

## Summary Report

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# Use of Police dog during arrests in Auckland

## INTRODUCTION

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1. On 23 August 2013, following the pursuit of a stolen car in West Auckland, Police arrested two men, Mr X and Mr Z, who had fled from the vehicle. A Police dog was used during both arrests.
2. Both Mr X and Mr Z claim that they had surrendered before the Police dog handler deployed his dog.
3. In addition, two officers who witnessed Mr Z's arrest reported that they believed the use of the Police dog was unnecessary and excessive.
4. The Police notified the Independent Police Conduct Authority of the incident, and the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority's findings.

## BACKGROUND

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5. At about 12.40am on 23 August 2013, Waitakere Police observed a Subaru, containing three occupants, acting suspiciously in the New Lynn area. After checking the Subaru's registration it was determined that it had been reported stolen the previous day. Police signalled the driver of the Subaru to stop, but he failed to do so. A pursuit was commenced. The pursuit lasted about three minutes before it was abandoned in Cliff View Drive, Green Bay.
6. Following abandonment, several Police units began to search the surrounding area in an attempt to locate the Subaru and its occupants. The Police helicopter, Eagle, was also involved in the search.
7. At about 1am Eagle located the Subaru parked in a driveway in Harrybrook Road, Green Bay. Officer A, a dog handler who had been dispatched to the area to assist in locating the Subaru's occupants, approached the vehicle and found it empty.

8. Officer A and his dog, which was on a long tracking lead, began to track the occupants. As they did so, Eagle informed Officer A, and the other Police officers in the area, that they could see three people standing in an adjacent property.
9. Two of the men, Mr X and Mr Y, moved to a carport on the property where they stood still. Mr Z jumped a fence into a neighbouring property, situated on Godley Road.
10. Officer A and his dog tracked the occupants until Officer A saw Mr X and Mr Y crouching in the carport.

### The arrest of Mr X

11. Officer A said that upon seeing the men, who he believed to be the occupants of the stolen Subaru, he yelled a challenge, twice identifying himself as a Police dog handler and telling them *“stay there or the dog will be used to arrest you.”*
12. Mr X and Mr Y did not comply with Officer A’s instructions, and began to run down the driveway towards the road. In response, Officer A let go of his dog’s tracking line and commanded the dog to *“rouse.”* Officer A told the Authority that *“rouse”* is a command to a Police dog to move forward towards an offender.<sup>1</sup>
13. Officer A also told the Authority that there were no other officers available to assist him, and that there was no other tactical option available that would allow him to arrest Mr X and Mr Y and prevent their escape.
14. Footage recorded from the Police helicopter, Eagle, shows the dog running towards the men, who were running away (see paragraphs 46-51 for further detail). According to Officer A, the dog bit Mr X on his buttock and knocked him to the ground before biting his arm.
15. As Officer A ran to remove the dog from Mr X he passed Mr Y and ordered him to surrender and get on the ground. Mr Y complied.
16. Mr X told the Authority that when he saw that the Police dog had been released he stopped running, raised his hands and told Officer A that he *“gave up.”* According to Mr X, Officer A ignored this and let the dog bite him while *“egging the dog on”* by saying *“good boy”* or *“get him boy.”*
17. About 45 seconds after the dog first bit Mr X, Officer B arrived to assist in the men’s arrests. He told the Authority that as he ran up the driveway he noticed that Mr X was sitting on the ground *“with a dog on his arm.”* The dog continued to hold and bite Mr X’s arm while Officer A yelled *“stay on the ground.”*

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<sup>1</sup> While there is no standard Police definition of the command *“rouse”*, it is generally used in training and operational deployment to command a dog to bite.

18. Mr Y told the Authority that Officer A set his dog on Mr X even though Mr X had surrendered. Mr Y further alleged that Officer A racially abused Mr X, and let the dog continue to bite Mr X for two and a half minutes.

### The arrest of Mr Z

19. As soon as sufficient back up arrived to deal with Mr X and Mr Y, Eagle directed Officer A towards the Godley Road property where Mr Z was hiding. By this time Officers C and D had also made their way to the scene. Officers C and D were general duties officers who had been dispatched to the area to help locate and arrest the occupants of the Subaru.
20. Officers C and D went to the back of the property where Eagle told them to stop and wait for Officer A to arrive. Neither officer had seen Mr Z at this point.
21. As Officer A and his dog jumped over the fence into the Godley Road property, all of the officers loudly warned Mr Z that a Police dog was now on the property and called on him to come out of hiding, which he did not appear to do.
22. The dog tracked Mr Z, finding him hiding in a gap between a shed and fence in the back corner of the section.
23. Mr Z, Officer A, and Officers C and D all have different accounts of what happened next.

### Mr Z's account of events

24. According to Mr Z, while he was hiding behind the shed he heard a Police officer yell *"come out with your hands up"* and *"we're going to let the dog go."*
25. Mr Z took three or four steps out from behind the shed with both of his hands in the air. He saw a Police dog handler and two Police officers standing in front of him. He then heard the dog handler say *"russ, russ"* before the dog started attacking him and biting his leg.
26. Mr Z told the Authority that he thought he was treated unfairly because he had complied with Police instructions to come out from behind the shed with his hands up but the Police dog was still released. He said he thought that if he came out he would just be arrested.

### Officer A's version of events

27. Officer A told the Authority that as the dog tracked towards the back corner of the property he saw Mr Z standing in the gap between the fence and the shed. Mr Z had one hand raised as if he was about to climb the fence.
28. According to Officer A, neither Officer C nor D would have been able to see Mr Z at this stage as, from where they were standing, their view would have been blocked by the corner of the shed.
29. Mr Z's raised hand led Officer A to believe that Mr Z was trying to escape. He said that Mr Z had already been warned that a Police dog was on the property and had plenty of time to yell out to the officers or come out from behind the shed, but failed to do so.

30. Officer A then gave his dog the command to “rouse.” The dog bit Mr Z’s thigh. Officer A said that the dog bit Mr Z once and then immediately released him but continued barking at Mr Z.
31. Officer A told the Authority that he commanded the dog to “rouse” more than once. He explained that, as the dog was young and relatively inexperienced, he would not automatically bite when given the command to “rouse”. Officer A said that he used the command in this instance to get the dog to maintain its focus on Mr Z,<sup>2</sup> in order to get Mr Z to stay where he was. He added that because he was holding the dog back by its lead, it would have been unable to move forwards and bite Mr Z again.
32. Officer A said that it was after the dog had bitten and released Mr Z that Mr Z put both of his hands in the air. He said that the dog did not bite Mr Z again, but continued barking as he moved out from behind the shed.
33. Officer C then tried to push past Officer A and his dog in order to handcuff Mr Z. Officer A said that he swore at Officer C and told him to wait so that the dog could be removed from the area first. Officer A was concerned that the dog might mistakenly consider Officer C a threat and bite him.
34. Officer C continued to push past Officer A and eventually moved in front of him. At this point Officer A said that he pulled the dog to the side and out of the way as much as he could.
35. Officer A said the he believed there was no need for Officer C to push past him. The dog was not biting and he was holding its line so that it couldn’t reach Mr Z. Mr Z did not pose a threat at this point, and Officer A said that he could have taken his time to calmly remove Mr Z from behind the shed.
36. Officer A added that if the dog had continued to bite Mr Z then he would have suffered multiple bite marks. He thought that Mr Z’s legs showed signs of multiple scratch marks, but not bites.

#### *Officer C’s and D’s version of events*

37. As Officer A and his dog tracked towards the back corner of the property, Officer D shone his torch in that direction. He and Officer C could both see Mr Z standing in the gap between the shed and the fence.
38. The officers told the Authority that when they first saw Mr Z, before Officer A had released his dog, Mr Z was standing still, had both of his hands in the air, and appeared to be surrendering.
39. The officers moved across the yard towards the shed, but stayed three to four metres behind Officer A. As they did so they heard Officer A command the dog to “rouse.”
40. Officer C told the Authority that, from his position, he couldn’t see the dog as it engaged Mr Z, but that it appeared that it was biting Mr Z’s leg. Officer D said that he definitely saw the dog bite Mr Z, and that Officer A pulled the dog back after a few seconds.

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<sup>2</sup> According to Police training, the command “watch him” should be used to order a dog to maintain focus on an offender.

41. Officer C then moved towards Mr Z, telling Officer A that he would arrest him. Officer A and the dog were between Officer C and Mr Z. Officer C told the Authority that Officer A told him to *“get the fuck back or the dog will bite you as well.”*
42. Officer C said that, eventually, Officer A moved back with the dog. This allowed Officer C to grab Mr Z, take him to the ground and arrest him.
43. Both officers told the Authority that they did not think that Mr Z posed a threat of either harm or escape when first sighted by Officer A. They believed that Officer A would have been able to see Mr Z standing with both of his hands in the air before the dog was deployed.
44. Officer C added that there was nowhere that Mr Z could escape to as he was backed into a corner and surrounded by several officers.
45. Neither officer believes that the level of force used by Officer A was necessary, and they both say that Mr Z did not do anything to justify such a reaction.

### **Eagle and Television Footage**

46. As part of its investigation, the Authority reviewed footage of the incident filmed by Eagle, as well as footage recorded by a television cameraman who had accompanied Officer C on his shift.

#### *Eagle footage*

47. The Eagle footage was filmed with a thermal imaging camera. This clearly highlights objects that are emitting heat, such as people. The footage gives an overview of what is happening at a scene.
48. The initial view of Mr X, Y and Z shows them standing in a property adjacent to where the Subaru is located. Mr X and Y are then seen moving towards a carport on the property, while Mr Z can be seen climbing the fence into a Godley Road property and hiding between the fence and a garden shed.
49. The footage then shows Officer A encountering Mr X and Mr Y in the carport, who both run away as Officer A approaches. The dog is very close to the men at this stage. Mr Y lies down almost immediately, and the dog closely chases Mr X as he runs down the driveway before engaging him about halfway along.
50. The footage then shows an overview of the incident scene and neighbouring properties. Officer A and Mr X can be seen intermittently. Officer B can be seen arriving about 45 seconds after the dog engaged Mr X, at which point the dog is still engaged.
51. A few seconds later the footage shifts to show three officers entering the Godley Road property. They are told by Eagle to stop and wait for Officer A.

52. Officer A and his dog are next seen on the footage about 30 seconds later. The dog is no longer engaged on Mr X. Officer A is directed to the neighbouring property by Eagle, and enters the property via the back fence about ten seconds later.
53. Officer A and his dog can then be seen tracking across the yard towards Mr Z. Mr Z can be seen standing still at the front of the gap between the fence and the shed with both hands in the air, before the dog or Officer A even notices him. Officer A is positioned directly in front of Mr Z when the dog is deployed.

### Television footage

54. The television footage, which was filmed by a camera with a light attached, shows Officer C entering the Godley Road property and proceeding to the back yard, where he and another officer wait for Officer A to arrive. Both are equipped with torches.
55. Officer A can be heard shouting *“the dog is coming, come out now”* as he enters the property.
56. Once over the fence, Officer A and his dog can be seen tracking towards the fence. After a few seconds Officer A is heard yelling *“rouse.”* The camera’s view of Officer A is obscured at this point.
57. Officers C and D then run in behind Officer A, and one of them tells Mr Z to get on the ground. Officer A continues communicating with the dog, saying *“rouse”* eight times and saying *“good boy”* four times.
58. Officer C then tells Officer A that he will get the offender out from the side of the shed. Officer A tells him not to, and that he will pull him out. Officer A tells Officer C to get back twice, before saying *“get the fuck back out of my way then or you’ll get fuckin’ bitten as well.”*
59. There is no view of Mr Z until after he is bitten. He can be seen with his hands in the air, but struggling to stay on his feet. When told to get on the ground he says *“I will if you get your dog off me.”*
60. About 25 seconds after the first command to *“rouse”* Officer A pulls the dog away from the area between the shed and the fence.
61. Officers C and D then move Mr Z out of the gap, pull him to the ground and place him in handcuffs. Officer C asks Mr Z if he is *“all good”* before helping him to his feet. Mr Z is able to walk to a nearby Police car.

## LAWS AND POLICIES

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### Law on use of force

#### *Use of force by law enforcement officers*

62. Sections 39 and 40 of the Crimes Act 1961 allow Police officers to use reasonable force in the execution of their duties, such as arrests, and to prevent the escape of any person trying to

avoid arrest. They may use “*such force as may be necessary*”, unless their aim can be achieved “*by reasonable means in a less violent manner*”.

### *General guidance on use of force*

63. The Police have a range of tactical options available to them to help restrain a person, make an arrest or otherwise carry out lawful duties. They include the use of Police dogs.

### *Tactical Options Framework*

64. The Tactical Options Framework sets out a range of options available to Police in responding to a situation, depending on the actions of the offender.
65. Options range from communication with the offender, to ‘empty hand’ tactics such as distracting or punching the offender, to ‘intermediate options’ which are those unlikely to cause death or serious injury such as OC spray or baton, to use of lethal force which includes use of firearms or strikes to the head or neck.
66. Which option is appropriate depends on whether the offender:
- is cooperative;
  - is resisting, either passively or actively;
  - is actively hostile and intending to cause physical harm; or
  - presents a threat of death or grievous bodily harm.

### **Use of Police dogs**

#### *General Instructions*

67. Under General Instruction D182, a dog handler is personally responsible for any use of force by that dog.
68. Before releasing the dog, the handler must be satisfied that the use of force is justified under the circumstances, and must call on the offender to desist unless it is impractical to do so.
69. The handler must also ensure that any force used by the dog is the minimum possible in the circumstances.

#### *Manual of Best Practice*

70. The Police *Manual of Best Practice* states that Police dogs may be used as a means of force to apprehend suspects and violent offenders who cannot be apprehended by other means.
71. Police dogs are trained to take controlled bites on the limbs and fleshy parts of the body in order to secure a hold on the suspect. Dog bites can cause damage to clothing, bruises, and more serious wounds.

72. Dogs cannot assess how much force is appropriate in a given situation. They may react independently according to instinct or training and should therefore be used as a last resort.
73. A handler using a dog must consider whether the use of force is justifiable and appropriate in the circumstances. They must also consider the possible consequences and whether there are other members of Police who could carry out the arrest.
74. Before releasing the dog, the handler should warn the suspect. However, in some circumstances – such as armed offender incidents – it may not be practical to warn the suspect.
75. Following apprehension, the dog should “*generally*” be removed as quickly as possible to avoid unnecessary injury.

## THE AUTHORITY’S FINDINGS

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### Was the use of force against Mr X justified?

76. After locating the abandoned Subaru, Officer A and his dog tracked to a property where Eagle had seen two men – thought to be occupants of the stolen car - hiding in a carport.
77. As Officer A approached the men he issued a verbal challenge, as required by Police policy, warning them that a Police dog would be used to arrest them if they did not comply with Officer A’s instructions.
78. When the men ran away, Officer A believed that the dog was the only tactical option available to prevent the men escaping, especially as there were no other officers immediately available to assist. Consequently, Officer A deployed his dog, giving the command “*rouse.*”
79. Mr X told the Authority that Officer A had allowed - and encouraged - the dog to bite him, even though he had surrendered following the dog’s release. However, the Eagle footage shows that Mr X was still running when the dog engaged him.
80. By running away, Mr X actively resisted arrest. Officer A was therefore justified under section 39 of the Crimes Act 1961 to use reasonable force to arrest him. In the circumstances, deployment of the dog was the least violent tactical option available to Officer A to prevent Mr X’s escape and make an arrest.
81. However, Police policy dictates that a dog should be removed as quickly as possible following the apprehension of an offender. In this case, the Eagle footage shows Officer B arriving at the scene 45 seconds after the dog initially engaged Mr X, at which point the dog is still engaged. This is supported by Officer B, who told the Authority that the dog was biting Mr X when he arrived.
82. Officer A should have removed the dog from Mr X as soon as Mr X was under control. While the Authority is unable to determine exactly when this should have occurred, it is clear from Officer B’s statement that Mr X was no longer resisting by the time he arrived.



## FINDINGS

Officer A was justified under the Crimes Act in using his Police dog to prevent Mr X from escaping. This was the only realistic tactical option available to Officer A in the circumstances.

However, the failure of Officer A to remove his dog from Mr X in a timely manner amounted to excessive force and was contrary to law.

### Was the use of force against Mr Z justified?

83. As required by Police policy, upon entering the Godley Road property, Officer A issued a warning that a Police dog was on the property and may be used if Mr Z did not come out of hiding. This warning can be heard on the television footage.
84. Officer A said that Mr Z failed to comply with his instructions and that, when Officer A first encountered Mr Z hiding behind the shed, he had one hand up in the air and appeared as though he was about to climb the fence.
85. In contrast, Mr Z said that he was standing still near the front of the shed with both hands in the air. Mr Z's version of events is supported by the Eagle footage and the accounts of Officers C and D who, given where Mr Z was standing, would have been able to see him.
86. The Authority accepts that Mr Z was clearly surrendering when confronted by Officer A. He was standing still with both hands in the air, making no attempt to resist Police. Communication should have been a sufficient tactic to ensure his ongoing compliance with Police instructions. In addition, Officers C and D were immediately available to assist with an arrest.
87. Officer A told his dog to "rouse" at least eight times. The majority of these commands were issued after the dog had bitten and released Mr Z. The Authority believes that using the command "rouse" to encourage a dog to maintain focus on an offender risks confusing the dog, causing it to bite an offender unnecessarily. Instead, a specific command ("*watch him*") ordering the dog to maintain focus should be used.
88. Officer A's use of his dog on Mr Z was excessive and unnecessary, and did not comply with law or Police policy. There were other, less harmful tactical options available to Officer A.

## FINDING

Officer A's use of his Police dog on Mr Z amounted to excessive force and was contrary to law.

## CONCLUSIONS

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89. The Authority has concluded, on the balance of probabilities, that:

89.1 The failure of Officer A to remove his dog from Mr X in a timely manner amounted to excessive force and was contrary to law.

89.2 Officer A's deployment of his dog on Mr Z amounted to excessive force and was contrary to law.

A handwritten signature in black ink, appearing to read 'David Carruthers', written in a cursive style.

**Judge Sir David Carruthers**

Chair  
Independent Police Conduct Authority

23 October 2014

## ABOUT THE AUTHORITY

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### Who is the Independent Police Conduct Authority?

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

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge 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 employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

### WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

On completion of an investigation, the Authority must form an opinion on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



Wahaia te pono, kia puawai ko te tika

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