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Independent Police
Conduct Authority

Whaia te pono, kia puawai ko te tika

Policing of Blockade the Budget Demonstrations in May/June 2012

October 2014

Contents

- Introduction 3**
- Background 4**
- Applicable Laws and Policy 14**
- The Authority’s Investigation 17**
- The Authority’s Findings..... 18**
- Subsequent Police Action 27**
- Conclusions 28**



Introduction

1. On the afternoon of 24 May 2012 a demonstration took place in the streets surrounding Auckland University in Central Auckland. The demonstrators, numbering approximately 300, were mainly students from Auckland University. They blocked streets, successfully stopping traffic from leaving the city from Symonds Street. During this demonstration only two or three Police officers attended and there were no arrests.
2. On 1 June 2012, in response to a public statement made by a Government Minister, a second demonstration took place at the same location. Police were informed of the demonstration in advance and assembled around 50 officers to 'police' the demonstration for any potential disorder or disruption to traffic.
3. Over the course of the second demonstration 43 people were arrested for obstruction. Four were subsequently prosecuted with the remainder being cautioned and released with pre-charge warnings.
4. Following the demonstration, the Authority received a number of complaints from individuals and a complaint from a group calling themselves 'Blockade the Budget', representing the demonstrators. The complaints made against the Police included allegations of excessive use of force and assault during arrest, Police officers not wearing identification epaulettes, and a general complaint of over-policing the second demonstration and aggressive behaviour towards the demonstrators.
5. The Authority conducted an independent investigation into the complaints received. This report sets out the results of the Authority's investigation and its findings.

Background

SUMMARY OF EVENTS

First demonstration: 24 May 2012

6. On 24 May 2012 a large group of demonstrators, estimated to number 300 and made up predominantly of students from Auckland University, held a demonstration to protest against the Government's proposed budget cuts to tertiary education.
7. During the early afternoon the students occupied the junction of Symonds Street and Grafton Road.
8. During the demonstration some of the demonstrators caused minor disturbances by tipping over some rubbish 'wheelie' bins, spilling the contents.
9. The demonstration caused significant traffic disruption for several hours, forcing the Auckland City Council to provide a traffic management plan so that roads could be closed off to afford some protection for demonstrators who by that time were sitting in the middle of the road.
10. Police report that they were unaware that a demonstration was to take place until the day before.
11. The Acting Area Commander, Officer A (an inspector), told the Authority that on 24 May he sent four of his staff members (three uniform and one plain clothes) to the University to provide him with further information as to what was occurring. As a result of the further information, he went to the location of the demonstration.
12. Officer A told the Authority that, *"It was my assessment at that point that we needed to carefully balance the rights of individuals demonstrating, protesting, voicing their thoughts against that of the wider public in relation to using roads and freedom of movement"*.
13. Officer A told the Authority that he made a decision not to escalate the Police response to the demonstration as he felt that it was important to let the group express their views even though there was significant disruption to traffic.
14. By the time Officer A arrived at the scene, the Council had provided a traffic management plan around the demonstration location so that roads could be closed off to provide some protection to demonstrators who were sitting down in the road. Officer A further added, *"To put a police operation in around that would have been problematic in the timeframe available in order to have an adequate response with options, again balancing the two key groups"*.
15. However, Officer A told the Authority investigator, that if Police had been given more notice of the 24 May demonstration, he would have organised a larger Police presence.

16. The demonstrators have advised the Authority that they believe the demonstration was successful and peaceful and very little policing was required, which resulted in minimal or no trouble. The protest ended when the demonstrators dispersed of their own accord.

Second demonstration: 1 June 2012

Planning

17. A few days before 1 June 2012, Police began to receive information from the Auckland City Council transport agency that the student group was planning to hold another demonstration. The second demonstration was organised for Friday 1 June 2012 between 3pm and 6pm and advertised under the headlines "*Protest like the Greeks*" and "*Blockade the Budget Greek style Teach-in*". A flyer was circulated giving the meeting point and details of the reason for the demonstration.
18. As previously stated, the 24 May demonstration had been considered by the demonstrators as a success. Many told the Authority that their aims had been achieved with little or no policing being required.
19. Conversely, Police felt the earlier demonstration had impacted significantly on the movement of traffic.
20. When planning for the 1 June demonstration, Police aimed to keep traffic moving without major disruption to road users, as had occurred in the earlier protest. Police took into account that 1 June was the Friday before Queen's Birthday weekend and traffic would be at its busiest, between 3pm-6pm, with many commuters leaving the city for the long weekend. The Police view was that the second demonstration needed to be policed more proactively than the one on 24 May.

Command and control

21. Police held managerial meetings prior to 1 June to discuss tactics and decide their approach. A decision was made that the Acting Area Commander, who was experienced in managing Police emergency response, would be the Operation Commander (Officer A) and that another inspector, experienced in running large Police operations, would assume the role of the Forward Commander (Officer B).
22. The Police Mass Arrest Processing policy provides that the Operation Commander should: direct, coordinate and control the operation; appoint a second in charge (Officer B), a liaison officer (Officer C), and a safety officer; and generally assess the situation. The Operation Commander must also give regular "*sitreps*" to the District Commander.
23. Policy provides that the Forward Commander: directs, co-ordinates and controls Police activities at the scene; is responsible for briefing group commanders; and ensures that there is a high degree of teamwork.

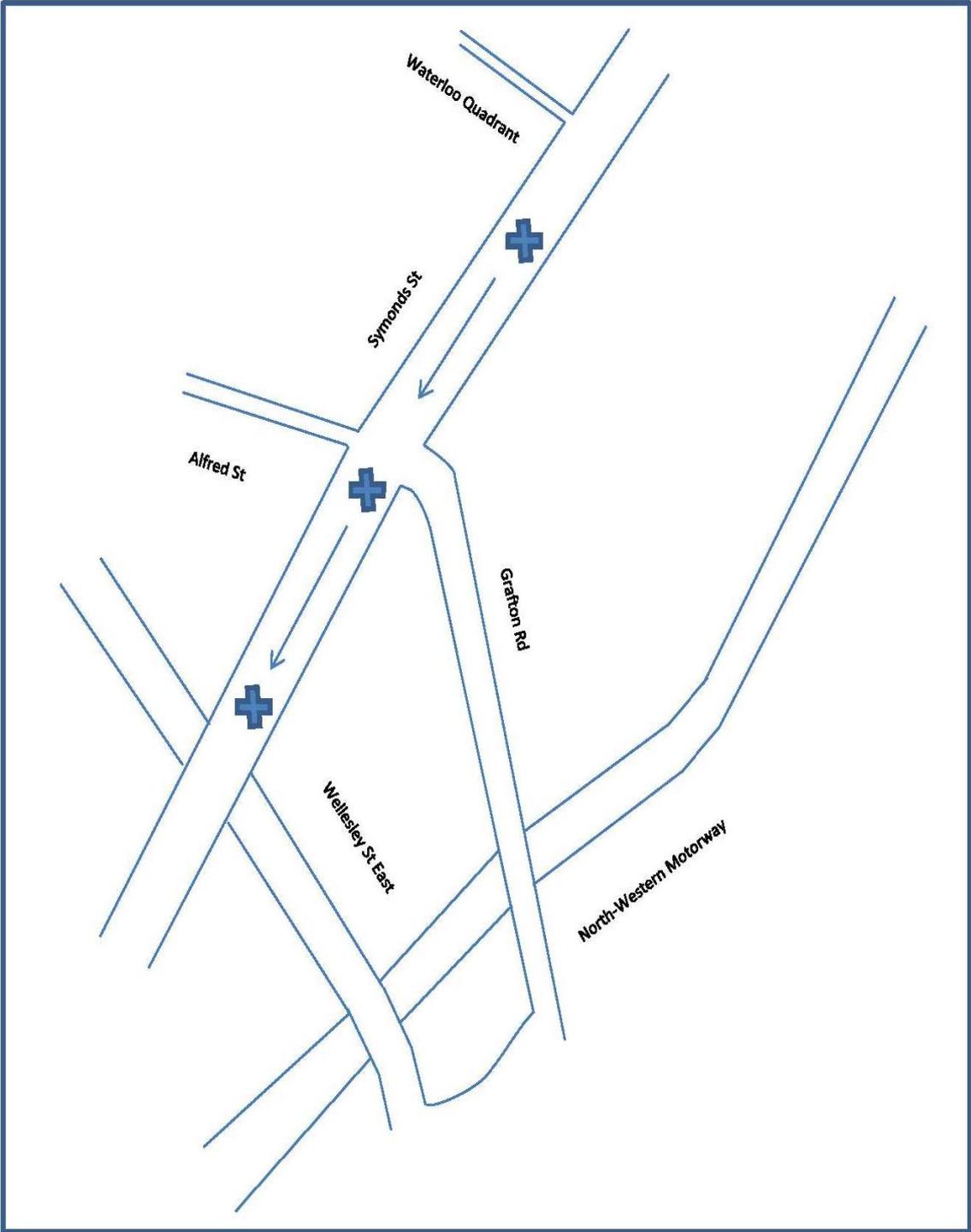
24. Early on 1 June 2012 Officer B drew up a Police Operation Order (an operational plan) for the demonstration. The plan included the number of Police officers proposed to be used (50-60), the mission statement, execution, administration and the command and radio communication signals to be used. This Operation Order provided that Police were to balance the rights of the demonstrators to protest with the rights of other citizens to go about their lives without unreasonable interference, particularly as it was a holiday weekend and the end of the school term.
25. The Operation Order specifically stated that *“any disorder or a sit-in will be addressed by way of a warning and then Police action if there is a continuance of the behaviour”*.
26. The Operation Order said that Officer B should command all groups assigned to this operation and ensure a balance was maintained between the right to protest and the need to maintain law and order. The Order also provided that Officer B was to ensure that the protest group was policed with minimal disruption to the City of Auckland and to set up and maintain a communication link between the protest leaders and the Police liaison officer.
27. Officer B said his plan was for *“minimal deployment, maximum reserve and a high level of tolerance of unlawful activity”*. The protest group was to be policed by a ‘March Group’ (a team that travelled with the demonstrators) with a ‘Response Group’ (a backup team if the demonstration got out of hand) in reserve supported by a ‘Processing Section’ (to deal with any arrests that might occur).
28. Police were unaware of how many demonstrators were going to be involved or what specific route through Central Auckland the demonstrators were planning to use. They also did not know whether the demonstrators planned to block traffic as they had done on 24 May. Police involved Auckland City Council in their planning and the Operation Order provided that the Council was to be responsible for traffic control.
29. Officer B told the Authority that it was his intention to allow a protest to occur, with Police escorting them to their destination. He said depending on numbers he would allow them to use one lane of the road, or if the demonstrators numbered into the hundreds, to occupy the whole road. He said that his aim was to keep the demonstrators moving so that they could protest but with minimum traffic disruption.
30. Officer A told the Authority that he had no pre-determined idea how the demonstration would pan out but he wanted options available, such as making arrests if necessary. He said that in comparison to the protest on 24 May, *“to have a dedicated, briefed and rehearsed group for this operation was most desirable”*.
31. Officer A acknowledged to the Authority that the ‘Operation Commander’ would normally be *“slightly removed”* from the operational location but said that in this instance he needed to be at the protest location so that he had an *“immediate and accurate feel for the operating environment”*.

32. Officer B said that he did not anticipate arrests. He told the Authority that he tried to resist making arrests during demonstrations as, in his experience, a situation can deteriorate if Police make arrests and arrests also tie up considerable resources due to processing and transporting requirements.
33. However, as many details about the demonstration were unknown and Police did not know how it would develop, they made contingency plans in the Operation Order to try to cover all eventualities.
34. As a result of this uncertainty, a liaison officer (Officer C), a sergeant, was appointed to communicate with the demonstrators during the protest in an attempt to find out what their plans entailed and the route they were to take.
35. Between 1pm and 2pm approximately 50 officers, who would be attending the demonstration, were briefed on the policing strategy. Police then made their way to the demonstrators' assembly point which was the University library.

Liaison

36. Later that afternoon students who intended to participate in the demonstration began to assemble outside the University library as planned. Officer A tasked Officer C to make contact with the demonstration leaders to try to find out what their plan was and the intended route.
37. However, after trying to engage with the leaders for about 10 minutes, Officer C was unable to get any information on the demonstrators' intentions.

Policing the protest



(This map provides a rough sketch to assist when reading this report. It is not an exact to scale depiction of the street layout).

(X's = sit down)

38. Officer B said that Police were in standard uniform with hats, not helmets, and no protective equipment, such as shields, were carried. All officers were wearing high visibility vests.
39. Officer A told the Authority that if the Police turn up with helmets and shields and batons they are “*upping the ante*” and setting the tone for how the demonstration will be policed.
40. Throughout the demonstration Police used different tactics, including the use of a loud-hailer, to issue instructions, and a March Group (see paragraph 27) assigned to walk alongside the demonstrators. Police also videoed the demonstration for their own record. Officer B told the Authority that he wanted the video to capture Police instructions and warnings given to the demonstrators to support any prosecutions and to record Police actions if there were subsequent complaints. Other recordings were also made by demonstrators and various media organisations. Many of these have been made available to the Authority and have assisted the Authority in considering the complaints made.
41. At approximately 3pm the group of demonstrators, which by this stage numbered over a hundred, began to move from the University library east onto Alfred Street and then south down Symonds Street. This section of Symonds Street has two lanes in each direction. As the demonstrators moved off they began to move into the two south bound lanes which created some minor traffic disruption. Officer A instructed Police to help clear the road by channelling the demonstrators onto the footpath while Officer B, at the same time, was giving instructions to the demonstrators to move onto the footpath using the loud-hailer.
42. In an effort to prevent the demonstrators from taking over more of the road, Police officers in the March Group walked alongside them and, at the same time, attempted to move them towards the footpath. Although the demonstrators became quite compact they were spread over a distance of 50 to 80 metres.

“*Sit Down*”

43. After walking a short distance along Symonds Street the demonstrators responded to a person in the group saying “*sit down, sit down*” and they collectively sat down in the middle of the two southbound lanes, blocking one lane. At that time Officer A decided to place officers at the front of the group so that efforts could be made to talk to the perceived organisers to help identify their intentions. Officer A said that at this stage, the aim of Police was to allow the group to demonstrate in a safe manner but that Police wanted to move the demonstrators onto the footpath.
44. Officer A said that at this point Police asked the Auckland Traffic Management Company, who were on standby at the scene, to block off the road. Officer B reported that he said over the loud hailer, “*look, you know, you’re obstructing the road. You’ve got to get off the road*”. He said that he told the demonstrators that “*it’s Friday and a long weekend and people want to get home to their families*”. He also told them that they could protest peacefully on the footpath but they could not stay on the road. He said that there were “*probably more than 50 [demonstrators] sitting down*”, as some of them had not done so.

45. Officers A and B told the Authority that before any information could be gained on the intention of the demonstration, they all stood up and again began to move south along Symonds Street. Officers A and B both told the Authority that when this happened, they believed that the demonstrators intended to repeat the disruption to traffic of 24 May.
46. The group continued to walk for about 80 to 100 metres south along Symonds Street before sitting down in the road again, blocking one side of the road (see map). Officer A told the Authority that he thought that this second sit down meant that the demonstrators were even *“more likely to go into a major intersection and repeat what they had on 24 May and with the associated disruption”*.

“Kettling”

47. When the group sat down for the second time, Officer B was able to place officers at the front of the group. Police were also positioned around the back of the group and on the median strip side of the road. The demonstrators claim that this was a tactic to ‘kettle’ them in order to prevent freedom of movement and speech.
48. ‘Kettling’ is derived from British protest groups and is not a common term used by New Zealand Police or the public. It is used in Britain to denote large cordons of Police officers who move a crowd into a contained area with either one or no place of exit.
49. In response to complaints that Police *“kettled them”* in order to dictate where the demonstrators could or could not go, Officer A said that the eastern side of the group was left free for the demonstrators to move onto the footpath. Officer A said that Police never prevented demonstrators from leaving the area if they chose – they *“always had an out”*.
50. Until the group sat down, blocking one side of Symonds Street, no arrests had been made. Officer A reported that Police until this point were happy to allow the protest to continue as long as it did not disrupt traffic and the demonstrators did not cause disorder.

Arrests

51. At this stage Officer B reported that he had a discussion with Officer A and they decided they needed to initiate a mass arrest procedure to start clearing the road. He said that he thought that once they instigated this other demonstrators would move on to avoid arrest.
52. Officers A and B report that the demonstrators were given several chances to continue their protest on the footpath, so that they were not blocking the road, but they would not comply. They were warned repeatedly by Police that they would be arrested for obstruction (see paragraph 80) if they did not obey the instruction to move.
53. Officer B gave a warning over the loudhailer – *“OK listen up. You’re blocking the road. If you do not move you’ll be forced to move”*. Other warnings given included, *“off the road please”* and *“on the footpath please”*, *“I just want you to be safe”*. These warnings can be heard on the video footage.

54. Individual officers had also been briefed on giving people a final warning before arresting them.
55. As the group stayed sitting in this position on the road Officer A gave Officer B the instruction for arrests to be made. Officer A told the Authority that he was very aware of being in “*the spotlight*”, given the presence of independent media and video recording availability on cell phones. He considers that his decision to start making arrests for obstruction was justified in the circumstances.
56. Officer B gave multiple final warnings under section 22 of the Summary Offences Act 1981 using the loud-hailer. Section 22 provides that every person is liable to a fine not exceeding \$1,000 who, without reasonable excuse, obstructs any public way, having been **warned** (*Authority emphasis*) by a constable to desist (see paragraph 80). Not long after the section 22 warnings were given, the first arrest was made.
57. The demonstrators then allege that Police started punching, grabbing and striking people and in one case dragged a demonstrator by the scarf (as detailed in paragraph 138).
58. They claim that some demonstrators who were sitting down and linked by their arms were forcibly removed from the group by Police holding them around the neck and jaw. This is a Police approved tactical option, called the ‘mastoid thumb pressure grip’, which is a pressure point control technique involving exerting pain by applying pressure with the knuckle of the fingers to the cavity in the head between the mastoid process (a conical bone in the skull) and the jawbone (see paragraph 97). The mastoid thumb pressure grip is commonly used by Police as a method of removing demonstrators.
59. There were also complaints about officers “*wildly punching*” students. Police present deny that punches were thrown but report that they used open palms to try and break the link between the demonstrators as well as defend themselves and other officers whilst making arrests (see paragraph 142).
60. From this point on the mood of the demonstrators changed and the crowd then directed their attention towards the Police and shouted a variety of chants including “*Shame Shame*”, “*Police brutality*”, “*Where’s your badge number?*”, “*Hope your children watch this video*”, “*Fascist*” and “*Peaceful protest*”.
61. After approximately an hour and a half, 30 demonstrators had been arrested.
62. Officer B told the Authority investigator that his officers had great difficulty in effecting the arrests as the demonstrators had linked arms and, when a person was being arrested, would grab hold of the person being arrested and interfere with the arrest.
63. Officer B told the Authority that he had no concerns about the amount of force used but he wasn’t “*that happy with the way the arrests were being effected*”. He put this down to the fact that most of the officers present on the day were not public order trained Police officers.

64. Officer B said that they should have used other pain compliant techniques, such as the mastoid thumb pressure/‘jaw lift’ mentioned below (see paragraph 97), rather than trying to pull people out of the crowd when they were being held onto by other people. He believed that using the mastoid thumb pressure point would have been a much quicker and effective process for removing demonstrators from the crowd.

Dispersion

65. After the 30 arrests were made, Officer B reported that the demonstrators then moved onto the footpath and proceeded in a northerly direction along Symonds Street and then down Grafton Road towards the motorway. Officers A and B said that they had “grave concerns” that the demonstrators were going to occupy the motorway which was only a few hundred metres away and where they did not have a traffic management plan in place.
66. However, after a short distance the demonstrators turned around, returning to a grass bank area near the Symonds Street intersection with Grafton Road. At this point Police identified key leaders as “rarking up” the group and encouraging non-compliance with Police and disorder. Officer A gave instructions for these few people to be arrested, with the hope that if these individuals were removed the group would lose its leadership and disperse.
67. Following these arrests, the remaining demonstrators then started moving towards Queen Street. Officer A said that he felt that the mood of the group had changed, with some people who solely wanted to display hostility towards the Police, rather than demonstrate, joining the group.
68. Officer A decided to discontinue the Police operation and announced this over the Police radio. Officer A said that he had to weigh up the risks involved in continuing the Police operation against the risk to the general public’s safety. Officer A said that the intent was to show a clear break of Police presence in the hope that the demonstrators would calm down.
69. The group then moved on towards the casino and the Auckland Central Police station, where there was an out of sight Police presence. Officer A deduced that the Police presence was causing more issues than it was resolving and it was not achieving the maintenance of public order, so he had instructed his officers to remain out of sight.
70. Officer A said that around 200-300 demonstrators went to the Police station which caused it to go into ‘lock-down’. This caused significant disruption to policing in the Auckland District as no one could enter or exit the station, including the custodial facility.
71. Officer A told the Authority that after about 15-20 minutes the group either went along Mayoral Drive onto Queen Street or cut through Aotea Square before eventually dispersing around 6pm. He said that he learnt through CCTV monitoring that the demonstrators then occupied an intersection on Queen Street which caused a small amount of disruption to vehicles. Officer A said that he decided “to let that sit” as in his experience, once the prime time news time slots had passed, the demonstrators would disperse. This is what occurred.

Post Arrest

72. Two vans took those arrested back to the Police station for processing. Of the 43 arrests made during the demonstration, 39 were cautioned for obstruction and four were prosecuted.
73. Several of the demonstrators complained that they were arrested unnecessarily. They also complained that they were not allowed to telephone a lawyer during their time in custody and were given incorrect documentation. One demonstrator claimed to have been given a pre-charge warning and release notice belonging to someone else.

COMPLAINTS RECEIVED FOLLOWING EVENTS ON 1 JUNE 2012

74. The Authority received a number of complaints from individuals who were at the 1 June demonstration or had witnessed Police actions on Youtube and the television news. While the complaints centre on each individual's specific experience there are common issues that arise from these complaints as follows:
 - 1) Over-policing of the demonstration on 1 June 2012 in comparison to the earlier one held on 24 May;
 - 2) Excessive use of force;
 - 3) Failure of some officers to identify themselves;
 - 4) Unnecessary arrests; and
 - 5) Failure to provide access to a lawyer and correct documentation post arrest.
75. The general issues outlined above are all addressed in this report. Where additional matters specific to individuals have been raised, the Authority has reported to each complainant directly.

Force Used

76. A general theme in the complaints received by the Authority was that Police used excessive force on some people by punching, grabbing and striking them and in one case dragging a seated demonstrator by the scarf (see paragraph 138). They claimed that some demonstrators who were sitting down and linked by their arms were forcibly removed from the group by the neck and jaw.
77. It is of note that while other demonstrators complained about the way the woman with the scarf was arrested, she did not want to make a complaint herself despite numerous attempts by the Authority to make contact with her. Likewise a demonstrator who received a dislocated wrist did not wish to make a complaint.

78. Other complaints received included: that Police gripped a female demonstrator's arm too tightly, causing bruising, as she was escorted to the Police van; and that Police pushed a male demonstrator, causing him to get a cut to his left eyebrow (see paragraph 136).
79. 16 specific complaints, alleging the excessive use of force by Police, many of which were caught on film, have been examined by the Authority and the findings reported to the individuals concerned. None of these complaints were upheld.

Identification

Several demonstrators complained that three Police officers could not be identified as they were not wearing identification epaulettes, as required by policy (see paragraph 96). See paragraph 119 for their explanations and the Authority's findings on this issue.

Applicable Laws and Policy

LAW

Obstruction

80. Section 22(1)(a) of the Summary Offences Act 1981 provides that every person is liable to a fine not exceeding \$1,000 who, without reasonable excuse, obstructs any public way, having been **warned** (*Authority emphasis*) by a constable to desist. Section 22(2) defines a "public way" as a road, street, path, mall, arcade or other way over which the public has the right to pass.
81. Section 23(a) of the Summary Offences Act 1981 states that every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who resists or intentionally obstructs, or incites or encourages any other person to resist or obstruct any constable acting in the execution of his duty.

Reasonable Force

82. Section 39 of the Crimes Act 1961 provides that Police can use reasonable force in the execution of their duties such as arrests, where the use of the force is necessary to overcome any force used in resisting.

Breach of the peace

83. Under the Crimes Act 1961, everyone can interfere to prevent a breach of the peace if they witness such breach. Section 42(1) of the Crimes Act states:

“Everyone who witnesses a breach of the peace is justified in interfering to prevent its continuance or renewal, and may detain any person committing it, in order to give him into the custody of a constable:

provided that the person interfering shall use no more force than is reasonably necessary for preventing the continuance or renewal of the breach of the peace, or than is reasonably proportionate to the danger to be apprehended from its continuance or renewal.”

- 84. There is a breach of the peace whenever harm is actually done or is likely to be done to a person or in their presence to their property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.
- 85. Police may arrest any person without a warrant who is found disturbing the public peace or who Police have good cause to suspect of having committed a breach of the peace. Such arrest is pursuant to section 315(2) of the Crimes Act.

Bill of Rights

- 86. The New Zealand Bill of Rights Act 1990 sets out a number of rights and freedoms afforded to individuals.
- 87. Section 14 states that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.
- 88. Section 16 provides that everyone has the right to freedom of peaceful assembly.
- 89. Section 18 states that everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand.
- 90. Section 22 states that everyone has the right not to be arbitrarily arrested or detained. Section 23 then goes on to state that everyone who is arrested or who is detained under any enactment:
 - 1) shall be informed at the time of the arrest or detention of the reason for it; and
 - 2) shall have the right to consult and instruct a lawyer without delay and to be informed of that right; and
 - 3) shall have the right to have the validity of the arrest or detention determined without delay by way of habeas corpus and to be released if the arrest or detention is not lawful

POLICE POLICY

Demonstrations

- 91. The Police Demonstrations Policy applicable at the time of the second demonstration stated that the purpose of policing demonstrations is to preserve law and order and protect people

and property from the actions of demonstrators and demonstrators from people not supportive of them.

Mass Arrest procedure

92. The Police Mass Arrest Processing policy is designed to facilitate the handling of large numbers of prisoners.
93. There are two different methods of mass arrest:
 - 1) Method A - suspects are arrested on charges appropriate to each individual, and are then identified and processed at the scene; and
 - 2) Method B – suspects are arrested together on one charge. Where there is insufficient evidence pertaining to individuals, they can be released later. The suspects are photographed at the scene as a group and are not identified or processed until they arrive at the station.
94. The Mass Arrest Processing policy provides that the Operation Commander should direct, coordinate and control the operation, appoint a liaison and safety officer and generally assess the situation.

Mass Arrest and Processing Form

95. This is a generic form used for offenders who have been arrested in a group. Under the Demonstrations Policy constables who have made arrests must report at the station as soon as possible to complete the Scene and Station Process form or sign the Custody/Charge sheet.

Identification

96. Police Policy provides that Constables who interact directly with the public must be clearly identifiable by either name or registered number. Constables wearing uniform must wear detachable epaulettes on the outermost upper body garment.

The Mastoid Thumb Pressure

97. The policy on Mastoid Thumb Pressure comes within the Use of Force policy. The Mastoid Thumb Pressure is a pressure point control technique involving exerting pain by applying pressure with the knuckle of the fingers to the cavity in the head between the mastoid process and the jawbone. It is a technique which Public Order, rather than General Duties, officers are trained in.
98. The technique is a method of dealing with non-violent offenders who refuse to move. It can be used in a demonstration situation where demonstrators are usually seated and have locked arms amongst themselves or around another object to prevent their removal or arrest.

99. To apply this tactic the officer must make a fist with his hands and the knuckles are applied to pressure points.
100. Once the offender has released their arms and risen to their feet the pressure should be released.
101. A Tactical Options Report must be submitted if the mastoid thumb pressure technique is applied to a person.

Pre-charge warnings

102. Pre-charge warnings are “...intended to hold the offender to account and deter them from further offending. The warning informs the offender that the offence (s) committed by them have been treated seriously and has been recorded in the National Intelligence Application”.

The Authority’s Investigation

THE AUTHORITY’S ROLE

103. Under the Independent Police Conduct Authority Act 1988, (‘the Act’) 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, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.

THE AUTHORITY'S INVESTIGATION

104. The Authority’s investigation focused on both the complaints received as well as whether or not Police policed the 1 June demonstration according to law and policy.
105. As required under section 16 of the Act, the Authority notified Police of these complaints. The Authority also decided to independently investigate the matter pursuant to section 17(1)(a) of the Act.
106. The Authority’s investigation included:
 - a visit to the scene at Symonds Street and surrounding area;
 - interviews with key Police staff who were involved with the incident;

- interviews with 19 of the complainants;
- consideration of the Police and complainants' recordings of events;
- examination and analysis of YouTube video and TV news footage; and
- independent examination and analysis of all evidence in the Police investigation file.

ISSUES CONSIDERED

107. The Authority's investigation considered the following issues:

- 1) Was the demonstration which took place on 1 June 2012 over-policed in comparison with the earlier demonstration on 24 May 2012?
- 2) Did three Police officers fail to wear epaulettes with a view to avoiding identification?
- 3) Was the force used against the demonstrators excessive?
- 4) Did Police restrict the movement of those taking part, thereby breaching their 'Bill of Rights'?
- 5) Were the arrests in accordance with law and policy?
- 6) Did Police comply with policy in relation to command and control of the incident?
- 7) Did Police fail to deal with arrested persons according to law and policy by not affording them access to a telephone to call a lawyer or providing correct documentation?

The Authority's Findings

ISSUE 1: WAS THE DEMONSTRATION WHICH TOOK PLACE ON 1 JUNE 2012 OVER-POLICED IN COMPARISON WITH THE EARLIER DEMONSTRATION ON 24 MAY 2012?

108. The New Zealand Bill of Rights Act 1990 sets out a number of rights and freedoms afforded to individuals (see paragraph 86). Under Police policy (see paragraph 91) Police must balance the need to maintain order with these rights, including freedom of speech and peaceful assembly.
109. The demonstrators complained that the demonstration which took place on 1 June was over-policed in comparison to the earlier demonstration on 24 May and excessive force was used against them as a result.
110. They questioned why it was necessary to police the demonstration on 1 June with at least 50 Police officers when the demonstration on 24 May only had between one and three Police officers and, as the demonstrators indicated, there was no violence or aggression.

111. The demonstrators allege that it was the large Police presence and “*over-policing*” which led to the use of force on 1 June 2012. One complainant blamed the Police for “*inciting violence*” in the later demonstration.
112. The demonstrators believe that the minimal Police presence at the first protest is how Police should have also policed the second protest.
113. Police state that the planning and tactics used by Police on 1 June were a result of events that occurred during the first demonstration. Police wanted to prevent a repeat of the traffic disruption and incidents of minor disturbances such as pushing over rubbish bins which occurred on 24 May.
114. Officer A told the Authority that the 1 June demonstration carried greater risks in terms of traffic disruption and risks to the safety of demonstrators, given that it occurred on the eve of a public holiday weekend and at the end of the school term.
115. The demonstrators did not advise the Police or Auckland City Council of their intentions during either demonstration. Police therefore had to make spontaneous decisions in response to how the demonstration developed and their assessment of the risk at the time.
116. The Authority considers that the small Police response to the 24 May demonstration was due to a lack of awareness of the scope and size of the demonstration occurring.
117. As the Police had a few days’ notice in the case of the second demonstration, they acted responsibly in preparing an Operation Plan to police the 1 June demonstration and in deploying significantly more officers in comparison to 24 May.
118. The Authority is satisfied that the Police helped the demonstration proceed peacefully until the actions of the demonstrators, in sitting and blocking part of Symonds Street, required more active policing. It is clear to the Authority after examining the Operation Order, and interviewing Officers A and B, that the commanding officers were cognisant of the need to balance the rights of the demonstrators with those of the general public’s safety and to minimise disruption, particularly with regard to blocking the road and enabling traffic to leave the city.

FINDINGS

The planning and tactics used by Police on 1 June were as a direct result of the lessons learned from the first demonstration. Police wanted to prevent a repeat of the traffic disruption and incidents of minor disturbances which occurred on 24 May.

Police assembled around 50 officers to ‘police’ the demonstration and this level of policing was appropriate in the circumstances, given that there were approximately 300 demonstrators.

Police balanced the rights of those demonstrating with the rights of members of the general public in accordance with policy.

ISSUE 2: DID THREE POLICE OFFICERS FAIL TO WEAR EPAULETTES WITH A VIEW TO AVOIDING IDENTIFICATION?

119. Several demonstrators complained that three Police officers could not be identified as they were not wearing identification epaulettes, as required by policy.
120. The Operation Plan specifically provided that QID numbers must be “*worn and visible*”.
121. Video footage shows Officer D (a constable) wearing only his right shoulder epaulette. He reported that during the protest his left epaulette was ripped off. It was later handed back to Police and Officer D reattached it.
122. The footage also shows Officer E (a constable) not wearing any epaulette on his high visibility vest. Later in the protest he is shown wearing epaulettes on both shoulders. Officer E is a Commercial Investigation Unit (CIU) officer who was called to work at the protest at short notice. He said that he put his vest over his stab resistant body armour (SRBA) without considering that it would cover his epaulettes. Once he was told that they were not visible he transferred his epaulettes to his outer layer and returned to the operation.
123. Officer F (a constable) was also shown without his identification number. He is a Strategic Tactical Unit (STU) officer who was assigned to the protest from other duties at short notice. When he had gone to his locker to get his vest he had not been able to locate his epaulettes and advised his sergeant. His sergeant decided he should still attend the protest without them.
124. The Authority accepts the reasons provided by the officers and has concluded that none of the three officers intended to avoid identification.

FINDING

The officers did not fail to wear their identification epaulettes with the intention of avoiding identification.

ISSUE 3: DID POLICE USE EXCESSIVE FORCE AGAINST THE DEMONSTRATORS?

125. The demonstrators complained that Police used excessive force on some people by punching, grabbing and striking them and in one case dragging a seated demonstrator by the scarf. They claimed that some demonstrators who were linked by their arms were forcibly removed from the group by the neck and jaw and that this was excessive and “*unnecessarily violent*”.
126. As part of this issue the Authority has examined whether the Police tactic of using a mastoid grip/jaw lift on demonstrators amounted to excessive force in the circumstances and whether Police actions in breaking the demonstrators’ linked arms in order to separate them from the group were reasonable.

127. The Police have a range of tactical options available to them to help restrain a person, effect an arrest or otherwise carry out lawful duties. These range from handcuffing and use of empty hand tactics to the use of batons, O/C spray, Tasers and firearms.
128. Police report that the demonstrators were given several chances to continue their protest on the footpath, so that they were not blocking the road, but they would not. They were warned repeatedly by Police, using the loudhailer, that they would be arrested if they did not comply.
129. Officer B told the Authority that the force used was the minimum required to effect the arrests with the intention of clearing the road. He said that if people resist arrest Police are entitled to use force to effect the arrest.

Lectern

130. One situation that gave rise to a complaint involved the Police seizing the lectern from which a member of the demonstration was speaking. Officer B said that he gave the instruction to remove the lectern as it was both blocking the road and could have been "*used as a weapon*". He further stated that the presence of the lectern led him to believe that the demonstrators were "*there to stay*" and would probably not comply with Police instructions to move.
131. As Officer G (a sergeant) was removing the lectern a male demonstrator grabbed it, at which point Officer G decided to arrest him for obstruction. During the scuffle that followed the male demonstrator and Officer G fell backwards.
132. The officer believed that the demonstrator was resisting arrest, as he was pulling back against him and refusing to release the lectern, and he therefore pushed the man's head into the ground so he could handcuff him quickly as he felt vulnerable and outnumbered in the large hostile crowd.
133. Officer G said that the male was non-compliant and "*it was imperative that [he] brought him under control immediately*". The officer said that he told the male to put his hands behind his back and the male said, "*No.*" Officer G said he then put more pressure on the back of the male's neck and the male immediately put his hands behind his back.
134. Officer G said that he was mindful that the demonstrator's head was on its side and his eyes, nose and mouth were not at risk. The technique, a Police approved tactical option, was immediately effective.
135. Officer G accepted that he should have submitted a tactical options report when he put pressure on the demonstrator's neck. He said that he did not do so because he went around the cells on the night and could not identify who he had arrested.
136. This demonstrator received a minor injury to his face and his glasses were damaged in the scuffle. Officer G considered the demonstrator's injury so minor that it did not warrant medical attention and the male demonstrator advised Police that as he was a nurse he was able to take care of his own injury.

137. The photos and video footage viewed by the Authority show a very small cut to this demonstrator's brow and the Authority is satisfied that medical attention was not necessary. The Authority found that this was not excessive force and has advised the complainant by individual letter.

Mastoid Thumb Pressure Technique

138. As stated above (see paragraph 57), one demonstrator complained that an arrested person was dragged by the scarf as she was arrested. The Authority has viewed video footage of this arrest. Whilst it may initially look like the officer is lifting the woman by the scarf, when the video footage was slowed down the Authority established that the officer was in fact using the 'mastoid thumb pressure' technique approved by Police policy (see paragraph 97). As mentioned in paragraph 77, this woman did not want to make a complaint about the force used.

139. The officer who used this technique said that he released this pressure as soon as he removed the demonstrator from the crowd. This is consistent with what the Authority has viewed on slowed down video footage.

140. As stated in paragraph 60, the Police use of this technique changed the mood of the demonstrators and they linked arms and became more vocal towards the Police.

Open palm strikes

141. The Authority received several complaints about officers "*wildly punching*" students.

142. One such complaint was against Officer H (a constable), who was in the skirmish line (a line of officers standing side by side across a given space to hold back a crowd or to hold ground) next to officers making an arrest. To prevent the arrest the demonstrators tried to grab Officer H and drag him into the crowd. This officer used two to three open palm strikes to the wrists and arms of those demonstrators trying to grab him.

143. Officers policing the demonstration deny punching or striking anyone. They reported using open palm strikes to defend themselves and other officers whilst making arrests and to try and break the link between the demonstrators.

144. This is supported by the video footage. When the video is slowed down it is clear that the strikes were open palm strikes rather than punches.

General

145. The Authority considers that the Police officers policing the protest behaved professionally despite being faced with verbal and physical provocation, including demonstrators' kicking, punching, knocking off their hats, ripping off their epaulettes and pulling them into a hostile crowd.

146. It was only when the demonstrators sat down and blocked the southbound lanes of Symonds Street, causing obstruction and traffic disruption, that the Police took action against them.
147. It is of note that the Authority has not received a complaint from any individual who claims to have been punched. The complaints came from onlookers who witnessed the Police action. In the Authority's view, this indicates that the actions of Police at the time looked worse than they actually were. Close examination of the slowed down video evidence shows that, what initially appeared to be Police punches were in fact open palm strikes.
148. Contrary to Police policy, no tactical option reports were submitted by the arresting officers despite the use of force in some arrests. In addition, Police policy specifically requires a tactical option report to be submitted when the mastoid thumb pressure point is used and this requirement was not met.

FINDINGS

The force used by the officers in policing the 1 June demonstration was appropriate, reasonable and justified in the circumstances.

Police officers who used force, in particular the mastoid thumb pressure point, should have submitted tactical options reports.

ISSUE 4: DID POLICE RESTRICT THE MOVEMENT OF THOSE TAKING PART THEREBY BREACHING THEIR 'BILL OF RIGHTS'?

149. The demonstrators alleged that Police restricted the movement of those taking part in the protest by 'kettling' them, thereby breaching their 'Bill of Rights'.
150. In response to complaints that Police dictated where the demonstrators could or could not go, Police told the Authority that as they did not know the demonstrators' intentions they had to follow where they went rather than lead them.
151. Officer A said that the eastern side of the demonstration group was left free for the group to move onto the footpath. Officer A said that Police never prevented demonstrators from leaving the area if they chose. The Authority saw, when viewing the video footage, that a small number of demonstrators left the group.
152. From examining the available video footage, the Authority is satisfied that the demonstrators were not restricted once they moved onto the footpath and had a means of exit.

FINDING

Police did not breach the rights of the demonstrators by restricting their movements.

153. Demonstrators complained that the large Police presence on 1 June in comparison to 24 May indicated a pre-emptive decision to make mass arrests.
154. As mentioned in paragraph 24, Police report that their Operation Order specifically stated that *“any disorder or a sit-in will be addressed by way of a warning and then Police action if there is a continuance of the behaviour”*.
155. Section 23(a) of the Summary Offences Act 1981 states that every person is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who resists or intentionally obstructs, or incites or encourages any other person to resist or obstruct any constable acting in the execution of his duty.
156. Police have a duty to keep the roadways clear but also to protect life and property.
157. Officer B said that the decision to charge only four out of the 43 people arrested for obstruction under section 23(a) of the Summary Offences Act 1981 was based on their previous offending as well as their more serious behaviour on the day.
158. The Authority is satisfied that Police acted in accordance with policy in carrying out the arrests. Warnings were given prior to arrests in accordance with legislation. Although three out of the four people arrested were discharged without conviction and the other had his case dismissed when they appeared in Court, the Authority is satisfied that the Police did not make unnecessary arrests.

FINDINGS

Warnings were given prior to arrests in accordance with legislation and Police correctly utilised pre-charge warnings for those who were arrested.

The arrests made were reasonable and in accordance with law.

ISSUE 6: DID POLICE COMPLY WITH POLICY IN RELATION TO COMMAND AND CONTROL OF THE INCIDENT?

159. The Mass Arrest Processing policy provides that the Operation Commander should direct, coordinate and control the operation, appoint a liaison and safety officer and generally assess the situation.
160. Officer A was the Operational Commander who was meant to have the overall view of the whole operation and not be on the frontline where the arrests were occurring. Officer A told the Authority investigator that at one point he helped pull someone out of the crowd to arrest him.
161. Officer A acknowledged that being on the frontline was not the usual place for an Operation Commander but he said that he wanted to get a better feel for things, it was only for a short time and he was satisfied that Officer B had the wider operation in full control.

162. While Officer A was mindful of the need to balance the rights of the demonstrators with members of the public not involved in the demonstration, the Authority has concluded that he was too active in the actual policing of this demonstration. This involvement had the potential to affect his decision making ability regarding the ‘wider demonstration’, although it did not in this particular instance.
163. Officer A’s active involvement in the actual policing of the demonstration could have compromised his ability to have an overview and make decisions in relation to the whole operation. This could have caused complications had the demonstration got out of control and violence escalated. But in this particular case there were no adverse consequences.

FINDING

Command and Control of the demonstration was generally appropriate.

ISSUE 7 DID POLICE FAIL TO DEAL WITH ARRESTED PERSONS ACCORDING TO LAW AND POLICY BY NOT AFFORDING THEM ACCESS TO A TELEPHONE TO CALL A LAWYER OR PROVIDING CORRECT DOCUMENTATION?

Telephone calls to Lawyers

164. One demonstrator complained that those arrested were told that they could have a telephone call to a lawyer once Police had processed all 43 students arrested but this did not occur. After conducting its investigation, the Authority has established that many of those arrested were not allowed access to legal advice.
165. Officer I, the sergeant in charge of the Auckland Central Custody Suite, said that he decided that telephone calls to lawyers could not be given as there was only one telephone in the search area and the time delay this would create was not tenable. The sergeant said that the priority was to receive and bail people as quickly as possible and giving arrested persons telephone calls would have slowed down the process considerably.
166. While the Authority appreciates the logistics and practicalities involved in processing 43 people at once, it has concluded that Police breached the demonstrators’ rights in not affording them access to the telephone in order to obtain legal advice.
167. The Authority has recently been advised by Police that there are plans in train to provide more telephones to prisoners and a short term solution is in place in the Auckland Central Custody Suite in the meantime (see Subsequent Police Action at paragraph 173).

FINDING

Police breached the demonstrators’ rights in not affording them access to legal advice.

Standard of arrest documentation

168. Method A of the Police Mass Arrest Processing Procedure was used in this particular case (see paragraph 92).
169. The Authority has identified that the relevant 'Mass Arrest and Processing Form' was not consistently used as required by policy (see paragraph 95).
170. The arresting documents were difficult to read, as the handwriting was so poor, and it was difficult to identify the arresting officers involved as a result. Prosecutions would not have been possible based on such substandard forms.
171. The Authority considers that the officer's QID (identification number) must be clearly recorded on the charge sheet or pre-charge warning, rather than just a signature, so that it is clear who the arresting officer is.
172. The Authority has been advised by Police that the Mass Arrest Procedures have recently been updated to ensure that the arresting officer is identified and photographed with the arrested person, who is given a number, using a camera. The officer's details are entered onto the charge sheet by a processing team before the arrested person is received at the van (see Subsequent Police Action at paragraph 175).

FINDING

The arrest documentation did not reach the standard required by policy.

Subsequent Police Action

173. Police also conducted an investigation into this incident and found that the use of force techniques utilised by Police staff, whilst unpopular, were reasonable, necessary and effective. They concluded that most complaints resulted from a lack of understanding of the tactical options used.

Mass Arrest Policy

174. Police advise that the Mass Arrest Procedures have been changed to improve their processes. It is reported that the arresting officer is now identified and photographed with the arrestee, who is given a number, using a camera (see paragraph 173). The officer's details are entered onto the charge sheet by a processing team before the arrestee is received at the van. The arrested person has their property secured in a property bag which is labelled and includes their number.

175. Police have recently advised the Authority that digital cameras have been purchased and the mass arrest forms updated. Mass arrest training has also been delivered to the Public Order Policing staff.

Use of Force

176. Police accept that there needs to be specific mention in Operation Orders that tactical option reports must be submitted when the mastoid thumb pressure point is used. This requirement should also be drawn to the officers' attention at Order Groups where the Operation Orders are delivered.

Telephones

177. Police have advised the Authority that as a result of the lack of access to telephones during this incident, 20 mobile phones have been purchased and are kept in the Property and Exhibit Store for use if a similar situation were to arise.

Custody Unit

178. Police have informed the Authority that the Auckland City Custody Unit is undergoing an extensive renovation which will assist with prisoner management. They also advise that reception processes have also been improved.

Conclusions

179. The Authority has concluded that:

- 179.1 the second demonstration was not over-policed in comparison to the first;
- 179.2 the force used by the officers policing the demonstration was reasonable and justified in the circumstances;
- 179.3 officers should have submitted Tactical Options reports given their use of force, in particular, the Mastoid Thumb pressure point;
- 179.4 while two officers failed to wear their identification epaulettes, the explanations provided were reasonable and there was no intention to avoid identification;
- 179.5 the Police did not unnecessarily restrict the movement of the demonstrators and at all times tried to facilitate the march, balancing the needs of the demonstrators with those of the general public;
- 179.6 arrests were made in accordance with law and policy and after warnings were given;
- 179.7 command and Control of the demonstration was appropriate;
- 179.8 the Police breached the demonstrators' rights in not affording them access to legal advice; and
- 179.9 the mass arrest documentation did not reach the standard required by policy.

180. Given the recommendations instigated by the Police (refer Subsequent Police action paragraph 173-179), the Authority makes no recommendations.

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

30 October 2014

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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?

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.



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