basically saying get up, what are you doing, get up. I didn’t believe things were that severe at the time.”*

152. Officers E and F then picked Mr Legg up and carried him one under the armpits and one under the legs, while Officer D took his dog back to his wagon.

153. Officer C, who was the senior officer at the scene, told the Authority that Mr Legg’s fall did not appear to be violent; rather it appeared to be *“quite a minor fall”*, partly because he had been holding Mr Legg and had *“stopped most of his fall sort of going to the ground”*. Officer C said he climbed over the fence and asked why Mr Legg had jumped (as described in paragraph 118). As he asked this, Mr Legg complained of having a sore foot and a sore arm; the officer assumed the sore foot was from the dog bite and the sore arm was because *“he’s just landed on his arm”*.

154. Officer C said Officers E and F then took Mr Legg under the armpits and helped him up. He said that it appeared at that stage as if Mr Legg *“was sitting up of his own free volition and almost helping stand up”* (although, given the nature of Mr Legg’s injuries, it is unlikely that the officer’s subsequent recollection of the events reflects what actually occurred). After they had carried him about 15 metres Mr Legg said his back

was getting hot. Officer C said “*what’s that?*” and Mr Legg “*turned around to me... and he said “my back’s hot” and sort of arched his back*”, indicating where it was sore. Officer C said he was concerned by that comment.

155. Shortly afterwards, Mr Legg complained that he had pins and needles in his hand or arm. Officer C instructed Officers E and F to put Mr Legg down on the nearest flat, stable area of ground, which was about 2-3 metres way. Officer C “*still didn’t believe anything was majorly wrong at this stage*”, and remained concerned that Mr Legg may attempt to escape again, but he also believed Mr Legg needed to be checked out. The officers laid Mr Legg gently on the ground, then Officer C asked Officer F to check the cut on Mr Legg’s foot. Officer C made the decision to remove Mr Legg’s handcuffs. Mr Legg was complaining that his back and neck were sore, but he was also moving his arms and neck and “*actually sort of lifting off his shoulder blades to sort of do this sort of thing, look around*”; as the handcuffs were removed Mr Legg placed his own hands on his chest. Officer C told Mr Legg to keep his neck still. He asked someone from the house to bring a blanket, and asked Officer B to bring a raincoat from one of the Police vehicles to put around Mr Legg’s head to keep it stable. Mr Legg said he couldn’t feel his feet, so Officer C used his fingernail on the sole of the foot and did not see any reaction. Officer C asked whether Mr Legg had taken any drugs so he could pass this on to ambulance staff. He then provided an update to NorthComms, and remained with Mr Legg until the ambulance arrived.

#### *Independent witnesses*

156. While no-one from the house saw Mr Legg’s fall over the fence, several witnesses did see him being dragged or carried from near the fence to the place where he was laid on the ground. One of those witnesses described Mr Legg being “*more picked up than dragged*”, with one officer holding each of his shoulders and his legs dangling on the ground. This witness did not believe Mr Legg was injured, but rather thought he was “*faking it*”. Another also described Mr Legg being lifted and carried with his feet dragging on the ground:

*“I thought he was sort of playing around but when he was laid on the ground and he was there for quite a long time that’s when I sort of started thinking you know maybe he’s hurt”.*

157. Other independent witnesses provided similar descriptions. One approached Mr Legg as he was lying on the ground and described him as shivering uncontrollably and showing signs of shock, but showing no sign of pain; she believed he was “*putting it on*” and did not have any idea that he was paralysed until she heard it at work the next day.

### *Ambulance staff*

158. One of the medics told the Authority she found Mr Legg “supine on the ground”; while it was not immediately clear that he was injured, the decision was made to put him in a neck brace and use the scoop to lift him into the ambulance. Mr Legg complained of pain in his back, but was moving his arms “so I’m sort of a little bit mystified [about his injury]... I guess, well maybe swelling developed later. I actually didn’t seriously think that there was a serious injury even though we took all the precautions in case there was.” In a normal situation the medics would have done a thorough examination but Mr Legg was uncooperative and abusive and so the examination was not as thorough as it might otherwise have been.

159. The other medic said that as Mr Legg was examined and his wounds disinfected, it appeared he had no movement or feeling in his legs; there was however some movement in his arms.

### *Medical staff*

160. The orthopedic surgeon who subsequently operated on Mr Legg told the Authority that it may have been possible for Mr Legg to move his arms and head immediately after the fall. While most of the damage would have occurred immediately as a result of fractures in the neck putting pressure on the spinal cord, it was possible that subsequent bruising or swelling around the injury could have caused further damage to the spinal cord and further deterioration.

161. The surgeon said that it was possible that Police could have aggravated Mr Legg’s injury by moving him. Any movement that did not keep the head in alignment with the shoulders could potentially aggravate or even cause an injury.

### *The Authority’s view*

162. Mr Legg has said that he told the officers he feared he had broken his neck, but no-one else nearby acknowledges having heard him say this. Rather, the officers present say they heard him complain of soreness in either the arm or the leg or both after he had fallen from the fence. There was nothing in Mr Legg’s initial presentation that led the officers to believe Mr Legg had seriously injured himself; rather, they believed that he was being uncooperative and may have been preparing for another attempted escape. The Authority has no doubt that these beliefs were genuinely held, and given Mr Legg’s previous actions they were understandable. The Authority believes that it would have been desirable for the officers to have exercised a more cautious approach and checked Mr Legg for injuries before moving him. However, it recognises that this view has been reached with the benefit of hindsight. The Authority therefore concludes that, on the information known to the officers at the time, their actions cannot be regarded as

unreasonable or a breach of their legal duty under section 151 of the Crimes Act (paragraph 187).

163. There is insufficient evidence to support Mr Legg's contention that at this point the officers dragged him by his feet (see paragraph 62, last bullet point). Rather, on the basis of evidence from other witnesses (paragraph 156) the Authority concludes that, having formed the view that Mr Legg was not injured, Officers E and F picked him up under his shoulders and carried him some 5-10 metres with his legs dragging behind him. Although it was clear that Mr Legg was not supporting his own weight, the officers continued to believe he was simply being uncooperative. They changed positions and carried him a further 25-30 metres with one officer holding him by the arms or shoulders and another by the legs. This version of events is consistent with the statements given to the Authority by all of the Police officers present, the independent witnesses, and Mr Legg himself.
164. Once Officer C heard Mr Legg complain of heat in his back, he made a decision to stop and check Mr Legg's condition. Mr Legg then complained of back and neck pain, and pins and needles, and was unable to feel his feet. Officer C immediately called an ambulance and took steps to keep Mr Legg still in order to prevent any further damage to his neck. During this period, the care provided to Mr Legg was as it should have been under the circumstances.

#### FINDING

The officers involved genuinely did not believe Mr Legg was seriously injured and their actions were not unreasonable in light of the information known to them at the time and do not amount to a breach of their duty of care. With the benefit of hindsight, it would have been desirable for them to have taken a more cautious approach and checked Mr Legg for injuries before moving him from the fence, and before putting him down and picking him up by the shoulders and legs.

#### ISSUES RAISED BY MR RAY LEGG

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165. Ray Legg (Shane Legg's father) has raised a number of specific issues with the Authority additional to the issues already considered in this report.

#### **Issue 5: Why was a doctor called at the time of Shane Legg's arrest?**

166. Mr Ray Legg asked why a doctor was called at the time of his son's arrest.
167. Police policy requires that everyone bitten or injured by a Police dog must be given appropriate medical attention. It also requires that anyone who receives an injury as a

result of use of force by Police must be medically examined at the first opportunity, unless that is impractical or inappropriate. As Mr Legg was bitten during his arrest, Police made a decision to call a doctor to Whangarei Police Station. According to the NorthComms radio transcript, this was done at 9:37:08pm, a few minutes after Mr Legg was arrested. This call was made before Mr Legg was seriously injured at the fence, and was entirely appropriate and consistent with Police policy.

#### FINDING

Police complied with policy and acted entirely appropriately when they called a doctor soon after Mr Legg was arrested to examine his dog bite injuries.

### Issue 6: Why was a tow truck called before medical assistance was sought, and why did it arrive before the ambulance?

168. At 9:03:49, almost half an hour before Mr Legg was arrested, Officer A called for a tow truck to remove Mr Legg's car from its abandoned position in the house garden so that it could be impounded. Section 96(1AB) of the Land Transport Act 1998 empowers Police to impound a vehicle if the driver has failed to stop when signalled to do so. There was also the prospect that forensic examination of the vehicle may have needed to be completed. Officer B told the Authority it was routine for traffic Police to call a tow truck after a fleeing driver incident; in her view there had been no need to wait for the offender to be caught.
169. The NorthComms radio transcript shows the tow truck arriving at 9:43.39 – more than 40 minutes after it had been called – and the ambulance being requested at 9:56.02. The ambulance paramedic recalled seeing the tow truck leaving the property as the ambulance was arriving. The other medic said the ambulance was dispatched at 10:01pm and arrived at 10:22pm.

#### FINDING

It was reasonable for Police to have called the tow truck at the time they did. The tow truck arrived before the ambulance for the sole reason that it had been called almost an hour earlier, and almost half an hour before Mr Legg was arrested and long before he sustained his injuries.

### Issue 7: Why did Police leave infringement notices with Mr Legg at the hospital?

170. Officer A travelled in the ambulance as it took Mr Legg to Whangarei Hospital. Officer B also went to the hospital, but took the Police vehicle that had been involved in the pursuit. According to Officer A, after they arrived they remained uncertain about whether Mr Legg's injuries were serious, and waited to determine whether they would

be taking him back to the Police station for processing or would be giving him a summons at the hospital. Officer A said the doctor attending Mr Legg was initially uncertain about Mr Legg's condition; after completing an x-ray he determined that the injuries were serious and Mr Legg would be staying in hospital, although according to Officer A the doctor also indicated that it may be possible for the injuries to be treated and for Mr Legg to recover. Officer A then decided to give Mr Legg his infringement notices, saying: *"Here's your summons but it obviously depends on your medical condition whether you can attend or not."* Officer A said he left the notices on a shelf near Mr Legg's bed, and told nursing staff that it was his personal property and had to remain with him.

171. Officer B said it was routine for traffic Police to issue summonses.

*"...we're traffic cops and that's what we do. We summons people, we've met our obligation, you're summonsed to Court... Court dates can be put off, we know that, but we've had to do something. And [Officer A] was liaising back at base I think with [Officer C]. God, no, they didn't need to be done at all. They didn't need to be done but I would not be – certainly not authorised to make that call. Certainly not."*

172. Officer B said the x-ray confirmed that Mr Legg had a broken neck, and the officers knew this before leaving the infringement notices.
173. Mr Legg's family told the Authority they found the officers' actions insensitive, given that Mr Legg had been diagnosed with serious injuries.

#### FINDING

Officers A and B were legally entitled to serve the summons and infringement notices; Officer A appears to have been influenced by a view that Mr Legg's condition was not as serious as it has subsequently proven to be. It is understandable, however, that the family found this action insensitive.

#### CONDUCT OF THE PURSUIT

##### **Issue 8: Did Police comply with the law and the Police fleeing driver policy in their conduct of the pursuit?**

174. Law and Police policy in relation to vehicle pursuits is set out in paragraphs 232-237.
175. Under the Land Transport Act 1998, the Police are empowered to stop vehicles for traffic enforcement purposes. If the vehicle fails to stop, it may be pursued. The Police



fleeing driver policy sets out requirements covering the conduct of pursuits, including risk assessment, communication, and officers' roles and responsibilities.

176. In this case, Officers A and B had seen Mr Legg speeding and had signalled for him to stop. Mr Legg instead sped away. There was a short time during which Officers A and B were attempting to catch up to Mr Legg; under the Police urgent duty driving policy they should have activated their lights and siren during this stage to warn other drivers.
177. The fleeing driver policy requires officers, before commencing a pursuit, to consider a range of risk factors before determining whether the immediate need to apprehend the offender outweighs the risks. The Authority is satisfied that Officer A carried out this risk assessment and determined that under the circumstances (rural road, clear weather, little or no other traffic) the risks were minimal. Officer A, and his patrol car, were appropriately classified to undertake pursuits under the Police Professional Driver Programme. NorthComms, as noted in paragraphs 23 and 24, issued the required warning and Officer B acknowledged it.
178. The pursuit speeds ranged between 80kph and 120kph on rural roads. At one stage Mr Legg cut a corner and at another point his car skidded and spun before he again drove off. As the pursuit reached Tavinor Road the officers followed at what they considered to be a safe distance, as they knew the road was a dead-end. Officer B provided regular situation reports to NorthComms informing it of speed, traffic volume, Mr Legg's manner of driving, and other information required under the fleeing driver policy to allow NorthComms to assess whether the pursuit should be abandoned.
179. Throughout the pursuit, Officer A continued to assess the risks. The pursuit lasted about five minutes and covered a distance of just under 8km before it came to an end at the house.

#### FINDING

The officers should have activated their lights and siren earlier, in accordance with the Police urgent duty driving policy. Once the pursuit got under way, the officers complied with the policy in all respects. They considered all relevant risk factors, drove safely, and fulfilled communication requirements.





# Conclusion

180. On the evening of 19 April 2012, Shane Legg drove, possibly under the influence of drugs, more than 50kph over the speed limit along a rural Northland road. When Police signalled for him to stop, he sped away, at times driving in a dangerous manner in his attempts to evade them. Once he reached a dead end he left his car and ran, in the dark, into an area of land that was steep, slippery, and hazardous. He remained determined to evade Police until it became clear that he could not.
181. The officers who responded to Mr Legg's actions were attempting to do their duty under circumstances that were, at times, extremely difficult. None of those officers acted recklessly or intended to cause harm. In most respects their actions were entirely consistent with legal requirements and Police policy. At times, however, errors of judgement were made. Officer C did not stop to fully consider possible risks and alternative courses of action before instructing Mr Legg to climb the fence, and this – along with Mr Legg's own actions – contributed to Mr Legg's injuries. With the benefit of hindsight it would have been desirable for Officers E and F (under Officer C's supervision) to stop and consider possible risks and alternative courses of action before moving Mr Legg from the fenceline.

## Section 27 opinion

182. Section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable. In the Authority's view:
- i) Officer C did not adequately consider possible risks and alternative courses of action before instructing Mr Legg to climb the fence. In that respect, the officer did not fulfil his legal duty of care to Mr Legg, and his actions were therefore unreasonable. However, in the circumstances these actions were not so grossly negligent as to give rise to criminal liability.
  - ii) Officers E and F did not consider possible risks and alternative courses of action before moving Mr Legg after he had fallen. Their failure to do so was

undesirable. However, their actions were not unreasonable, given the information known to them at the time, and did not amount to a breach of their legal duty of care.

# Recommendations

INDEPENDENT POLICE CONDUCT AUTHORITY

183. Pursuant to Section 27(2) of the Act, the Authority recommends that Police:
- i) Reconsider their decision not to take action under the Code of Conduct in relation to Officer C.
  - ii) Amend the 'Mechanical Restraints' chapter of the Police Manual to require specific consideration of potential risks to the safety of handcuffed offenders due to their restricted mobility.
  - iii) Amend the Arrest and Detention chapter of the Police Manual and the 'overview' and 'general principles' sections of the Mechanical Restraints chapter to ensure officers are given clear and consistent guidance about the factors they must consider before deciding whether to use mechanical restraints.



SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

5 AUGUST 2013





# Appendix: Applicable Law and Policy

INDEPENDENT POLICE CONDUCT AUTHORITY

184. This Appendix sets out applicable law and policy in force at the time of this incident.

## DUTY OF CARE

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185. Police owe a legal 'duty of care' to take reasonable care of all people arrested, detained or placed in their custody. This duty begins from the moment the person is detained and applies until the person is released from custody or transferred into the care of another agency.

186. The Police duty of care was historically found in the common law, and is now enshrined in section 151 of the Crimes Act 1961. The duty is recognised in Police policies and instructions relating to arrest and to the care of people in custody.

### Statutory provisions

187. Section 151 of the Crimes Act 1961 provides:

*“Every one who has actual care or charge of a person who is a vulnerable adult and who is unable to provide himself or herself with necessaries is under a legal duty—*

*(a) to provide that person with necessaries; and*

*(b) to take reasonable steps to protect that person from injury.*

188. The Act defines a 'vulnerable person' as *“a person unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw himself or herself from the care or charge of another person”*. 'Necessaries' refers to the basic requirements of life, such as food, water and adequate warmth.

189. Under section 150A(2) of the Crimes Act 1961, deaths or injuries arising from a failure to perform the legal duty in section 151 gives rise to criminal liability only if the failure is *“a major departure from the standard of care expected of a reasonable person”* (commonly described as a “gross negligence standard”). A person who simply fails to provide a

reasonable standard of care, without more, cannot be convicted of offences such as manslaughter or injuring.

190. Under section 317 of the Accident Compensation Act 2001, a person is prohibited from bringing civil proceedings for damages for personal injury caused by negligence. Section 319 allows proceedings for exemplary damages, but only where the person causing the injury has either intended the harm or has appreciated the risk of harm and has *“deliberately and outrageously”* run that risk (see *Couch v Attorney-General* [2010] NZSC 27). Again, therefore, a person who is injured as a result of another’s simple failure to provide a reasonable standard of care, without more, may have no civil remedy.
191. However, the absence of criminal or civil liability in cases of simple negligence does not make the legal duty under section 151 of the Crimes Act inapplicable. It simply means that the injured person’s remedies for a breach of that duty are limited to other avenues.

## Police policies

### *Arrest and detention*

192. The duty in section 151 of the Crimes Act is reflected in various Police policies.
193. The Arrest and Detention chapter of the Police Manual encourages officers carrying out arrest to take time and plan their actions, organise any necessary back-up, and take steps to ensure *“the safe and humane arrest of the offender”*.
194. The Arrest and Detention chapter also contains a section on Duty of Care, which states:

*“When you arrest or detain a person you have a duty of care to protect that person and keep them safe from self harm and/or suicide and harm from others (e.g prisoners) while they are in Police custody.*

*Your duty of care starts from the moment you arrest or detain the person at the incident or elsewhere, continues while the person is being transported to the police station and during processing. Your duty of care does not end until you transfer the person into someone else’s custody (e.g. a watchhouse keeper) or the person is released.”*

195. The chapter also imposes responsibilities on the arresting officer. One of those responsibilities is to *“take steps to manage any concerns or identified risks while transporting the person or while the person is in your care”*.

### *Transporting prisoners*

196. The Transporting Prisoners chapter of the Police Manual says:

*“Police have a duty of care when transporting prisoners and must ensure:*



- *prisoners' health, safety and secure custody*
- *the safety of the escorting employees and the public*
- *meals are provided at normal meal times unless impracticable to do so."*

197. The chapter applies to all situations in which prisoners are transported after arrest or detention. Most of the detailed requirements in the chapter relate to transporting prisoners to and from courts and prisons, to and from medical facilities, and transporting by vehicle or air. The policy requires officers responsible for transporting prisoners to undertake a risk assessment covering a range of factors including the likelihood of escape, the prisoner's compliance with instructions, and whether the prisoner needs special care (for example, for medical or mental health reasons).

## USE OF FORCE

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### Crimes Act 1961

198. Section 39 of the Crimes Act 1961 provides authority for Police carrying out an arrest to use *"such force as may be necessary"* to overcome any force used in resisting the arrest, unless the arrest can be made *"by reasonable means in a less violent manner"*.
199. Section 40 of the Crimes Act 1961 provides authority for Police to use *"such force as may be necessary"* to prevent a person from escaping in order to avoid arrest, or to recapture that person, unless the escape can be prevented *"by reasonable means in a less violent manner"*.
200. These provisions are mirrored in the Use of Force chapter of the Police Manual, which sets out the circumstances in which Police can use force.

### Tactical options

201. The Tactical Options Framework provides guidance for Police officers on how to assess the circumstances they face and determine the appropriate tactical response. This includes determining whether force is necessary and, if so, the appropriate level of force. The framework asks officers to assess and continuously reassess the incident they are dealing with, based on information about the situation and the subject's behaviour.
202. Under the framework, officers must determine the appropriate tactical response depending on whether the person they are responding to is:
- cooperative
  - passively resisting (refusing verbally or by being physically inactive)

- actively resisting (pulling away, pushing away, running away)
  - assaultative (actively hostile – showing an intent through either actions or body language to cause physical harm; examples include kicking, punching or aggressive body language), or
  - acting in a way that is likely to cause death or grievous bodily harm.
203. For an offender who is deemed to be passively resisting, the framework suggests using communication and moderate ‘empty hand tactics’ such as physically escorting the person, and handcuffing them.
204. For an offender who is deemed actively resistant, the framework suggests distraction and redirection, compliance techniques, wristlock, arm bar takedown, bottle top, and OC spray.
205. For an offender who is deemed assaultative, the framework suggests empty hand techniques (striking with hand, elbow and knee), using batons, dogs and ‘weapons of opportunity’.

### **Use of handcuffs**

#### *Use of handcuffs during arrest and detention*

206. The Arrest and Detention chapter of the Police Manual says that restraints (including handcuffs) may be used when a person is detained or arrested.
207. When deciding whether to use restraints, an officer must determine whether this use of force is justifiable, and what level of force – if any – is appropriate in applying the restraints. In making these decisions, officers are required to consider:
- their own safety and the safety of others
  - the nature of the charge against the person they are restraining
  - the person’s conduct and temperament
  - the likelihood of the person escaping (which is reduced if the person is restrained).

#### *Mechanical restraints policy*

208. The Mechanical Restraints chapter of the Police Manual provides further detail on the use of handcuffs, and the circumstances in which they can be used.
209. In an overview section, the policy says that mechanical restraints are a tactical options used to control a person, and are used to reduce the risk of injuries to Police

employees, the person who is restrained, or any other person, or when there is a risk of escape.

210. The necessity to use restraints depend on a range of circumstances including the nature of the charge, the conduct and temperament of the person being restrained (including intoxication), the likelihood of the person attempting to escape, the safety of Police employees and other people, and *“factors which may elevate or reduce the risk”* (for example, whether the person is young or old, and their mental and physical health).

211. In a general principles section, the policy says that when officers are determining whether to use mechanical restraints, the overriding principle is: *“In the particular circumstances what possible risks are posed by the person?”*

212. Officers are also required to consider:

- the nature of the charge or the reason for detention
- the likelihood of the person trying to escape
- the ability of Police to apprehend if the person escapes
- their own safety and the safety of everyone else involved
- the person’s criminal history and previous behaviour
- whether the person is behaving in a manner that suggests they are dangerous to Police or any other person
- whether the circumstances of the arrest suggest it is *“a situation of some risk”*.

213. In managing risks, officers must consider the most appropriate form of mechanical restraint, whether it can be safely applied, and whether any force used in applying the restraint is justified.

214. In a section titled ‘Handcuffs – metal’, the policy requires officers to take care when applying metal handcuffs, and says there is a risk of injury – including nerve damage, contusions and cuts, and restricted circulation - to the person the cuffs are being applied to.

#### **Use of force with Police dogs**

215. The ‘Use of force with Police dogs’ section of the Police Manual sets out the circumstances in which dogs may be used to arrest a person.

216. The policy makes clear that use of Police dog is legally similar to any other use of force by Police. The legal authority to use force is given to the handler, and the dog is the

- handler's instrument. Therefore, the use of force by a Police dog can only be justified if the use of force by the handler would be justified.
217. The policy also makes clear that, although Police dogs are highly trained, they are animals and cannot assess how much force is appropriate in any particular circumstance.
218. The policy notes that any use of a Police dog to bite a person must be justified in law, necessary, reasonable, and proportionate (that is, the force used should not be disproportionate to the seriousness of the offence).
219. Dog handlers should consider all tactical options available to them: *"Just because you have a Police dog with you should not be the reason for using the dog as a means of force instead of a more appropriate option."*
220. Before releasing a dog, the handler must:
- be satisfied that the use of force is justified in the circumstances
  - have called on the person to desist (unless it is not practicable to do so)
  - ensure that the use of force by the dog is kept to the minimum possible in the circumstances.
221. They must also ask:
- whether they can identify the suspect to the dog
  - whether there are enough Police officers present to carry out the arrest safely
  - whether the dog can be used while on a lead and under control
  - whether there is any risk to innocent bystanders which may outweigh the need to use the dog.
222. When giving the warning, the dog handler must identify himself or herself as a Police officer, make clear that the handler has a dog, and make clear that the dog will be used to bite the suspect if he or she does not surrender to Police. The warning must be loud enough for the offender to hear it, and the offender must be given a reasonable amount of time to comply.
223. The policy notes that dogs can be used while on a lead and collar, or chain, or tracking harness, or can be used lead-free. The handler is required to maintain physical or voice control of the dog at all times, including when releasing a dog to bite.
224. The policy notes that dog bites cause significant pain and panic reactions.

*“Most people will react in some way to a dog biting them. While some suspects may deliberately fight and resist the dog, it is a natural reaction for people to physically resist and to respond verbally. It is therefore unrealistic to expect full compliance to instructions or a passive response from people while a dog is biting them.*

*The action of people resisting being bitten will also stimulate the dog to continue biting and handlers must take this into consideration when managing their dog.”*

- 225. For these reasons, handlers must call off their dog as soon as possible after a suspect has been apprehended or any person has been bitten. The handler must use approved techniques to call off the dog, including commanding it to “leave” and physically stopping it from biting.
- 226. The policy advocates keeping dogs at a safe distance from other people in order to reduce the risk of the dog biting a person when not intended (for example biting in order to protect the dog handler from someone nearby). Handlers must also be constantly alert for environmental stimuli that may lead the dog to act in ways the handler does not intend.

### **Reporting use of force**

- 227. The Use of Force chapter of the Police Manual requires Police officers to submit a Tactical Options Report to their supervisor on any occasion where they use force in the execution of their duties. They are not required to submit a report if the force used was trifling (such as holding a person’s arms in a way that doesn’t restrict their movement, or pushing a person in a way that doesn’t cause them to overbalance). They are however required to submit a report in all circumstances where the force is likely to result in a complaint.
- 228. The report must set out the officer’s assessment of the situation, the person the force was used on, the tactical options considered and used, the type and degree of force used, and any injuries sustained.
- 229. The ‘Use of force with Police dogs’ chapter of the Manual policy requires that all dog bites or injuries caused by Police dogs are reported.

### **Medical care**

- 230. The Use of Force chapter of the Police Manual requires that, whenever use of force by Police has resulted in injury that is not of a minor nature, the injured person must be medically examined at the first opportunity, unless under the circumstances this is impractical or inappropriate.

231. The 'Use of force with Police dogs' chapter of the Manual requires that everyone bitten or injured by a Police dog must be given appropriate medical attention.

## PURSUIITS

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### Legislative authority for pursuits

232. Under the Land Transport Act 1998, the Police are empowered to stop vehicles for traffic enforcement purposes. Where such a vehicle fails to stop, the Police may begin a pursuit.

### Fleeing driver policy

233. Under the fleeing driver policy, a fleeing driver incident occurs when (i) the driver of a vehicle has been signalled by Police to stop, (ii) the driver fails to stop and attempts to evade apprehension, and (iii) Police take action to apprehend the driver. The Police tactic to apprehend is referred to as a pursuit.
234. The overriding principle for conduct and management of pursuits is: *"Public and staff safety takes precedence over the immediate apprehension of the offender."*
235. Under the policy, the pursuing officer[s] must carry out a risk assessment both prior to starting a pursuit and continuously throughout a pursuit. The assessment must consider: the speed limit and manner of driving by the offending vehicle; identity and other characteristics of the occupants of the offending vehicle; weather conditions; the environment, including the location, road type and potential hazards; traffic conditions, including vehicle and pedestrian as well as time of day; and capabilities of the police driver and vehicle. The pursuing officers and the Communications Centre pursuit controller must then use the risk assessment factors to *"...determine whether the need to immediately apprehend the fleeing offender is outweighed by the potential risks of a pursuit"* to the public, the occupants of the pursued vehicle, and the Police.
236. When a pursuit commences, the nearest communications centre must be notified. The communications centre must provide the warning referred to in paragraph 23, which the pursuing officers must acknowledge. The pursuing officers must provide situation reports to the communications centre in a timely manner to enable the pursuit controller to make an independent assessment of the risks and manage the pursuit, including whether to direct the abandonment of the pursuit. The situation reports should include information about: location; direction of travel; reason for pursuit; the offending vehicle's description and speed; the posted speed limit; road and traffic conditions; weather; the offender's manner of driving and identity; the Police driver and vehicle classifications; and confirmation that warning devices are activated on the Police car.

237. A pursuit must be abandoned if at any stage the risks to safety outweigh the immediate need to apprehend the offender. The policy also sets out other specific circumstances in which the pursuit must be abandoned, as well as procedures for abandonment and recommencement, and tactical options for ending pursuits.

# About the Authority

## WHAT IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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The Independent Police Conduct Authority is an independent body set up by Parliament to provide civilian oversight of Police conduct.

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 Sir David J. Carruthers.

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 has highly experienced investigators who have worked in a range of law enforcement roles in New Zealand and overseas.

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant;
- 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 determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.

The Independent Police Conduct Authority is an independent body set up by Parliament





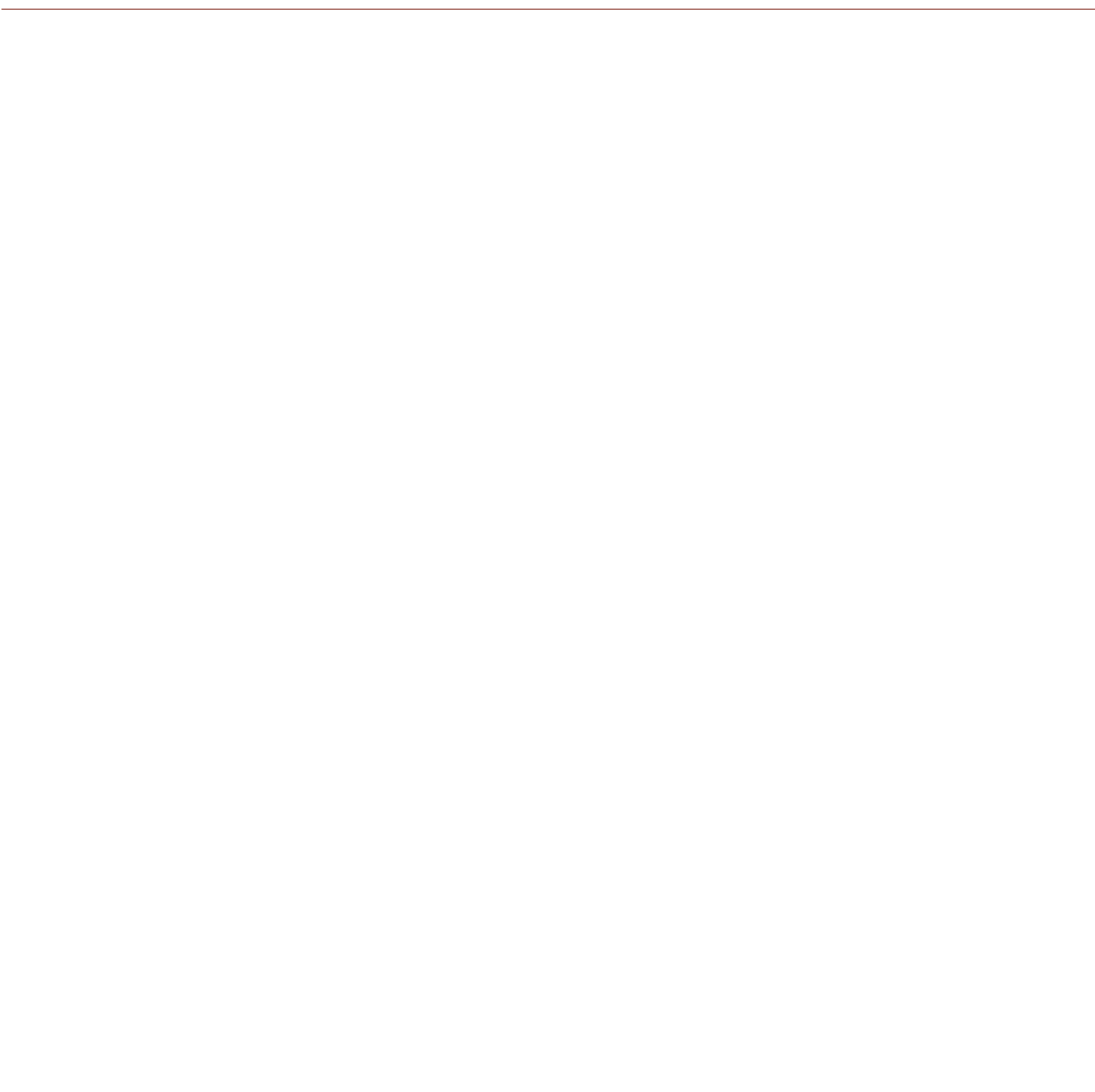
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