

IPCA Findings

EMBARGOED: Thursday 20 April 2023 at 10am

POLICE'S INITIAL ACTIONS

Did Police have adequate intelligence information about the protest and was it properly communicated?

- Police Intelligence staff provided very good information about the developing protest environment.
- Police Intelligence staff identified the planned protest in a timely way, monitored developments in real time, and provided appropriate information about the nature of the risks it presented.
- This information was communicated to a wide range of Police decision-makers.

Did Police make proper use of the information the Intelligence staff provided?

- Police failed to properly consider some of the available intelligence. In the light of that intelligence, they should have consulted Wellington City Council well before the arrival of the convoy about whether a traffic management plan needed to be put in place.
- Wellington District Police should have considered, prepared and disseminated an operation order before the arrival of the protest convoy.

Were Police actions to handle the protest on 8-9 February adequate and appropriate?

- The Local Controller's Guidance and Commander's Intent issued on 9 February was generally appropriate. However, his intent to remove the tents and other structures and otherwise allow protesters to express their grievances from Parliament grounds during the day was at odds with the fact that the Speaker shortly thereafter closed Parliament grounds. This disconnection indicated that over this initial period there was insufficient liaison between Police and the Parliamentary Service.
- Police placed undue reliance on information that the protest would conclude at the end of the afternoon on 8 February, and were unaware of or failed to take into account other contrary information. They also did not allocate enough staff to manage the protest on that day. However, this made no difference to the likely course of events: Police did not have the legal authority to end the protest at that stage, and even if they had, lacked the capacity to do so.

POLICE'S ATTEMPT TO END THE OCCUPATION ON 10 FEBRUARY 2022

Were the protesters trespassing on Parliament grounds?

- The gathering of the convoy at Parliament on 8 February for the purposes of protest was lawful and did not constitute any trespass.
- Once protesters showed an intent to stay at Parliament overnight on 8 February and started to erect tents and other structures at about 4pm (after a large proportion of those in attendance began leaving), the Speaker was legally justified in closing Parliament grounds. The protesters by their continued presence became trespassers.

How was the decision made to clear Parliament grounds and was there undue political interference?

- The Commissioner made his own independent decision to attempt to clear Parliament grounds on 10 February and there was no undue political interference in that decision.
- The operation on 10 February was unlikely to succeed. However, it may have retained a measure of community support for the Police approach that would have been lost without that operation, and therefore bought Police time to plan for the eventual operation on 2 March.

Was the operation to clear the grounds on 10 February appropriately planned and resourced?

- There was no properly articulated and communicated plan for the operation on 10 February.
- As a result, Police were unprepared (in terms of planning, resourcing, staff, equipment and command and control) for the operation and the degree of resistance they encountered.
- The 10 February operation was hurriedly executed by an under-resourced unit, thus diminishing its overall prospects of success. A 24-hour delay might have helped.

Was the operation to arrest protesters undertaken lawfully?

- Police initially failed to give the warnings required by the Trespass Act in the correct fashion.
 - The law of trespass as set out in legislation and developed by the courts was ill-equipped to deal with this large-scale public order event.
 - The arrest process was deficient, as a result of which a majority of the charges brought against protesters should not have been laid.
 - The degree of force used to effect the arrests was generally reasonable.
 - The operation continued for longer than necessary and should have been terminated when it became evident that it would not succeed.
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Were those taken into custody treated lawfully, appropriately and in accordance with policy?

- The fact that arrested protesters were sometimes left sitting around for a lengthy period before transport back to the Police station arrived was unsatisfactory and carried an element of risk. However, this stemmed from the failure to plan for a mass arrest situation and inadequate transportation arrangements rather than poor decision-making on the ground.
- The officer in charge of the custody unit was given insufficient notice of the operation and no time to arrange for additional capacity, including staff, to process the arrests.
- Staff at the custody unit took reasonable steps to alleviate the uncomfortable conditions resulting from overcrowding and poor ventilation.
- Staff at the custody unit were unable to comply with the legal requirement to advise all detainees of their rights and facilitate access to a lawyer. Police as an organisation failed to comply with the law as they should have in this respect; as part of the operation, there should have been contingency planning for the possibility that numbers exceeded expectations.
- Because staff were giving priority to processing new arrivals, those not being detained overnight waited longer than necessary before release, which contributed to the over-crowding, heat and generally uncomfortable conditions. This again resulted from the fact that custody staff were confronted with the need to compromise and adjust their processes as they went along, because they had not been given appropriate advance notice of what might happen and were confronted with the unexpected.

POLICE'S ACTIONS FROM 11 FEBRUARY TO 1 MARCH 2022

How did Police plan to manage the occupation until it was brought to an end and was this appropriate and effective?

- The Police's two-pronged planning intent for this period was appropriate as they sought to contain the protest and achieve some positive progress through negotiation with protest leaders, while planning for deliberate action.
- The District planning team was under-resourced for the scale of the operation and the range of activities it was tasked with. We agree with the Police's own assessment that additional capability should have been provided from the outset.

Was the decision to establish a national operation timely and did the Major Operations Centre provide effective assistance to the overall policing of the protest?

- Police should have provided national support to the District operation earlier, ensuring that the District planning team was adequately resourced to deal with day to day operational matters and to properly plan for 'Deliberate Action Day'. The planned change to a three-tier system will allow Police to be more agile in such circumstances.
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- Police should have ensured that staff assigned to the Major Operation Centre roles, clearly understood the roles and responsibilities of those in the MOC and the District command structure.
- Police should have clearly articulated and documented the purpose and responsibilities of the Deputy Commissioner: Strategy and Service within the operation to ensure there was a clear understanding of the role and how it interacted within the command structure.

What was the nature of Police engagement with protest groups and was it appropriate and effective?

- Police should have formulated a clear communication and engagement strategy and plan with roles and responsibilities outlined.
- All Police should have supported the APNT in the engagement role and individual Police staff should only have undertaken communication and engagement activities in accordance with an agreed plan and strategy. Failure to do so undermined the APNT's negotiations with protesters and caused confusion as to who from within Police was leading this engagement. The APNT correctly assessed that the effectiveness of negotiations lessened as the influence of protest spokespersons on the protesters diminished.

Did Police engage effectively and appropriately with interested parties?

- Police's engagement with interested parties was generally more reactive than proactive.
- However, those interested parties with existing working relationships with Police and established points of contact were positive about the nature of their engagement with Police.
- Police should have had a clear engagement strategy and plan with clear roles and responsibilities outlined.
- Police should have recognised that particular partner agencies had an important role in supporting the Police operation and should have ensured they had the necessary and timely information to do that.

How appropriate was Police's management of traffic and the seizure of vehicles?

- The installation of bollards was a critical and successfully implemented strategy to limit and eventually reduce the occupation's footprint.
 - The legal powers available to Police under the Local Government Act 1974 to seize vehicles were inadequate in the circumstances of this protest, since they were not accompanied by a power to impound.
 - Police efforts to remove vehicles were in any event impeded by their inability to secure the services of sufficient transport operators until they had developed a full Vehicle Extraction Plan in consultation with NZDF and civilian operators. These arrangements were not finalised until 1 March.
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Did Police do enough to secure public access to the courts?

- The options available to Police for maintaining safe access to the courts were very limited and constrained by limited staff resource. By the afternoon of 8 February, it was not practicable for them to do any more than they did to ensure the ongoing operation of the Courts.

POLICE'S ACTIONS ON THE FINAL DAY – 2 MARCH 2022

Was Police's plan to end the occupation adequate?

- The Police's plan for the operation to clear protesters occupying Parliament grounds and the surrounding area was incomplete and inadequate. It did not properly address:
 - the clearance of a large part of the Parliament grounds, the Cathedral and the Victoria University Law Faculty;
 - how Police would hold the ground they had reclaimed overnight, even though they anticipated that the operation would take more than one day;
 - how risks to officers' safety would be addressed or minimised;
 - how Police would manage the protesters' property; and
 - the means by which evidence should be collected and retained to support subsequent prosecutions (although there were significantly fewer deficiencies than in the 10 February operation).
- Given the effects of COVID-19 and the day-to-day needs of national policing, the number of staff used for the 2 March operation was all that was realistically available.
- Ideally, Police would have had more officers, and been able to provide more training for the ones they did have. However, Police had a good number of PSU-trained team leaders and dealt with the clearance of unlawful occupiers very well.
- The Police's decisions to move the operation forward by one day and to complete the operation in one day were reasonable.

Did Police adequately protect their officers from potential injury?

- Police did not adequately equip officers during the 2 March operation.
 - The initial decision that hard body armour would not be worn when staff were initially deployed on 2 March was reasonably open to the Local Controller.
 - The trigger points in terms of risk that might require reconsideration of that initial decision should have been identified and communicated to front-line supervisors. Nor was it made clear whether authority to vary the decision rested with front-line supervisors or the Local Controller.
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- The escalation in the level of resistance and violence, and particularly the use of objects as weapons, should have led to a decision at some stage during the morning that all staff would be authorised to wear what hard body armour was available. The fact that there was no explicit decision to that effect led to ad hoc and inconsistent decision-making during the day, which unnecessarily exposed some unprotected officers to a significant risk of injury.
- Police should have considered a more rigorous health and wellness response to provide support to officers after 2 March.
- While it was reasonable for Police to use new graduates for the 2 March operation, they did not adequately prepare or equip them for the role.
- A lack of planning led to the use of recruits for cordon duty overnight on 2 March.

Did Police use appropriate tactics to end the occupation on 2 March?

- The Police initial decision to not require officers to complete any Tactical Options Reports at all for 2 March was inappropriate, and decreased the amount and quality of information available about what force was used and why.
- The use of Long Range Acoustic Devices to clearly communicate with the crowd on 2 March was appropriate.
- The use of the LRAD's aversion tone after the protesters started the fire on Parliament grounds was justified. Its use against protesters throwing paving bricks at Police was also justified.
- Police were justified in using skirmish lines to clear the occupation. The officers' use of shields to protect themselves and others was also justified.
- Police were justified in using empty hand techniques against protesters.
- Police were justified in using pepper spray against protesters.
- When batons were used against protesters, their use was justified.
- Officers were justified in using fire extinguishers, fire hoses and paving bricks to defend themselves from protesters throwing items at Police.
- Police were justified in deflating the tyres of vehicles when they feared protesters would use them as weapons against them.
- Police were justified in firing sponge rounds, and would have been justified in doing so earlier.
- Police were justified in carrying firearms.

Were Police justified in arresting and charging protesters?

- The current law governing arrest is not fit-for-purpose for the mass public disorder situation that confronted Police on 2 March.
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Did Police appropriately manage people taken into custody on 2 March?

- Police were better prepared to manage people in custody on 2 March, but at times lacked enough trained and experienced custody staff.

Was the property of protesters handled and disposed of lawfully and appropriately?

- With the exception of vehicles, Police lacked a plan to deal with protesters' property.

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