

Unlicensed Maori Drivers

INTRODUCTION

1. On Tuesday 16 June 2015, ONE News reported that South Auckland Police officers had been briefed not to ticket unlicensed Maori drivers, and to instead refer them to local Iwi and a community support panel. Following the news programme, the Independent Police Conduct Authority received a number of complaints that this Police document was “*racist*” and “*discriminatory*”.
2. Under the Independent Police Conduct Authority Act 1988, the Authority must form an opinion about the Police conduct, policy, practice or procedure which is the subject of the complaint (see page 7, “What are the Authority’s functions?”); in particular it must decide whether it amounts to misconduct or neglect of duty.
3. After notifying Police of these complaints, the Authority conducted an independent investigation. This report sets out the results of that investigation and the Authority’s findings.

BACKGROUND

4. ‘Turning of the Tide’ is a Police strategy aimed at reducing victimisation of and offending by Maori, who as a group are over-represented in the criminal justice system. It was launched in October 2012 and remains a key focus area for Police.
 5. In June 2014, members of the Counties Manukau Criminal Investigation Branch (CIB) requested clarification from the District Crime Manager on what actions they could take to comply with the ‘Turning of the Tide’ strategy. Consequently, the District Crime Manager requested that the Maori Responsiveness Manager speak at a Detectives’ Forum on the ‘Turning of the Tide’ strategy.
 6. At the forum, the Maori Responsiveness Manager identified a number of areas in which specific action points could be developed to reduce Maori victimisation and offending. The Maori Responsiveness Manager told the Authority that it was not his intention that these action points be confined specifically to Maori.
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7. Following the forum, the District Crime Manager drafted the “*Counties Manukau CIB – ‘Turning of the Tide’ Action Plan 2014-2015*” in line with what had been discussed. The action plan was sent to the District Commander and the Maori Responsiveness Manager for feedback. The plan included the action point:

“All Maori drivers detected driving without licences [sic] or in breach of licence [sic] conditions given compliance and referred to community based driver licence [sic] training. Failure to comply [sic] within a 2 mth [sic] period will result in an infringement being issued.”

8. This action point referred to a general Police policy of traffic compliance. The traffic compliance policy (referred to as ‘given compliance’ throughout the report) offers drivers who are stopped for a certain offence, such as vehicle defects or licence issues, a certain amount of time to fix the problem, rather than having to pay a fine or be prosecuted. The driver must then provide evidence to Police showing that they have fixed the problem within the allocated time.
9. The District Commander did not provide any feedback and the Maori Responsiveness Manager did not send any response directly to the District Crime Manager. However, the Maori Responsiveness Manager did refer this particular action point on to Maori, Pacific and Ethnic Services (MPES) and requested that they compile a list of driver licensing providers within Counties Manukau, which the District Crime Manager could then provide to his staff. The District Crime Manager was copied into that email and he would have therefore received the impression that the Maori Responsiveness Manager had read the action plan.
10. The Maori Responsiveness Manager’s response to Authority questions about the wording and intent of the action plan are addressed in paragraphs 25 and 26 below.
11. On 2 July 2014, the District Crime Manager approved the action plan and sent it to all CIB Non-Commissioned Officers¹ for circulation among their own staff.
12. At a detective forum on 23 July 2014, officers queried the reference to “*ALL Maori drivers*” being given compliance. They also sought direction about how to determine if someone is Maori and whether other nationalities should also receive compliance. Minutes from the meeting show officers were advised that there was “*room for discretion in this area, and just to use a common sense approach*”.
13. The District Crime Manager told the Authority that there was no additional feedback or criticism from the officers, and no further concerns about the action plan had been raised with him over the subsequent 12 months. His response to Authority questions about the wording and intent of the action point are addressed in paragraph 23.

¹ Officers below the rank of Inspector

14. On 11 June 2015, Donna-Marie Lever, a ONE News reporter, interviewed the General Manager of MPES, regarding the 'Turning of the Tide' strategy. During the interview, Mrs Lever stated that she had received information from Auckland officers who were unhappy because they were specifically told to "give compliance" to Maori drivers who were unlicensed or in breach of their licence conditions.
15. In reply, the General Manager of MPES said that all races get the same opportunity when it comes to traffic compliance and that the action point was not exclusively targeted at Maori. The specific focus on Maori was in response to the over-representation of Maori as unlicensed drivers and it was designed to fit the broader Police 'Turning of the Tide' strategy.
16. The General Manger of MPES explained that Police wanted to prevent Maori from entering the justice system in the first place, and give them an opportunity from the outset to get a driver's licence. However, he stressed that this was not an action point about race and the intent was to address the issue of unlicensed drivers.
17. The interview aired on Tuesday 16 June 2015, and as a result of the media reports which framed the action point as racist by giving preferential treatment to Maori drivers, the whole action plan was reviewed and amended. The action point now states:

"Maori drivers detected driving without licences or in breach of licence conditions are considered for compliance and if appropriate referred to community based driver licence training. Failure to comply within a 2-month period will result in an infringement being issued."

LAW AND POLICIES

'Turning of the Tide'

18. As part of the 'Turning of the Tide' strategy, Police recommend four objectives for Districts to work towards. These include:
 - 1) reduce the proportion of Maori entering the criminal justice system for the first time;
 - 2) reduce the proportion of Maori re-entering the criminal justice system;
 - 3) prosecute as a last resort; and
 - 4) reduce the proportion of Maori dying and being injured on our roads.

THE AUTHORITY'S FINDINGS

Issue 1: Was the wording of the action point regarding unlicensed Maori drivers, in the Counties Manukau CIB Action Plan, appropriate?

19. The 'Turning of the Tide' strategy aims to reduce the offending and victimisation of Maori who are over-represented in the criminal justice system.
20. The Counties Manukau CIB Action Plan, as crafted by the District Crime Manager and approved by the Maori Responsiveness Manager, was an attempt to provide officers within their District with the means to apply the 'Turning of the Tide' strategy to their everyday work activities.
21. The Authority finds that although it was intended that the action point be applied at the Police officer's individual discretion, regardless of race, the wording of the action point contradicted this intention and suggested that all Maori drivers in breach of their licence conditions should be "*given compliance*" regardless of whether it was appropriate or not.
22. Counties Manukau Police have since amended the action point so that it aligns more accurately with the traffic compliance policy.

FINDING

The action point regarding unlicensed Maori drivers in the Counties Manukau CIB Action Plan was not appropriate as it was worded.

Issue 2: If the action point regarding unlicensed Maori drivers was not appropriate, was that due to misconduct or neglect of duty by individual officers?

23. When interviewed by the Authority, the District Crime Manager acknowledged that the wording was wrong and that the action point should have said that all Maori should be "*considered for compliance*" rather than that all Maori should be "*given compliance*". However, he maintained that it was not his intention for the action point to be applied in the way it was worded, and that there was "*always discretion*" for officers on the roadside.
24. The Authority accepts that the document was worded poorly and did not accurately reflect the Police's intention. The Authority also accepts that there was clear advice given to officers that there was room for discretion and the Authority has not found any information to suggest that the action point was applied as worded.
25. The Maori Responsiveness Manager told the Authority that he could not remember receiving the action plan but must have only "*skim read*" it before sending it on. In hindsight, he said the original wording of the action point was inappropriate and misleading. He acknowledged that there was no proper quality control, and said that it "*could have been worded better*".

26. However, the Maori Responsiveness Manager also said that it was never intended that Maori drivers would be subject to the traffic compliance process more often than non-Maori drivers, and that there was no indication that officers had interpreted or applied the action point as if it removed their individual discretion.
27. The Authority finds that the original action point was created in haste and was poorly written. However, the failure to word the action point appropriately falls short of misconduct or neglect of duty. The only difference between this action point and the Police's usual traffic compliance policy is that it specifically refers to Maori. The specific focus on Maori is a result of Police's broader strategy, 'Turning of the Tide', which aims to reduce Maori offending and victimisation. This action point, however, does not override the fact that traffic compliance is available to any driver, regardless of race.

FINDING

The failure to word the action point appropriately did not amount to misconduct or neglect of duty.

CONCLUSIONS

28. The Authority has found that the wording of the action point regarding unlicensed Maori drivers within the Counties Manukau CIB Action Plan was not appropriate. However, this failure did not amount to misconduct or neglect of duty.



Judge Sir David Carruthers

Chair
Independent Police Conduct Authority

16 June 2016

IPCA: 14-2421

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 about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.



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