



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihimana Motuhake

The Review: Policing of the Protest and Occupation at Parliament 2022

April 2023

Contents

- Executive summary 4**
 - Our recommendations.....12
- Timeline of events..... 15**
- Part 1: The Parliament protest and occupation in context..... 22**
 - Overview22
 - What were the COVID-19 restrictions in New Zealand?23
 - What was the general situation for Police at the time of the protest?.....25
 - Who were the protesters and what did they want?26
 - What area did the occupation cover?30
- Part 2: Purpose and scope of review 33**
 - What is our jurisdiction?.....33
 - What did our investigation cover and what was out of scope?34
 - How did we deal with the complaints we received?.....35
 - What was our approach?.....42
- Part 3: Public order policing..... 48**
 - How has public order policing developed over time?48
- Part 4: Events preceding the protest and Police’s initial action..... 57**
 - Did Police have adequate intelligence information about the protest and was it properly communicated?57
 - Did Police make proper use of the information the Intelligence staff provided?62
 - Were Police actions to handle the protest on 8-9 February adequate and appropriate?67
- Part 5: The decision to clear Parliament grounds and the Police operation on 10 February 74**
 - Were the protesters trespassing on Parliament grounds?.....74
 - How was the decision made to clear Parliament grounds and was there undue political interference?78
 - Was the operation to clear the grounds on 10 February appropriately planned and resourced?82
 - Was the operation to arrest protesters undertaken lawfully?.....87
 - Were those taken into custody treated lawfully, appropriately and in accordance with policy?97
- Part 6: The Police operation from 11 February – 1 March105**
 - How did Police plan to manage the occupation until it was brought to an end and was this appropriate and effective?106
 - The establishment of a National Operation109

What was the nature of Police engagement with protest groups and was it appropriate and effective?	116
Did Police engage effectively and appropriately with interested parties?	128
How appropriate was Police’s management of traffic and the seizure of vehicles?.....	142
Did Police do enough to secure public access to the courts?.....	147
Part 7: Clearing the Parliament grounds and surrounding area on 2 March 2022	150
Timeline of events on 2 March	150
Was Police’s plan to end the occupation adequate?	156
Did Police adequately protect their officers from potential injury?	167
Did Police use appropriate tactics to end the occupation on 2 March?	179
Were Police justified in arresting and charging protesters?	203
Did Police appropriately manage people taken into custody on 2 March?	205
Was the property of protesters handled and disposed of lawfully and appropriately?	206
Conclusions and Recommendations	217
What is our overall assessment of Police’s response to the protest and occupation?	217
What lessons are to be learned from the Police response?	218
Final Word.....	224

Executive summary

1. On 8 February 2022, a convoy of protesters arrived in Wellington from across New Zealand. Some of the protesters set up tents and structures on Parliament grounds, starting an occupation that spread into the surrounding streets and lasted until 2 March 2022.
2. The protest's initial focus was on ending vaccine mandates and other COVID-19-related restrictions. However, the protesters included several different groups with other agendas and grievances against the Government. The occupation caused a large amount of disruption to Parliament, key government and judicial institutions, schools and businesses in the area, at a time when New Zealand was experiencing a COVID-19 outbreak.
3. On 10 February, after the Speaker had communicated that the protesters were in breach of the Speaker's Rules governing the use of Parliament grounds and trespassed them, Police mounted an operation to end the occupation and clear protesters from the grounds. However, the operation did not achieve that objective.
4. Over the following three weeks, Police managed and contained the extent of the protest while they planned for an eventual major operation to bring the occupation of Parliament grounds and other compromised properties in its vicinity to an end.
5. Police undertook that operation on 2 March. It began at 6am and continued throughout the day. Protesters resisted, some violently, and caused significant damage to Parliament grounds. By 3.30pm the situation deteriorated even further, into a riot, during which the remaining protesters began lighting fires and violently attacking the advancing Police line. It was not until that evening that Police succeeded in dispersing the protesters and ending the occupation.
6. The Authority received 1,905 complaints about how Police had handled this event (85% of which were from people who were not at the protest). As well as assessing and dealing with those complaints, we decided to investigate how Police had handled the whole protest and occupation and whether their response was lawful, reasonable and proportionate.
7. This report covers:
 - Part 1 – the context in which the protest and occupation took place;
 - Part 2 – the purpose and scope of our review;
 - Part 3 – the history of public order policing;
 - Part 4 – events preceding the protest and Police's initial action;
 - Part 5 – Police's first attempt to end the occupation on 10 February;
 - Part 6 – Police's actions from 11 February to 1 March; and
 - Part 7 – the events of 2 March – the final day of the occupation.

Overall assessment

8. Our review is intended to provide the public, Police, and interested parties with an independent assessment of the information Police had, the decisions Police took, the tactics used, and whether the approach taken to policing the protest as it evolved was lawful, proportionate and appropriate. We aim to make a constructive contribution to ongoing work within Police to improve responses to events such as this and the development of public order policing more generally. We have therefore necessarily focused on areas where we think practice fell short of the ideal and lessons can be learned for the future. This should not be interpreted as finding that Police failed in their policing of the protest and occupation.
9. Despite the range of recommendations for change we have made we believe that, in dealing with this difficult and complex set of events, Police did a good job and served the public of New Zealand well. They experienced a range of challenges, including reduced staffing levels due to the impact of COVID-19.
10. On the final day, frontline officers faced extreme provocation and violent behaviour from some of the protesters, and a level of public disorder rarely seen in New Zealand. In the face of that, almost all Police officers involved exercised professionalism and restraint in their dealings with the protesters. It is highly commendable that Police were able to end the illegal occupation of Parliament grounds with as few injuries and as little damage to property as they did.
11. Even so, as to be expected in protracted and complex events such as this one, we found there were lessons to be learned from the Police response.
12. We have summarised our findings and give our recommendations below.

Police's initial actions

13. The initial Police response to the protest depended on good intelligence about its potential nature and the risks that it posed.
14. We have found that Police Intelligence staff provided very good information about the developing protest environment, which they communicated to a wide range of Police decision-makers. They 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.
15. However, although Police operational managers in Wellington District were given information that at least 370, and possibly up to 1,000, vehicles might arrive in Wellington, we do not think they sufficiently considered the possible implications of that intelligence.
16. We acknowledge that Police are well used to dealing with protests at Parliament and planned to monitor this particular protest in the usual way. Their approach is based on what has been labelled a "*4E graduated response model*", comprising the following strategies in order of priority:
 - 1) engaging with the protesters and identifying any potential threats;

- 2) educating them on the requirements of a lawful protest;
 - 3) encouraging compliance if required; and
 - 4) enforcement by way of warnings or prosecution only when necessary as a last resort.
17. We also recognise that, if Police had acted to restrict or prevent the possible occupation prematurely or unnecessarily, they would have been criticised for that. But we have concluded that they did not sufficiently consider the particular risks posed by this event, especially in the light of disruption reported from similar recent convoys in Australia and Canada. In particular, well before the arrival of the convoy they should have considered, and consulted Wellington City Council about, whether there was a need for a traffic management plan. They should also have prepared and disseminated a detailed operation plan. However, if that had been done it would not necessarily have resulted in any additional action (for example, by closing the roads around Parliament). Nor would it necessarily have changed the trajectory of the protest.
18. Once the protesters had arrived in substantial numbers on 8 February, there was nothing Police could realistically do to prevent the occupation. By the evening of 8 February, several hundred protesters had set up tents and structures on Parliament grounds and Victoria University's Pipitea campus. Police did not have the staff capacity to remove them. Nor, at that stage, did they have the power to do so. While many protesters who had erected tents on Parliament grounds were told by Parliamentary Security to leave on the night of the 8 February, the occupation of Parliament grounds only became unlawful after the Speaker had closed the grounds and determined that the protesters were trespassers. That did not occur until the morning of 10 February.

Police's attempt to end the occupation on 10 February 2022

19. During the evening of 9 February, the decision was made to conduct an operation on the following day to remove the protesters occupying Parliament grounds. That decision was ultimately made by the Wellington District Commander, but only after the Commissioner of Police communicated his view that this should occur. The decision was made following a discussion between the Commissioner, the Speaker, the Deputy Prime Minister and the Attorney General. We are satisfied that there was no undue political interference and the Commissioner reached his own independent view.
20. The operation took place the following day. Police formed a skirmish line at 8am in an attempt to force protesters out of the Parliament grounds.¹ They made little progress, and ended up retreating at about 4.40pm. They arrested 108 people in the process.
21. The vast majority of Police officers we interviewed said that the operation was bound not to achieve its objectives. We agree success was unlikely.

¹ A skirmish line is a Police tactic used in public disorder events, where officers form a line to create a barrier between a crowd and a fixed point and disperse the crowd by walking towards it and instructing people to leave the area.

22. That does not mean the operation was unjustified. The resolve of the protesters was perhaps greater than anticipated, and without the degree of resistance Police encountered there was at least some prospect of success. But the operation served another important function. By the evening of 9 February there was a considerable measure of consternation and frustration, especially among the businesses, schools and residential dwellers in Wellington city centre, that Police were being too passive and ineffective in addressing the manifest illegality of the protesters' actions. Without some action, that frustration at the perceived lack of an effective Police response would only have grown. The operation on 10 February demonstrated that Police were confronted with a difficult situation and that easy options to end the occupation at that time were not available. In short, likelihood of success aside, it did buy Police time to plan for the eventual (and successful) operation on 2 March.
23. However, we have found a number of deficiencies in the 10 February operation:
- Police were unprepared (in terms of planning, resourcing, staff, and equipment) for the operation and did not clearly communicate to staff what was intended.
 - They initially failed to provide many of the protesters with warnings in the manner required by the Trespass Act 1980 that they were to leave the Parliament grounds, which resulted in evidential problems in subsequent prosecutions.
 - While the degree of force used to effect the arrests was generally reasonable, the arrest process and recording of evidence was deficient. Many of the charges against protesters were withdrawn for this reason.
 - Police were also unprepared to deal with so many arrests and people in custody, which meant they were unable to comply with all legal and policy requirements governing the treatment of detainees in custody.
 - It became clear by late morning that the operation would not succeed, and the decision to terminate it should have been made much earlier than it was.
24. Most of these deficiencies were driven by the speed with which the operation was mounted. It was hurriedly implemented by an under-resourced unit, thus diminishing its overall prospects of success. A 24-hour delay until 11 February might have been preferable.
25. We have also identified a number of areas relating to the law of trespass and arrest which in this context were simply not fit for purpose.

Police's actions from 11 February to 1 March 2022

26. From 11 February, Police aimed to contain the protest and maintain law and order while planning for a larger operation to end the illegal occupation. Preventing a breach of Parliament was the highest priority. The style of policing adopted sought to build trust and to de-escalate the situation with any actions to be reasonable and proportionate. To that end, the Police planning team developed a three-phase concept plan involving negotiation, disruption and eventual termination of the occupation.

27. This was the right approach. It was a major logistical exercise to bring the occupation to an end, and Police had neither the capacity nor the capability to do that quickly; they needed time to plan and to marshal the required resources.
28. However, given the demands of day-to-day policing and staff shortages through COVID-19, the Wellington District planning team was under-resourced for the scale of the operation and the range of activities it was tasked with.
29. On 15 February, Police did decide to establish a national operation and set up a Major Operations Centre (MOC) at Police National Headquarters to support their response to the occupation at Parliament as well as other protests that had sprung up around the country. While we think that was appropriate, there were a number of aspects of the planning process that could have been improved:
- Police should have provided greater support to the District earlier, to ensure that it was adequately resourced to deal with the District's day-to-day operational matters as well as to plan for the operation to end the occupation.
 - The absence of that support meant that the planning for the eventual operation remained under-resourced and was initially more fragmented and uncoordinated than it needed to be. There was slow progress in moving beyond the concept plan stage; it was not until a two-day workshop on 21-22 February that some of the details of the eventual operation started to be worked out.
 - Many of the staff seconded to the MOC were insufficiently trained for the role. This was exacerbated by the fact there were no detailed standard operating procedures for such an event, so that staff were unclear what was expected of them.
 - There should have been greater clarity about the roles and responsibilities of some in the MOC and the District Command structure, including the Deputy Commissioner: Strategy and Service who was Executive Lead. The failure to communicate adequately the nature and purpose of various roles led to a degree of confusion among staff.
30. The lack of earlier action to prevent vehicles blocking roads when they first arrived made it very difficult for Police to further contain the area occupied by the protest and to remove the vehicles. Developing a strategy for removing vehicles was therefore a major focus for the Wellington District planning team between 11 February and 2 March.
31. The development of an effective strategy was hampered by the fact that Police's legal powers to remove the vehicles obstructing the roads were limited, and they did not have the power to impound vehicles, so could not have prevented the owners from immediately re-joining the blockade once they had recovered their vehicle. Police were also unable to secure the services of enough transport operators to remove such a large number of vehicles until 1 March.
32. Early efforts to have vehicles moved (including some limited towing and the offer of free parking at Sky Stadium) had very limited success. Police also worked in partnership with the Wellington City

Council to have vehicles ticketed for parking illegally from 15 February, but some of the fines were swiftly paid by those funding the protest, so this proved ineffective in getting vehicles moved.

33. On 21 February Police moved to put concrete bollards in place. This was a critical strategy in changing the protest's trajectory. It not only maintained traffic flow through significant roads and intersections, but much more importantly provided a mechanism for Police to control the protest. In particular, it prevented the occupation's footprint from being expanded by the arrival of additional vehicles, and it enabled its size to be gradually shrunk over time. It also mitigated any risks that hostile vehicles might be used to cause harm to members of the public. The reduction in the number of vehicles on site over time demonstrates the effectiveness of this strategy, and contributed to the success of the final operation.
34. A significant component of Police activities during this period involved engaging with the protesters. This was challenging because there was no single consistent leader/spokesperson for all the various factions, and it was unclear how much influence the leaders they spoke to had within the group as a whole. The protesters also wanted to speak directly to the government, rather than Police.
35. Police should have formulated a clear communication and engagement strategy and plan with roles and responsibilities outlined, and should have supported the trained Advanced Police Negotiation Team (APNT) in leading the engagement with the protest groups. Instead, several senior Police staff tried to engage with various people, which undermined the APNT's role and caused confusion (in both Police and protester ranks) about who from within Police was leading the engagement.
36. All Police staff had the best intentions, but Police themselves were unaware what communication was actually occurring which led to frustrations and difficulties. We accept that it is appropriate for members of the Police Executive to become involved in a matter such as this when they have specific skills or expertise they can bring to bear. For example, the Deputy Commissioner: Iwi & Communities effectively liaised with local and national iwi. But a specific communication and engagement strategy would have been able to set out what role any specific members of the Executive were to have and provide transparency. The problem here, however, was the Executive members did not make any notes of their discussions or meetings, and the APNT had no knowledge of what they were doing.
37. Police also engaged with partner agencies (such as Wellington City Council) and others affected by the occupation (such as schools, businesses and residents) while the occupation was ongoing. We found that the Police's engagement with interested parties was generally more reactive than proactive. However, those with existing working relationships and established points of contact with Police were positive about the nature of their engagement. Again, Police should have:
 - have had a clear engagement strategy and plan for this;
 - recognised that particular partner agencies had an important role in supporting the Police operation; and
 - ensured they had the necessary and timely information to do that.

38. Finally, we note that over this period protesters and their vehicles made access to the Court of Appeal and the High Court difficult for judges, court staff and the public, and we received some comment that Police did not do enough in this regard. However, we have concluded that the options available to them for maintaining safe access to the courts were very limited and constrained by limited staff resource, so it was not practicable for them to do anything more than providing them with some Police officers to help address a shortage of court security officers.

Police's actions on the final day – 2 March 2022

39. The Police operation to bring the unlawful occupation to an end began at 6am on 2 March. As with 10 February, they formed a skirmish line, starting on Hill Street. They met strong resistance but forced protesters down Hill Street past the Wellington Cathedral of St Paul (the Cathedral), and reached the intersection of Hill Street, Molesworth Street and Aitken Street by 6.17am. It took much longer to clear Parliament grounds completely.

40. Police had originally planned for the operation to begin on 3 March but moved it forward by one day to maximise the number of staff available. They had also planned for it to take place over two or more days. However, when they had cleared the area outside the Parliamentary Library, they decided that they should proceed with clearing Parliament grounds. We have concluded this was a reasonable decision because:

- A delay would lead to a reduction in staffing and equipment levels.
- Pausing would have given the protesters more time to strategise and bolster their resistance.
- Police had not made plans for how they would hold the ground they had reclaimed overnight.

41. In order to give effect to this decision, Police progressively forced protesters down Molesworth Street and the Parliament lawn towards the bottom gates. During this manoeuvre, they encountered strong resistance from the protest group and some protesters started fires among the tents. Substantial violence was directed at Police. This included throwing a Molotov cocktail, bricks, paving stones, fireworks, poles, bottles, a knife and other projectiles. By that stage the protest had degenerated into a riot. At about 6pm a car was reversed into a Police line on Lambton Quay.

42. In the face of this extreme provocation, while there were some isolated incidents of potentially excessive force by Police, they generally acted with remarkable restraint and professionalism, and all the tactics they used to defend themselves and others on 2 March were justified in the circumstances. This included skirmish lines, shields, "*empty hand*" tactics (including pushing and striking), pepper spray, batons, weapons of opportunity (fire extinguishers, fire hoses and paving bricks), deflating tyres, and sponge rounds. Police were also justified in carrying firearms (though none were used on the day).

43. Police communicated with protesters throughout the day by using Long Range Audio Devices (LRADs), warning that they may be arrested if they did not leave the area. Although these devices can cause pain and hearing loss if used improperly, they were used when there was a threat of serious injury and their use in our view was also justified.

44. Police arrested 95 people on 2 March, and charged a further 54 people after subsequent investigation. Although Police had identified problems with their mass arrest process on 10 February and tried to address them, issues with evidence collection remained and resulted in some charges being withdrawn. Again, we have found that the current law governing arrest was not fit-for-purpose for the mass public disorder situation that confronted Police on 2 March.
45. 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, even though it was significantly fewer than requested by those planning the operation.
46. Overall, we have therefore found that the Police operation to clear the grounds of Parliament, Victoria University's Pipitea campus, the Cathedral and the surrounding streets was conducted professionally and successfully.
47. A significant concern, however, is that those commanding the operation did not take sufficient steps to mitigate the risks posed to officers during the operation. While officers were authorised to wear helmets and carry shields, they were denied permission at the outset of the operation to wear hard body armour (which is part of the standard public order policing protective equipment) and carry long batons. This decision derived from a concern that hard body armour and long batons would provoke protesters and engender confrontation and violence. Over the course of the day, some officers had to leave the skirmish lines to put on hard body armour due to the violence they encountered. There was also not enough hard body armour available for all officers.
48. We think the decision not to provide officers with hard body armour at the outset of the operation was reasonably open to the Local Controller. However, the trigger points in terms of risk that might require reconsideration of that initial decision were not identified and clearly communicated to staff. Nor was it made clear whether authority to vary the decision rested with front-line supervisors, the Tactical Commander or the Local Controller. Decisions ended up being made on an ad hoc and inconsistent basis and, after there was a significant escalation in the level of violence, some staff without body armour were exposed to various projectiles that were being thrown at them. This added to the significant risk of injury to officers and has led to ongoing trauma for many of those we interviewed. We think authority should have been given at least by late morning, if not earlier, for officers to don all available equipment.
49. Officers involved in the operation included newly graduated officers who were not equipped and trained for the role and faced additional risk. While it was reasonable for Police to use them to boost numbers for the operation, they had not been adequately prepared or equipped for a role on the skirmish lines.
50. Recruits who had not yet graduated from the Police College were also required to attend Parliament towards the conclusion of the operation to help secure the ground Police had reclaimed, since there had been no prior planning for how this would be done. They faced protesters who were throwing objects at them.
51. We have also found that, with the exception of a Vehicle Extraction Plan, Police lacked a detailed plan for dealing with property left behind on the Parliament grounds and the surrounding streets and properties. Police generally lack legal authority to seize property left in the possession of an

occupier. However, in some circumstances they can seize and impound property left behind in public spaces as enforcement officers with appropriate delegations under section 164 of the Local Government Act 2002. Delegations were obtained from Wellington City Council, and officers were told that they could only exercise their delegation to seize property in public places. But otherwise the circumstances in which the delegation should be exercised was never clearly articulated before the operation and decisions were made on an ad hoc basis. Property was gathered up and piled together, and was ultimately dumped in the landfill after it was determined by health authorities to be contaminated and a nuisance under the Health Act 1956.

52. This rationale for the disposal of the property was developed after the event. However, it is clear the property was generally being used to facilitate the commission of an offence and its seizure was therefore lawful. It also presented a risk to Police safety, as many protesters had used items such as tent poles as weapons of opportunity against Police.
53. The actions Police took in respect of property were therefore reasonable. Protesters had been given adequate time to leave the public spaces and take their belongings with them. Some did. Those who did not must have realised the escalating situation put their belongings at peril, yet they abandoned them.
54. We note, however, that the legal powers which exist to seize and impound property are not fit for the purpose of dealing with an occupation of this nature. We think that consideration should be given to the development of a more specific and comprehensive legislative framework for these types of public order events.

OUR RECOMMENDATIONS

55. We recommend that Police:
 - 1) Develop their end-to-end public order policing operating model as a matter of some priority, and ensure that:
 - a) It explicitly bases the strategic approach and standard operating procedures of Police on the *"4E graduated response model"*.²
 - b) It sets out detailed criteria governing decisions about whether officers should be equipped with protective equipment, and authorised to carry long batons, pepper spray or other tactical options, supplemented by a range of scenarios.
 - c) It addresses the extent to which, and the way in which, Tactical Options Reports from officers who have used force in major operations should be submitted.³

² See paragraph 16 for an explanation of the 4E graduated response model.

³ Police officers who have used force must complete a Tactical Options Report (TOR) which explains their decision making and their justification for using the force.

- d) It prescribes processes for mobilising required staff and equipment to deal with large scale events, including fully addressing health and safety requirements.
 - e) It addresses the extent to which each available type of tactical option in the use of force should be deployed in a public order context.
 - f) It considers the way in which Police should effectively engage with protest groups, partner agencies and other interested parties. This should include respective roles and responsibilities within Police, and address how engagement should adapt to a social media environment where groups can more readily coalesce around a range of agendas without unified leadership.
 - g) It is complemented by enhanced workforce management practices, including monitoring certifications and maintaining a register of the deployable skills of staff and making this accessible to the organisation as a whole.
 - h) It sets out requirements for ensuring that there is adequate training for the deployable skills that officers are certified and registered as having (taking into account Police cannot fully prepare and train sufficient numbers of staff for events such as this that have occurred, at least until now, very infrequently).
- 2) As part of the revised and broader public order policing policy recommended above, develop standard operating procedures for the parliamentary precinct. This should include scenario planning in conjunction with partner agencies, including the Parliamentary Service and the Courts, to avoid ad hoc decision-making for events such as these.
 - 3) Work with partner agencies (such as the New Zealand Defence Force) to review their strategic planning capability and provide additional training as required.
 - 4) Review associated Police policies and guidance to ensure best practice strategic planning and operational planning during major operations, including logistics management. These should include the processes required to enable adequate interfaces with regulatory agencies and other key partner agencies.
 - 5) Revise their policy to require intelligence products to best support decision-makers and priority setting, and to clearly assign responsibility for decision-making.
 - 6) Clearly spell out the purpose and responsibilities of an Executive Lead in a MOC context, both in general terms in policy and more specifically on a case-by-case basis when the role is created, so that there is a clear understanding of the role and how it interacts within the command and control structure of an operation.
 - 7) Review the training requirements for the command and control of major events at both national and District levels to ensure that staff with the right skills are available when required.

- 8) Include their new three tier structure in policy, with clear definitions of the command and control structure and the roles/responsibilities of those within it under various scenarios.
- 9) Urgently acquire extra public order policing equipment.
- 10) Review what equipment is internationally available to enhance the range of suitable options.
- 11) Work with partners to improve the national transport of equipment and personnel in emergency situations.
- 12) Develop policy and process guidelines for using recruits during major or high-risk operations.
- 13) Enhance their health and safety practices and include a requirement that, wherever practicable, a written health and safety plan with appropriate input from health and welfare staff be developed prior to major public order operations posing a significant risk to staff.
- 14) Propose to Government that there be a multi-agency review of the law governing a public order event such as this.

Parliament Protest & Occupation Timeline¹

1-3
FEB

Tuesday 1 February to Thursday 3 February

Situation: Police receive intelligence that there is a plan for a convoy of vehicles to head to Wellington from Cape Reinga and Bluff.

4-7
FEB

Friday 4 February to Monday 7 February (Waitangi weekend)

Situation: Police receive intelligence indicating the potential for an occupation at Parliament. Police Intelligence staff:

- actively monitor open source communications about the convoy's progress, intent and size;
- provide regular updates to the Wellington District Command Centre and the National Command and Coordination Centre; and
- provide advice, on 7 February, that there are more than 370, but possibly up to 1,000, vehicles heading for the Wellington city centre.

Week 1

Tuesday 8 February

Situation: Protesters arrive at Parliament (peak at about 2,000 by mid-afternoon, up to 500 overnight). Vehicles (150+) are blocking Molesworth and Bowen Streets and Lambton Quay. Tents are erected on Parliament grounds (50 overnight). Online sentiment is that protesters will stay until the Government ends the COVID-19 vaccine mandates.

- The Speaker asks Police to assist Parliamentary staff to remove the structures from the lawn. Police advise they do not have the resources available to take any enforcement action that evening.
- Eight Police staff are deployed to Parliament during the day, and a further two officers remain on site overnight.

Wednesday 9 February

Situation: 500-1000 protesters and 300 vehicles. Portalooos begin to arrive.

- About 80 Police officers are rostered on three shifts to cover the 24-hour period.
- Police's priority is to ensure the security of Parliament and maintain law and order.
- Police begin arranging for extra staff to support Wellington District and consider towing options and capability.
- The Speaker requests Police accompany Parliamentary staff to trespass the protesters. They approach three tents before the situation becomes unsafe and they return to Parliament House.
- At about 10.30pm Police decide that tents will be removed from Parliament grounds at first light on 10 February.

¹ The figures used by the Authority are based on a variety of sources. As there was no way to reliably measure, track, or record crowd and vehicle numbers the figures included in this timeline are estimates only, and do not necessarily account for fluctuations during any given day.



10
FEB

Thursday 10 February

Situation: Over 1,000 protesters and 60 structures. Showers are now in place. There is an unsuccessful attempt by Police to clear protesters from the front lawn in front of Parliament House.

- The Speaker closes Parliament grounds. Police loudspeaker informs protesters of this and that they must leave.
- About 150 Police officers are deployed in first attempt to remove protesters, and 108 arrests made. This action is unsuccessful in clearing the lawn and protester numbers increase.
- Footage of arrests is widely circulated online.

Friday 11 February

Situation: A second wave of protesters arrive as a result of seeing footage of Police actions from 10 February. There is an increase in younger people and children.

- Victoria University of Wellington authorises Police to use trespass powers on their Pipitea campus.
- At about 4.15pm, against Police advice, the Speaker activates lawn sprinklers and plays COVID-19 vaccination messages and loud music over a Parliament loud-speaker until about 10pm.
- About 135 Police officers are rostered on three shifts to cover the 24-hour period.

Saturday 12 February

Situation: Cyclone Dovi hits Wellington. There are over 1,000 protesters, 500 vehicles, and 200 structures. Protesters have extended their parking to Waterloo Quay. The bus interchange is now blocked.

- Protesters dig trenches and lay out straw and carpet to deal with the rain and sprinklers.
- Protesters arrange their own security, medical tent, food distribution, and are receiving donations.
- Protesters force open the gates at Parliament and cut off the power to the hydraulic bollards allowing access for protesters' vehicles.
- The Speaker continues to use a loudspeaker to play music and repeat trespass orders and COVID-19 messaging.
- About 155 Police officers are rostered on three shifts to cover the 24-hour period. They maintain a presence on the forecourt outside Parliament House.



13
FEB

Sunday 13 February

Situation: Protester numbers reduce to 200-300 due to torrential rain and gales.

- Police strategy is amended to include negotiation with protest leaders while planning how to end the occupation.
- The Police Negotiation Team start to engage with protest leaders.
- Police commence daily (and regular) reassurance patrols, together with Māori Wardens.
- About 165 Police officers are rostered on three shifts to cover the 24-hour period.

Week 2

Monday 14 February

Situation: Protester numbers have increased to about 3,000. Vehicle blockages have expanded to Murphy and upper Molesworth Streets. There are reportedly signs of COVID-19 among the protesters.

- Police have been unable to increase their towing capability other than securing two tow trucks.
- Police offer free parking at Sky Stadium as a strategy to try and clear the roads surrounding Parliament.
- Schools are escorting children to school and businesses are reporting increasing levels of aggression and harassment from protesters.
- About 200 Police officers are rostered on three shifts to cover the 24-hour period.

Tuesday 15 February

Situation: A support base under-pinning the protest movement continues to provide donations and financial aid, further evidencing the capability and intent to continue occupying Parliament grounds. There is conflict over whether the protest should have a leader. The sentiment is “the people” are leading.

- Police’s National operation begins with the establishment of a Major Operations Centre (MOC) to provide national logistical support to Wellington Police’s Local operation.
- Police announce that protesters’ vehicles will be seized and towed and those who block Police will be arrested and charged.
- About 180 Police officers are rostered on three shifts to cover the 24-hour period.



14
FEB



15
FEB





16
FEB

Wednesday 16 February

Situation: Protesters continue to take more ground. Protesters are well organised, with cleaning rosters and security wardens, and are communicating by walkie-talkie.

- Prime Minister advises the Commissioner of Police that she will not meet or engage with the protesters.
- About 155 Police officers are rostered on three shifts to cover the 24-hour period.

17
FEB

Thursday 17 February

Situation: Protesters attempt to serve a trespass notice on Police patrolling the area. Protest numbers have decreased but they are continuing to take more ground. Now over 800 vehicles.

- All political parties sign a joint statement - they will not talk to the protesters until they stop breaking the law.
- Police's towing plan has changed as there is insufficient capability to effect the plan.
- Police continue their negotiation strategy.
- About 225 Police officers are rostered on three shifts to cover the 24-hour period.

18
FEB

Friday 18 February

Situation: Increased gang presence observed.

- Police staff deployed at the protest start to test positive for COVID-19.
- Commissioner of Police briefs media that de-escalation is the only safe way to deal with the protest.
- About 250 Police officers are rostered on three shifts to cover the 24-hour period, and a further 65 are available if required at short notice.

19-20
FEB

Saturday 19 February - Sunday 20 February

Situation: Protest numbers remain over 1,000, with more than 2,000 vehicles over the weekend. Protesters are increasingly self-sufficient (own barbershop, laundry services, stage for entertainment, vegetable garden). The Freedom and Rights Coalition release a statement to the media, outlining their bargaining demands.

- Police tow two vehicles from Thorndon Quay.
- Police meet with several protest spokespeople and discuss traffic management, the installation of concrete bollards, health and safety of protesters, and access to food and toilets.
- Police plan an operation to install concrete bollards to contain and shrink the size of the occupation.
- About 600 Police officers are rostered on six shifts to cover the 48-hour period, and a further 200 are available if required at short notice.

Week 3

21
FEB

Monday 21 February

Situation: Protester numbers are now about 500. Protesters are presenting at Wellington Hospital for treatment. A group of protesters go to Pipitea Marae uninvited and claim they have authority to protest.

- Police install concrete bollards to cordon off the protest site. Vehicles can leave but are not able to return. This action was met with hostility from protesters, who then move the bollards during the night.
- Greater Wellington Regional Council confirms that sewage has been emptied into drains at the occupation site.
- Police begin a two-day workshop, with input from external expert advisors, to plan a response to end the occupation.
- About 270 Police officers are rostered on three shifts to cover the 24-hour period, and a further 180 are available if required at short notice.

22
FEB

Tuesday 22 February

Situation: Factions becoming apparent among protest groups. A protester attempts to drive their vehicle into a line of Police officers.

- About 100 Police staff reinstall the concrete bollards.
- The Chief Human Rights Commissioner hosts a meeting with several protester group leaders to discuss rights and responsibilities and to listen to their concerns and requirements. A Police representative is also present at this meeting.
- About 250 Police officers are rostered on three shifts to cover the 24-hour period, and a further 150 are available if required at short notice.

23
FEB

Wednesday 23 February

Situation: First confirmed COVID-19 case reported among the protesters. Some protesters start to leave, taking their vehicles with them. Some protesters force entry into Pipitea Marae and attempt to trespass tangata whenua.

- Sky Stadium announce that free parking will end on 24 February.
- The Mayor hosts a meeting with several protesters. Deputy Commissioner of Police: Iwi & Communities also attends.
- Police's planning continues for a final operation to end the operation, referred to as 'Deliberate Action Day'.
- About 320 Police officers are rostered on three shifts to cover the 24-hour period, and a further 120 are available if required at short notice.



24
FEB

Thursday 24 February

Situation: Some protesters observed with shields and weapons.

- Police have serious concerns for the health and safety of the, about 30, children at the protest. Due to the deteriorating sanitary conditions and confirmed diagnosis of COVID-19, the protest is no longer a safe environment for families and children. Police urge protesters to take their children home.
- The Deputy Commissioner: Iwi & Communities accompanies two church leaders to a meeting with local iwi leaders at Pipitea Marae to try and reach a resolution with protesters.
- About 230 Police officers are rostered on three shifts to cover the 24-hour period, and a further 40 are available if required at short notice.

Friday 25 February

Situation: Protesters move concrete bollards to allow more vehicles to enter the cordon.

- The Deliberate Action planning team receive approval to call up an additional 300 staff members to assist with the operation planned to remove protesters the following week.
- The High Court strikes down the vaccine mandate as it applies to Police and Defence Force personnel.
- About 210 Police officers are rostered on three shifts to cover the 24-hour period, and a further 40 are available if required at short notice.

Saturday 26 February

Situation: Protest numbers have reduced further – about 300 people and 300 vehicles present. Reports of protesters rerouting the Portaloos straight into the stormwater sumps in lower Molesworth Street. Police report increased illness amongst protesters.

- Police urge people to stay away from the protest as it is no longer safe.
- Police from around the country start arriving in Wellington in preparation for Deliberate Action Day.
- About 185 Police officers are rostered on three shifts to cover the 24-hour period, and a further 30 are available if required at short notice.

Sunday 27 February

Situation: Protesters number about 200. Police observe fighting and arguments within protest groups over preceding nights, and report that conflict continues to reflect dissent among different factions of protesters.

- Police continue to strengthen cordons.
- High-visibility Police patrols continue to provide reassurance to community members affected by the protest.
- About 185 Police officers are rostered on three shifts to cover the 24-hour period, and a further 35 are available if required at short notice.



25
FEB



26
FEB



27
FEB



28
FEB

Monday 28 February

Situation: Police report protesters are increasing their reconnaissance activities, scoping the cordons, and using radios with call signs. Sharpened sticks and caches of other weapons are located.

- Members of Taranaki Whānui ki Te Upoko o Te Ika lead a dawn ceremony at Pipitea Marae to deliver a united message from iwi around the North Island condemning the aggressive and violent behaviour of some of the protesters during the occupation.
- Police continue with major operation planning and brief incoming staff.
- A safe corridor for children walking to school commences, developed and implemented with collaboration between Police, Māori Wardens, Wellington City Council and Metlink.
- About 190 Police officers are rostered on three shifts to cover the 24-hour period, and a further 40 are available if required at short notice.



1
MAR

Tuesday 1 March

Situation: Around 200 – 300 protesters, 300 structures and 300 vehicles. Reports received of protesters letting down Police patrol vehicle tyres. Some protesters again try to access Pipitea Marae.

- About 270 Police officers are rostered on three shifts to cover the 24-hour period, with a further 50 available if required at short notice.
- About 280 additional staff have arrived from around the country. Police conduct training and briefing for the major operation scheduled to commence on 2 March.



2
MAR

Wednesday 2 March

Situation: Police commence a large-scale operation involving about 600 Police officers to clear protesters, vehicles, and structures from the protest site. This operation achieves its goal.

Part 1: The Parliament protest and occupation in context

56. This section sets out the broader historical and social context in which the protest and occupation took place. We discuss the COVID-19 related restrictions and requirements in place in New Zealand in 2021 and in the lead-up to the protest in 2022; the general situation for Police at the time of the protest; those who participated in the protest and what they were seeking; and the areas occupied by the protesters.
57. We use the terms ‘protest’ and ‘occupation’ throughout this report. Not everybody who came to Parliament to protest camped or ‘occupied’ the area around Parliament. We use the term ‘protest’ to represent the whole event from 6 February 2022 to 2 March 2022 and the term ‘occupation’ to explain when the area around Parliament had people, tents and structures present amounting to an occupation. This was for the period from late afternoon 8 February 2022 to late evening 2 March 2022.
58. The protesters were not a uniform group with a singular agenda. Moreover, not everybody who attended the protest site were protesters – many were visitors or onlookers.

OVERVIEW

59. In February and March 2022, a protest took place in and around Parliament grounds in Wellington which centred on government-imposed restrictions to control the spread of COVID-19; specifically, vaccine mandates.⁴ The protest resulted in an occupation by protesters that lasted for 23 days. The protesters drew inspiration from similar protests around the world, for example, Canada’s *Freedom Convoy* and Australia’s *Convoy to Canberra*.⁵
60. On Waitangi Day, 6 February 2022, two convoys of vehicles (*‘Convoy 2022 NZ’*, organised via social media) headed to Wellington from opposite ends of the country – Cape Reinga and Bluff. The first protesters arrived at Parliament grounds on 8 February.
61. Over the following days the protesters set up tents, toilet facilities and other infrastructure, becoming a relatively self-sufficient community (albeit with external resources and funding), which they named *“Freedom Village”*. A large number of vehicles were also parked around the Parliament precinct, disrupting the general flow of traffic.
62. A map of the area physically covered by the occupation is provided later in this part. The Parliament precinct and surrounding area is close to the main bus and train terminal for the city, and many government departments, businesses, courts, public facilities, schools and dwellings are in the immediate area. All of these were increasingly affected as the occupation continued.

⁴ Coronavirus 2 (SARS-CoV-2) was declared a pandemic by the World Health Organisation on 11 March 2020.

⁵ [Freedom Convoy: Why Canadian truckers are protesting in Ottawa - BBC News](#); [‘Occupy Canberra’: behind the anti-vaccine protests at Parliament House | Australia news | The Guardian](#).

63. The occupation continued until 2 March 2022, when Police moved the protesters so that Parliament grounds and surrounding streets could be cleared. The occupation was an unprecedented event in Wellington, the scale and length of which had not seen before.⁶

WHAT WERE THE COVID-19 RESTRICTIONS IN NEW ZEALAND?

64. The first case of COVID-19 was reported in New Zealand on 28 February 2020. From March 2020, and over the course of the pandemic, the Government imposed a series of mandates,⁷ including:

- restrictions on movement;
- requirements to wear a mask;
- requirements to use the NZ COVID Tracer app to enter businesses;⁸
- restrictions on gathering sizes (including family gatherings such as weddings and funerals and tangihanga);
- border closures and restrictions on international travel; and
- vaccinations and certificates.

65. New Zealand's geographic isolation meant the Government could observe in advance the significance and the devastating effects of COVID-19 on Europe, the United States of America, and other parts of the world. In March 2020 the Government set out its elimination strategy.

66. A system of increasing alert levels ranging from one to four was announced on 21 March 2020. Level 1 indicated what would happen if COVID-19 was contained in New Zealand (low risk of spread), and Level 4 indicated what would happen if COVID-19 was not contained (high risk of spread), at which point New Zealand would go into full lockdown.⁹ New Zealand's borders were closed to anyone who did not have New Zealand citizenship or residency. Those who entered New Zealand were initially required to self-isolate until managed isolation facilities ('MIQ') were established.

67. Following evidence of community transmission, New Zealand went into its first nationwide lockdown (Level 4) on 25 March 2020, when a National State of Emergency was declared.

68. The initial elimination of COVID-19 led to the resumption of a relatively normal life in New Zealand by May/June 2020. The National State of Emergency ended on 13 May 2020, and on 8 June 2020

⁶ In our assessment we refer to this protest as 'unprecedented' due to a range of factors including the numbers of protesters involved, the length of time the occupation occurred on Parliament grounds, the impact on the public, the number of complaints we received, the disparate nature of protest groups with different agendas and factions developing, the level of involvement of social media and that this was occurring against an international environment of protest action against COVID-19 measures.

⁷ [The COVID-19 Public Health Response Act 2020](#) was the primary piece of legislation to support a public health response to COVID-19. Various mandates were imposed by separate and specific Health Orders.

⁸ A Ministry of Health App which allows an individual to record and keep track of where they have been and share that data for contact tracing purposes if they contract COVID-19 – [NZ COVID Tracer App: Unite against COVID-19 \(covid19.govt.nz\)](#).

⁹ [History of the COVID-19 Alert System | Unite against COVID-19 \(covid19.govt.nz\)](#).

the Ministry of Health reported that there were no more active cases of COVID-19 in New Zealand. The whole country moved to Alert Level 1, meaning there were no restrictions on personal movement or gatherings, but face masks were legally required on public transport and aircraft.

69. There were still limitations on international travel due to the requirement to isolate in MIQ on return to New Zealand.¹⁰ Many New Zealanders who wanted to travel or to return to New Zealand for legitimate reasons were unable to because there were not enough MIQ spaces to meet demand.
70. On 11 August 2020, four new cases of COVID-19 were recorded in the community in Auckland. This led to more restrictions on the Auckland region compared to the rest of the country. The Auckland region moved to Alert Level 3 with a localised lockdown, and a border was established restricting travel between the Auckland region and the rest of the country (which moved to Alert Level 2). Within New Zealand, travel was restricted during lockdowns to control localised outbreaks. Regional borders were established with checkpoints, which meant people were not able to travel freely between areas with different alert levels (except under certain circumstances).
71. As the pandemic continued, the highly transmissible Delta variant became the predominant strain around the world.¹¹ The detection of a cluster of Delta cases in New Zealand in August 2021 resulted in another national lockdown, starting on 17 August. While the rest of the country moved down to Alert Level 3 on 31 August, Northland remained at Alert Level 4 until 2 September and Auckland remained there until 21 September 2021.
72. Further restrictions were introduced because of the transmissibility of Delta. It became mandatory for everyone over 12 years old to wear a face mask when visiting essential services and on public transport. Scanning/signing into businesses also now became mandatory.
73. The advent of the Delta variant made it untenable for New Zealand to continue with an elimination strategy.¹² On 22 October 2021, the Government announced that this strategy would be abandoned and the vaccination of the population would now be a key part of the response to COVID-19.¹³ Under the new COVID-19 Protection Framework (which came into effect on 2 December 2021), a traffic light system (red/orange/green) with varying restrictions depending on the risks was introduced,¹⁴ and it was a requirement to show vaccination certificates when entering a customer-facing business.¹⁵
74. Vaccine mandates for certain workers had already been introduced in July 2021. However, the mandates were now extended to include prison staff and more workers in the health and education sectors.¹⁶ The affected workers were required to be fully vaccinated by 1 January 2022, or they

¹⁰ The requirement to enter an MIQ facility was in place from 10 April 2020 to 28 February 2022.

¹¹ B.1.617.2 was designated a variant of concern by the World Health Organisation on 11 May 2021.

¹² [COVID-19 Protection Framework | Beehive.govt.nz](https://www.beehive.govt.nz/COVID-19-Protection-Framework).

¹³ Medsafe had provided provisional approval of New Zealand's first COVID-19 vaccine on 3 February 2021, and the vaccine rollout started in February 2021.

¹⁴ [History of the COVID-19 Protection Framework \(traffic lights\) | Unite against COVID-19 \(covid-19.govt.nz\)](https://www.covid-19.govt.nz/history-of-the-covid-19-protection-framework-traffic-lights)

¹⁵ *My Vaccine Pass* became available on 17 November 2021.

¹⁶ The groups included: General practitioners, pharmacists, community health nurses, midwives, paramedics, and healthcare and disability workers in facilities where vulnerable patients were being treated (including ICU); many workers doing non-regulated

could face losing their job (unless their employer could find alternative work for them in a role which was not subject to the vaccine mandate).

75. Omicron, a highly transmissible variant of COVID-19, was first detected in an international traveller who arrived in New Zealand on 10 December 2021. By 30 December 2021, there were two Omicron cases in the community. On 23 January 2022, New Zealand moved to 'Red' on the traffic light system due to community transmission in Auckland (and remained there until 13 April 2022).

76. Ipsos (a market research company) tracked public reaction and attitudes towards the state of the virus and perception of its management from February 2020. Its February 2022 report, entitled 'Mind and Mood of New Zealanders: The Arrival of Omicron' outlined a key finding of lower positive perceptions than previously of government management and restrictions:¹⁷

1) *"Half of all New Zealanders believe the red traffic light setting has the right balance between restrictions and freedom. A quarter would like to see restrictions tightened and, a further quarter, the restrictions loosened.*

a) *Those who would like tighter restrictions would like greater use of lockdowns, masks, border closures, and online learning for schools.*

b) *Those who would like looser restrictions would like to see the removal of border restrictions, masks in schools, hospitality limits and vaccine mandates. They are keen to see a full return to normal with no restrictions.*

2) *Nearly two-thirds of New Zealanders would like to see the removal of restrictions on how businesses were operating.*

3) *While 63% of New Zealanders currently rate the performance of the government positively, this has reduced from high levels of 80's and 90's over the last two years."*

WHAT WAS THE GENERAL SITUATION FOR POLICE AT THE TIME OF THE PROTEST?

77. Police resource capacity and capability were impacted by COVID-19. At the beginning of February 2022 Police anticipated at least 20% absenteeism across their workforce and were implementing processes to ensure essential policing services could be maintained. This included maximising separation between teams to avoid cross-contamination, reviewing the necessity of face-to-face meetings and travel, and prioritising delivery of core services in the event of workforce disruptions due to illness. They had ongoing obligations to staff MIQ facilities. In February 2022 approximately 230 staff were deployed across 33 MIQ facilities nationally.

healthcare work; and early childhood educators and staff from registered schools (including state schools, state-integrated schools and all private schools).

¹⁷[Mind and Mood of New Zealanders: The Arrival of Omicron | An Ipsos Survey – February 2022.](#)

78. Police say there were considerable ‘unknowns’ with the Omicron outbreak and they placed a significant health and safety focus on minimising risk across emergency services to ensure essential services could be maintained nationwide. In addition to vaccination, Police implemented layered controls throughout the organisation, including protection practices (such as hygiene and masks), assurance testing (RAT), and provision of additional leave to reduce the risk of potentially infected staff coming onto their sites. This approach enabled Police to continue to deploy staff nationally while mitigating the risks of infection.
79. The protest began at a time when Police, nationally and locally, had concerns about their general workforce numbers and ability to manage all essential services and business as usual requirements. As the occupation continued and expanded, this required Police at a national level to provide considerable support to Wellington District’s response at a time when resources were already stretched. It should be recognised that frontline Police staff at the protest had increased risk of exposure to COVID-19 due to protesters not adhering to the Government’s COVID-19 mitigation measures and potentially not being vaccinated.

WHO WERE THE PROTESTERS AND WHAT DID THEY WANT?

80. Convoy 2022 NZ organised the initial protest. They rallied convoys of vehicles to travel from both ends of the country (Cape Reinga in the north and Bluff in the south) to converge in Wellington at Parliament. Their primary intent was to force an end to vaccine mandates (which had resulted in loss of employment for some), other COVID-19 related restrictions and associated legislation.
81. Individuals and other groups joined the protest. As the number of protesters grew, it became clear that vaccine mandates were not the only issue raised by protesters. Groups who joined the protest had a wide range of views. The protest evolved over the first week, following the arrival of various groups with differing agendas, resulting in the assembly of disparate factions lacking cohesion and overall leadership.
82. The main groups Police identified as part of the protest included:

Convoy 2022 NZ

This group’s mission statement at the time of the protest was:

- *“Stop all mandates and end all COVID-19 imposed restrictions.*
- *Reverse COVID-19 introduced legislation and cease proposed legislation.*
- *Bill of Rights Act 1688 to be upheld and added into our constitution.*
- *Medical professionals to follow the Principals [sic] in the NZMA Code of Ethics.*
- *All media to have freedom without censorship.”*

The Freedom and Rights Coalition

Led by Brian Tamaki, the bishop of Destiny Church, this group campaigned for vaccine mandates to be removed. They specifically said they were not anti-COVID vaccinations but rather opposed to vaccination mandates and the effect of these mandates, such as job loss. Brian Tamaki did not personally attend the protest in Wellington.

New Zealand Doctors Speaking out with Science (NZDSOS)

This organisation is made up of medical professionals with domestic and international alliances, and had wide objectives, including:¹⁸

- *“Promoting medical freedom*
 - *Affirming the Hippocratic Oath: First do no harm*
 - *Empowering individuals to say NO to vaccine passports*
 - *Opposing vaccine mandate orders*
 - *Promoting freedom of choice around mask wearing and social contact*
 - *Encouraging all effective medicines and treatments, including proven alternative and traditional therapies*
 - *Supporting appropriate legal undertakings.”*

New Zealand Outdoors & Freedom Party

Led by Sue Grey and Donna Pokere-Phillips, a press release on 20 February 2022 stated that the party promoted *“alternatives to New Zealand’s extreme COVID response”* and supported *“immediate removal of all mandates, a more transparent approach to politics, strong and meaningful constitutional protections and an inquiry into the NZ Covid-19 Response”*.¹⁹

Voices for Freedom

An advocacy organisation, founded in December 2020 by Claire Deeks, Alia Bland, and Libby Johnson, *“with a focus on protecting New Zealanders’ fundamental human rights; particularly freedom of speech, health and medical freedom, and all freedoms under attack from an overzealous and oppressive COVID-19 response. We campaign for an alternative strategy for COVID-19.”*²⁰

Counterspin Media

An online media platform that states it is *“facts and evidence based”*, covering *“stories and events that many mainstream media outlets will not”*. Hosts Kelvyn Alp and Hannah Spierer broadcast video throughout the protest and issued a *“call to action to subscribers telling them that there was a need to mobilise and go to Wellington to choose freedom or tyranny”*.²¹

¹⁸ [New Zealand Doctors Speaking out with Science \(NZDSOS\) – Message and Objectives](https://www.nzdos.com) (nzdos.com).

¹⁹ [Outdoors and Freedom | From Parliaments front Line - 20 February 2022](https://www.outdoorsandfreedom.co.nz) (outdoorsparty.co.nz).

²⁰ [Voices for Freedom | About VFF](https://www.voicesforfreedom.co.nz) (voicesforfreedom.co.nz).

²¹ [The NZ media and the occupation of Parliament | Pacific Journalism Review 28 2022](https://www.pacificjournalismreview.com) p 124.



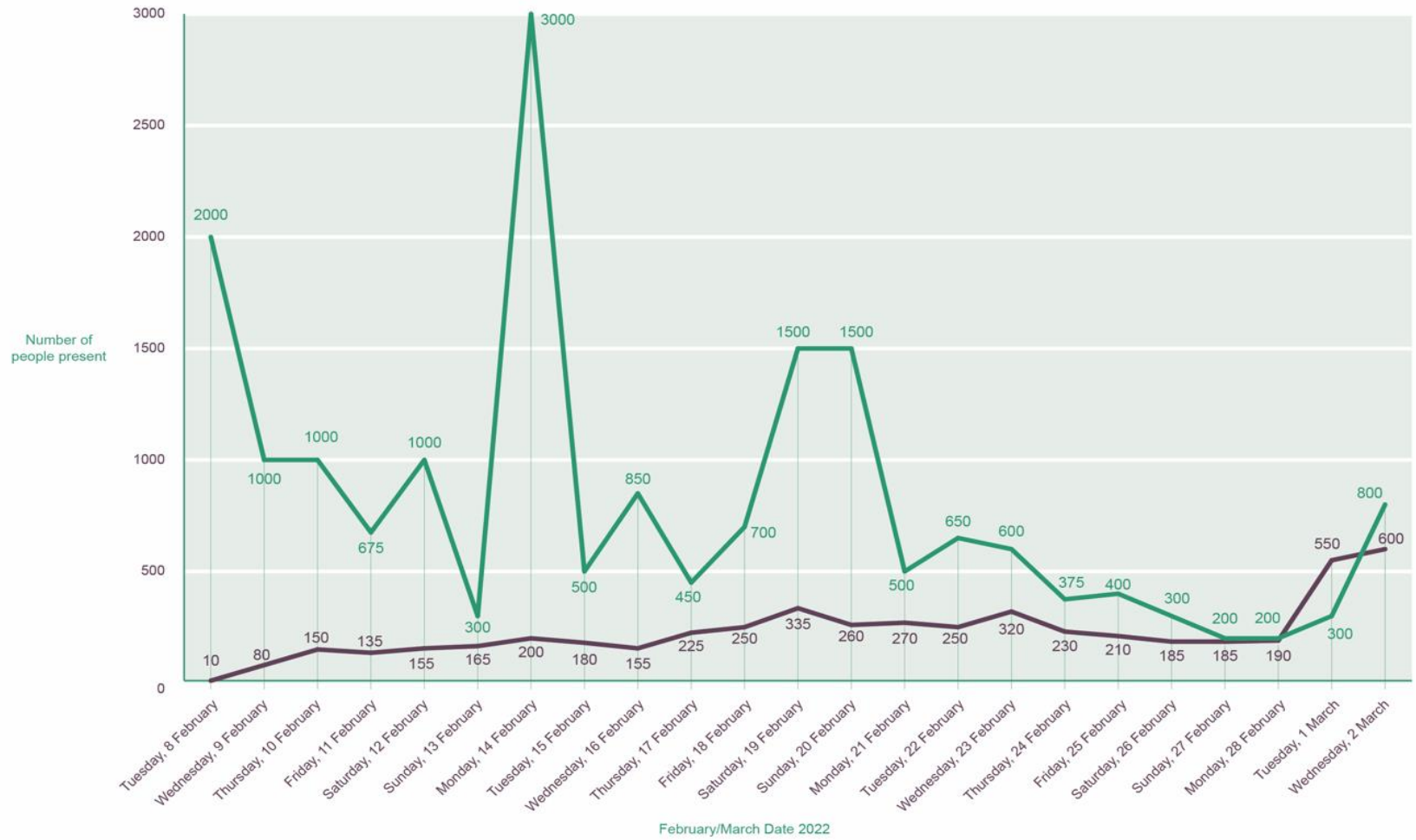
Original photograph courtesy of LibertyBites

83. Aside from these groups, there were some prominent individuals including: Billy Te Kahika, a musician and former political candidate; Liz Gunn, a former television presenter; Leighton Baker, former leader of the New Conservative Party; and his daughter Chantelle Baker, who had a large social media following and live-streamed events during the protest on her Facebook page.

Police and protester numbers

84. Police estimated that the number of protesters peaked at approximately 3,000, with more than 300 structures erected in and around Parliament grounds and, at one stage, about 2,000 vehicles in the surrounding streets. Police also estimated that over the 23 days the number of protesters generally ranged between 200 and 500 in the daytime and decreased at night. Many families and children were present.

Protester and Police officer numbers by day



Protesters - As there was no way to reliably measure, track, or record protester numbers, the figures included in this graph are estimates only, and do not necessarily account for crowd fluctuations during any given day.

Police officers - The figures included in this graph are the total number of officers rostered on over three shifts, covering a 24-hour period. On some days (see the 'Parliament Protest & Occupation Timeline' for details) the figures also include additional officers, who were available at short notice, if required, as part of rapid response teams.



Typical view of Parliament grounds before the occupation (© Khirol Amir, CC BY-NC-ND 2.0).



Photograph from Police helicopter footage on 2 March 2022 showing the extent of the occupation

WHAT AREA DID THE OCCUPATION COVER?

85. The occupation took place:

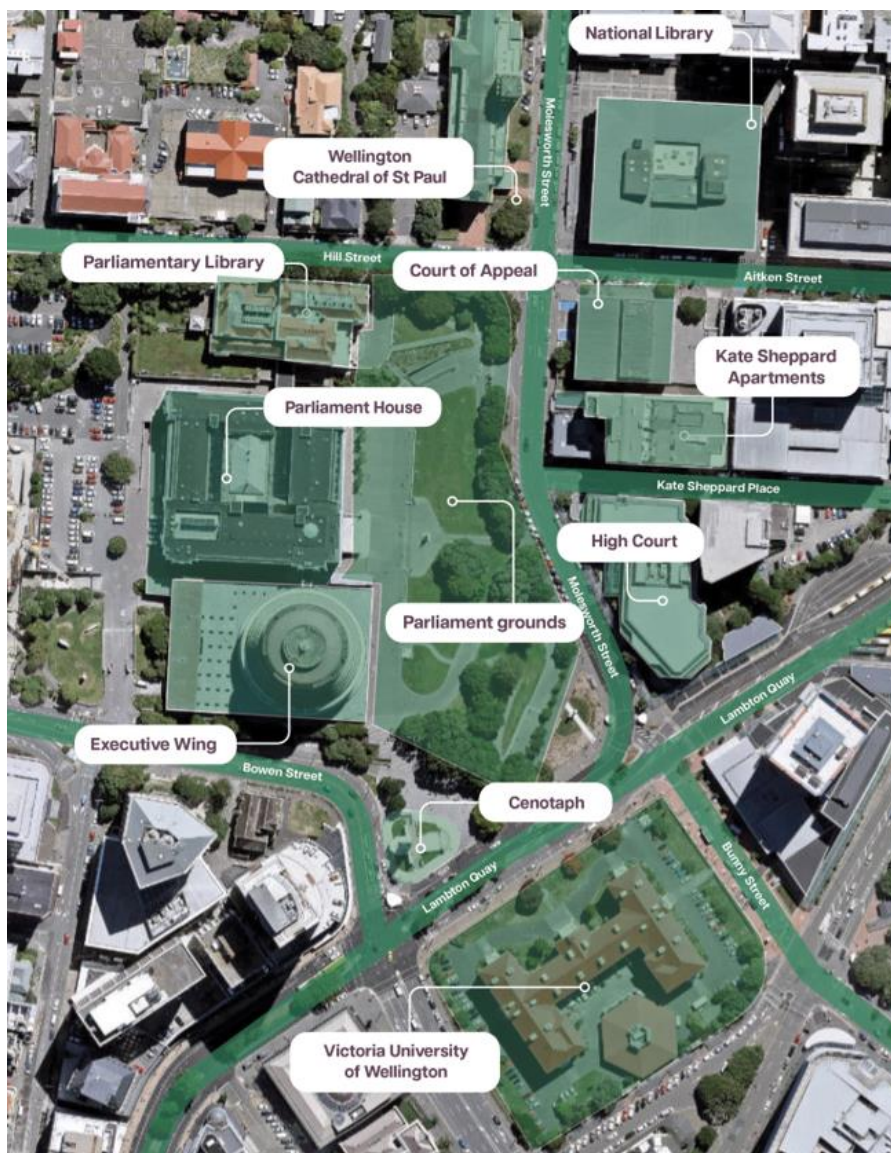
- within the Parliament precinct – Parliament buildings (Parliament House, the Parliamentary Library, and the Executive Wing (‘the Beehive’)) and Parliament grounds;²²
- in the roads surrounding Parliament (Bowen, Molesworth, Hill, Bunny and Aitken Streets, Lambton Quay, and Kate Sheppard Place); and

²² Parliament grounds are defined under [Part 4, s 23-25 of the Parliamentary Service Act 2000](#) and the [Parliamentary Service \(Parliamentary Precincts\) Resolution 2021](#).

- at properties on these roads including the Cenotaph, Victoria University of Wellington (the Old Government Buildings), the High Court, Kate Sheppard Apartments, the Court of Appeal, the National Library and the Cathedral.

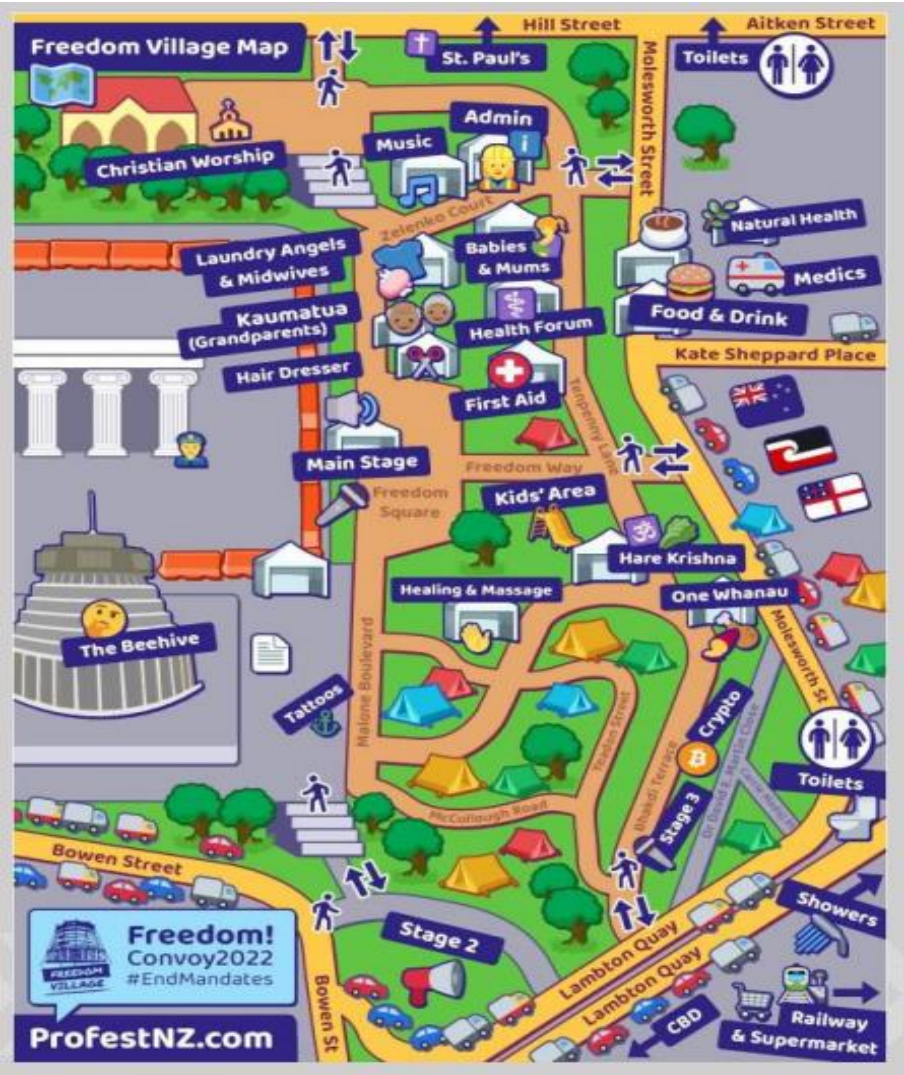
86. In the immediate vicinity there are courts, part of the university campus, numerous schools, office buildings, several government departments and national organisations as well as major transport facilities for Wellington, such as the railway station and central bus interchange. As the occupation continued over the course of the 23 days there was widespread and increasing disruption to the public and in particular people who lived and worked in that area of the city. It is impossible to have exact numbers, but we know thousands of people were affected on a daily basis either through disruption to public transport or access to places of work, public institutions, businesses, schools and the university, and the courts.

87. The Parliament grounds themselves which include the lawn and area immediately in front of the Parliament buildings are equivalent to the size of just over one rugby field (at 10,000sqm) or 8.2 Olympic swimming pools (at 1250sqm).



Original photograph courtesy of Wellington City Council

88. On or about 20 February 2022, Convoy 2022 NZ published on their website the following map of the protest area, in which they illustrated the services reportedly available to protesters in and around Parliament grounds at that time.



Part 2: Purpose and scope of review

89. On 24 March 2022, the Authority publicly announced an independent investigation and review into the policing of the protest and the occupation of Parliament grounds and the surrounding area. This was to provide the public, Police, and interested parties with an independent assessment of the information Police had, the decisions Police took, the tactics used, and whether the approach taken to policing the protest as it evolved was lawful, proportionate and appropriate.
90. The protest and occupation was an unprecedented event in New Zealand and represented one of the most significant policing challenges in recent years. It was, and continues to be, the subject of intensive media coverage and commentary.
91. It resulted in 1,905 complaints to the Authority, the most complaints ever received by us for a single event.
92. This section provides detail of the investigation and review we undertook in relation to the policing of the protest at Parliament and covers:
 - the Authority’s jurisdiction;
 - the scope of our review – what was covered and what was out of scope;
 - how we conducted the review including the approach we took; and
 - an overview of the complaints we received and how we managed them.

WHAT IS OUR JURISDICTION?

93. The Authority is an independent Crown Entity,²³ established by the Independent Police Conduct Authority Act 1988 (‘the Act’) to provide civilian oversight of Police conduct.²⁴ We investigate and resolve complaints about Police. The Act sets out our functions and powers.
94. When we receive complaints, we assess how to deal with each complaint. We can independently investigate the matter, refer the complaint to Police for them to investigate under our oversight, facilitate a resolution of the complaint, or decide not to take any action.
95. Section 12(2) of the Act empowers us to consider any apparent misconduct or neglect of duty by a Police employee, or any Police practice, policy or procedure which appears to us to relate to complaints received. This power enables us to carry out a wide investigation and review of the policing of the protest.

²³ The legal basis for the way Crown entities operate is set out in the [Crown Entities Act 2004](#).

²⁴ [Independent Police Conduct Authority Act 1988](#).

WHAT DID OUR INVESTIGATION COVER AND WHAT WAS OUT OF SCOPE?

96. When we announced our review on 24 March 2022, we also published details of its scope,²⁵ which focused on two areas:

A: The protest and occupation of Parliament

97. The investigation examined:

- 1) Police management of intelligence relating to the protest. This included what intelligence was available to Police, the sufficiency of that intelligence, and how it was assessed and informed Police decisions prior to, and throughout, the course of the protest.
- 2) Police engagement with Iwi, local businesses, the Courts, and other interested parties.
- 3) Police engagement with local and national agencies where Police and those agencies needed to work together to develop and execute operational plans.
- 4) Police engagement at local and national levels with those holding decision rights and responsibilities, including public and private sector actors whose actions materially influenced or impacted on Police decision-making.
- 5) Police planning and preparation of its response to the protest. This included staff selection, training, operational guidance, equipment, and technology provided to officers who policed the protest.
- 6) Police command and control, decision-making processes, and operational execution (including tactics used and timeliness of tactics).
- 7) The powers used to keep the peace, maintain public safety, enforce the law, and provide community support and reassurance, and the tactical exercise of those powers. This included how Police balanced the rights of protesters with the rights of other people throughout the course of the protest.
- 8) Any other decisions, acts, omissions, conduct, policy, practice, or procedure issues arising out of 1-7 above.

B: Complaints

98. For each complaint, we applied standard Authority operating practices including:

- assessing and triaging each complaint to determine themes and issues arising;
- determining how the complaints would be dealt with and, in particular, which complaints:

²⁵ [Independent Police Conduct Authority | IPCA to conduct investigation/review of policing of the Occupation and Protest at Parliament \("the Protest"\) | 24 March 2022 \(ipca.govt.nz\)](https://www.ipca.govt.nz/what-we-do/investigation-reviews/occupation-and-protest-at-parliament-the-protest).

- a) required specific investigation by us;
- b) would inform our broader investigation; or
- c) required no further action;
- telling complainants how their complaint would be dealt with and what contact, if any, they would receive from us; and
- carrying out relevant investigations.

Out of scope

99. The investigation **did not** look at:

- the policing of any other protests that took place around New Zealand during February and March 2022, or any since;
- the spread of misinformation/disinformation on social media and other digital platforms, and how that influenced people’s behaviour (unless social media influenced Police plans and actions);
- the political or socio-economic motivation of any complaint or group of complainants; and
- any complaints relating to Police actions at any other protest sites (these were dealt with as part of our usual complaint process).

HOW DID WE DEAL WITH THE COMPLAINTS WE RECEIVED?

100. The Authority began to receive complaints shortly after the start of the protest on 8 February. Most complaints were received during the protest or shortly thereafter. On 30 August 2022, we issued a press release inviting anyone owning CCTV or video footage of Police activities at the protest to send this to us. At the same time, we advised the public that we were imposing a deadline of 16 September 2022 for complaints to be made and considered as part of our broader investigation. A further 20 complaints were received as a result.

101. The greatest number of complaints were about Police actions on 10 February, when Police unsuccessfully attempted to clear the protesters from the grounds in front of Parliament buildings, and 2 March, when Police’s further attempt to do so succeeded. More than 1,100 complaints were about events on 10 February and more than 480 complaints for 2 March.

102. We also received more than 150 complaints about Police failing to take action to end the protest earlier than they did.

Complainants who were not at the protest

103. More than 85% of the 1,905 complaints received were from individuals who were not at the protest but were concerned about Police actions or inaction. Three quarters of these were from individuals

watching events unfold on television and social media (almost 1,000 of which related to high profile incidents widely circulated over these platforms). These complainants were advised that no specific action would be taken in relation to their complaint but the issues raised would be considered and addressed as part of our broader investigation into policing of the protest.

Complainants who were involved in or witnessed an incident

104. Of the total, 84 complaints were confirmed as coming from individuals who were physically present at the protest and were either directly involved or witnessed an incident.²⁶ These were complaints about specific or more general Police activities, such as:

- Police powers to keep the peace, maintain public safety, and enforce the law;
- the general and specific tactics, and the force used by Police in their operational response to the protest; and
- Police custodial management and property-handling processes during the period of the protest.

105. Attempts were made to contact each complainant to obtain as much information as possible to assist the triage process, such as details about those involved, the exact location, the date and time of the incident, and any available footage.

106. If an incident met our criteria for an investigation, we attempted to identify the person subjected to the force as well as the individual Police officers allegedly using the force. This enabled us to ascertain if the person subjected to the force wanted us to take action and to explain our role and powers to them. If identification was not possible, this meant we did not have lines of enquiry to follow up and investigate. There were some complaints with serious allegations about the force used by officers we were unable to progress because we could not identify the officer/s in question and there were no other independent lines of inquiry.

107. Having assessed all the available information, the project team made recommendations about further action to the Authority's management team, who ultimately decided how each complaint would be dealt with. We then advised each complainant of the decision.

Breakdown of complaints

108. We categorised the 1,905 complaints as follows:

- 13 specific investigations;

²⁶ About 200 complaints did not identify whether the complainant was present at the protest or not.

- six specific investigations initially limited to particular issues raised by the complaint to determine what, if any, further action the Authority would take;
- one facilitated resolution between the complainant and Police; and
- 1,885 complaints where we decided the issues raised would be covered by our broader investigation so no further action was required other than to inform complainants the subject matter of their complaint would be addressed in our full report.

109. The Authority cannot and does not respond to every complaint it receives with a full independent investigation. The law allows us to take a proportionate response to each complaint, depending upon the circumstances. Many of the 84 complaints we received from those directly affected bore common characteristics. Consequently, we elected to take no further action on the majority of the specific matters they raised. Instead, we decided to examine those common characteristics as part of our broader investigation, using the information and experiences reported to us by similarly impacted complainants to inform it.

110. Many complaints raised more than one issue, but the most common issues raised were:

- Allegations that Police used excessive force on protesters.
- Attitude of officers and language used towards protesters.
- Issues with property/vehicles being seized, destroyed, or not being allowed to retrieve belongings from the protest site.
- Police not acting soon enough to end the protest.
- Being unlawfully trespassed from Parliament grounds or trespass notices not being properly served.
- Unlawful arrest and custody issues.
- Police officers deliberately agitating protesters.
- Police officers deliberately covering up their ID number, refusing to provide it or inappropriately covering it up.
- Actions of Police not being lawful due to the ownership status of Parliament grounds.
- Allegation of Government/political interference with the Police operation.
- Police breaching the New Zealand Bill of Rights Act 1990 (NZBORA) which sets out people's human rights, including the right to protest.
- Specific critical comments about how Police, the Prime Minister and members of her Government should be treated.

High profile incidents

111. The majority of the 1,905 complaints came from people who were not at the protest and referred to the same 28 incidents. We received hundreds of photographs, videos, and links to videos on Facebook, YouTube, Rumble, Telegram, mainstream media posts and live feeds, as well as alternative media channels, influencers and platforms such as Counterspin media.
112. For eight of the 28 incidents, the individual involved in the incident complained directly to the Authority. The Authority has investigated these matters, and the outcomes will be reported to each complainant once they are concluded. These incidents involved Police officers who allegedly:
- placed their full weight on a man's head (commonly referred to as "*planking*"). The officer involved in this incident also allegedly used the same tactic on a young person, which was referred to in 366 complaints. While the young person did not wish to speak to us, we are conducting a combined investigation into these two incidents;
 - punched an elderly man in the face, who was attempting to protect another protester from them;
 - eye-gouged a man;
 - grabbed a man seated on a bollard and pulled him to the ground by the neck;
 - fractured a woman's sternum while she was standing at the front of a Police skirmish line;
 - placed a man in a headlock and dragged him along the ground by his neck and ear;
 - struck a woman in the face with a shield, breaking several of her teeth; and
 - used a fire extinguisher on protesters.



Police officer "*planking*" on young person's head (posted on social media)

113. After reviewing the relevant video footage, we determined that the other high-profile incidents did not warrant specific investigations. This was because they:

- were not fully or accurately depicted in photographs or footage originally supplied to us;
- were not sufficiently serious; and/or
- involved Police tactics that we intended to address in this report.

114. For example, we received 432 complaints about Police officers allegedly ripping the clothes from a protester, dragging her out of the crowd by her hair, holding her on the ground, and then smothering her face with a blanket so that she could not breathe. In fact, our enquiries, which included speaking to the woman herself, identified that she had deliberately stripped down to her underwear and covered her body in coconut oil to make it difficult for Police to grab her. The officer consequently lost her grip on the woman as she attempted to arrest her and was only able to regain control of her by grabbing the woman's hair. Police officers placed a blanket over the woman's torso to ensure her dignity.

115. Other incidents that we assessed as not requiring specific investigations (for the reasons outlined above) included:

- a protester who appeared to have been deliberately tripped over by an officer as she was being escorted to an area where protesters were being processed following their arrests;
- a protester who was allegedly punched while on his hands and knees;
- a Police officer saying to a protester: *"You should be real proud of your fellow protesters. You've got religious nutcases, gang members, the great unwashed and the unemployed"*;
- the arrest of an identified individual for trespass following his attempt to enter Parliament buildings to make a citizen's arrest of the then Minister of Health for alleged criminal behaviour relating to the rollout of the COVID-19 vaccine;
- Police officers pulling, dragging, restraining or plucking protesters from the crowd;
- the force used by Police officers when clearing Parliament grounds and the surrounding streets; and
- Police officers using fire hoses on, and throwing bricks at, protesters.

Common misunderstandings or misconceptions

116. We identified repeated misunderstandings or misconceptions about Police powers and their response to the occupation at Parliament. Following our investigation, which included reviewing 320 hours of footage, we are satisfied that Police:

- did not use tear gas during the protest;²⁷
- deployed only serving members of the New Zealand Police during the protest;
- carried out a number of operational tasks (such as placement or repositioning of bollards) in the early hours of the morning to ensure minimal interference from protesters and reduce disruption to the general public and traffic, and not as a tactic to wear down the protesters;
- are lawfully able to use reasonable and proportionate force in instances where peaceful protesters are obstructing Police from carrying out their duties;
- did not “stage” an incident on 22 February, when a driver threatened to reverse into a line of Police staff in his vehicle. It is also evident that protesters did not attempt to stop the driver of vehicle that threatened to reverse into Police on 2 March;
- did not use plain clothes officers, or authorise, arrange, or pay for anyone else to agitate protesters;
- did not intentionally cover up Police identification numbers on their uniforms with tape to prevent identification. While many officers placed coloured tape on their vests to identify their membership in a particular team, epaulettes with officers’ identification numbers are worn on their shoulders and were visible;
- used Long Range Acoustic Devices (LRAD) but neither the LRADs, nor any other device, emitted frequencies that burned people’s skin and made them sick;
- did not wear ‘knuckle-duster’ gloves. Members of the Police Support Unit wore ‘Hatch Reactor Gloves’, which resemble motorcycle gloves and are part of their approved kit;
- did not spray themselves with pepper spray. Three officers were treated by paramedics after an unknown substance was thrown at them. Protesters threw faeces at Police officers on 22 February and 2 March. Protesters also threw paint at Police officers; and
- were not responsible for starting the fires in Parliament grounds on 2 March.

117. Several images were also submitted to the Authority to support allegations that Police used excessive force. Examples included allegations that Police used pepper spray on a child, and repeatedly fired sponge rounds at a woman causing significant injury, as depicted in the images below.

²⁷ On 2 March, Police used larger pepper spray cannisters, which protesters may have mistaken for tear gas.



Overseas photographs wrongly attributed to Police actions at the Wellington protest

118. In fact, the Authority has established from reverse image searches that both photographs have been in circulation on the internet for the past three years. The image of the child is understood to have been taken at a protest in Seattle in 2020. The image of the woman is associated with posts online that discuss the use of sponge rounds at protests in the United States and Chile.

Overview of specific investigations into complaints

119. As set out above,²⁸ we designated 19 complaints as requiring either a specific investigation or further enquiries to determine what further action should be taken. These complaints were about specific incidents, where the issues raised were unlikely to be sufficiently addressed during our broader investigation and/or the actions of Police staff appeared to be excessive in the circumstances and warranted further examination by the Authority.

120. Eight of the complaints were 'high profile' incidents, described in paragraph 112. The remaining 11 complaints involved incidents where Police officers allegedly:

- Kicked the complainant and attempted to choke him.
- Repeatedly 'hammer' punched the complainant in the eye.
- Smashed the windows of the complainant's van while it was being driven in a convoy, resulting in the occupants (including a child) being showered with glass.
- Kicked the complainant in the back while he was sitting on the ground, grabbed him by the shoulders and then kned and shoved him across the footpath.
- Smashed the windows of the complainant's vehicle before removing it from the protest site with a forklift. Despite arrangements being made she was not allowed to recover the vehicle

²⁸ See paragraph 108.

or retrieve her belongings from it. Police subsequently left her vehicle on a public street, where it was vandalised.

- Arrested the complainant's 16-year-old son and subsequently issued him a warning without lawful grounds. The complainant was sworn at and threatened with the use of pepper spray when she was attempting to collect him.
- Dragged the complainant through the Police line, struck him about the face, threw him to the ground, and kicked him in the back. Consequently, the complainant lost his glasses and sustained an eye injury requiring specialist treatment.
- Dragged the complainant through the Police line, repeatedly punched and kicked him and then pepper sprayed him, including while he was in restraints.
- Fired sponge rounds at three complainants who were innocent bystanders.²⁹

121. We will report the outcome to each complainant at the conclusion of each of these investigations. Our preliminary findings are that Police actions were unjustified in eight of the 19 complaints that we have investigated. We will also provide a summary of our findings on these matters on our website when all investigations have been completed.

WHAT WAS OUR APPROACH?

122. After setting up a dedicated project team, we developed a project plan setting out the key deliverables with specific milestones and responsibilities. These included:

- Informing the public how anyone with relevant information (including digital footage) could contact us to provide this.
- Determining who we needed to interview.
- Engaging with those directly affected by the protest including the public, businesses, institutions in the immediate vicinity of the Parliamentary precinct, protest groups and the Wellington City Council and other local authorities.
- Setting up a process to obtain relevant information and views from:
 - a) Police;
 - b) mainstream and social media outlets;
 - c) protesters;
 - d) affected communities and interested parties; and

²⁹ These have been recorded as three separate complaints and are being investigated as such.

- e) the wider community/public.
- Triaging and responding to all complaints.
- Creating investigation plans for relevant specific complaints.
- Creating workplans for thematic areas to be covered by the review.
- Collecting and analysing material from multiple sources.
- Considering whether Police actions complied with law, policy, and procedure and whether any lessons can be learned from the policing of the protest and occupation.

General review

123. The project team obtained about 4,000 documents from Police, protesters and other interested parties. We also interviewed 377 people, some more than once. We analysed and considered all of the material and interview information to inform our review and reach our conclusions. The individuals we interviewed included:

- 193 Police officers and employees;³⁰
- 18 key interested parties including the (then) Prime Minister and other Cabinet ministers, the Speaker of the House, the Chief Justice, Parliamentary Service staff, the then Mayor and Wellington City Council staff;
- 34 staff from government agencies and other organisations that provided operational support to Police, including other councils, Oranga Tamariki, Māori Wardens, tow truck operators, Fire and Emergency New Zealand, Wellington Free Ambulance, Wellington Hospital and Ministry of Education;
- 70 impacted parties, such as local residents and businesses, and representatives from local schools, Victoria University, the National Library, Wellington Cathedral of St Paul, and Te Ātiawa and Ngāti Toa; and
- 62 individual protesters and representatives of protest groups, including activists and social media influencers.

124. We have prepared this report providing details of our general review and setting out analysis of the issues we have considered before making our findings. We include quotes in the report from

³⁰ Police staff were selected to interview from staffing lists and other documentation provided by Police. We interviewed a cross-section of the following: frontline, command and custody staff from all policing districts that deployed officers to the protest. This included officers who worked on 10 February and/or 2 March; officers who were injured on 2 March; recruits, new graduates and trainers from the Royal New Zealand Police College; and officers who volunteered, requested, or were referred by other officers to speak to us. We also interviewed all of the AOS and STG officers who were involved in the deployment of sponge rounds; officers who we identified as the subject of, or witness to, individual complaints; officers working in the various command centres and in the operation planning team; health and safety and welfare staff; tactical, national and district command staff; Deputy and Assistant Commissioners and the Commissioner of Police.

documents reviewed or people we interviewed where these are relevant and illustrate our analysis and findings, and sometimes to give voice to the emotions of those who were present.

Collection and review of digital information

125. We received and reviewed footage provided by complainants and members of the public via our online complaints form, email and through a secure web-based file sharing platform which we set up. The footage provided was often short snips, or not of the incident complained of but other contextual footage (for example, showing where the complainant was situated or the identity of the officers involved). We therefore needed to conduct a wider review of the footage to help us to assess complaints, and analyse the tactics used by Police.
126. As well as the digital material provided by complainants, we also obtained and reviewed 9.18 terabytes of raw footage from Police, including footage from the Police helicopter, Police videographers,³¹ and mainstream media outlets, along with CCTV footage from Wellington City Council, Parliament, Wellington Railway Station, the Supreme Court and the Court of Appeal. Almost 5.5 terabytes of this footage were from 2 March. We also obtained almost one terabyte of footage directly from mainstream media outlets and a social media influencer and activist who filmed over the duration of the protest.
127. In total, there were 6,540 video files with a date range of 8 February 2022 to 3 March 2022. These videos totalled more than 1,300 hours of viewing. Because of the unprecedented amount of digital footage received, we engaged the support of a forensic services provider to create data collection, storage and review processes and forensically collect, validate, and enhance footage where necessary. The validation process assisted us in ensuring the footage and photographs we received and took into account were authentic. It confirmed that, in one particular instance, a complainant alleging Police had used excessive force had manipulated the photographs he provided to us in support of his complaint.
128. We focused our footage review on seven key dates - 8, 10, 21-23 February 2022 and 1 and 2 March 2022 – as these related to the complaints we received and when particular Police tactics were used. There were 4,337 videos from these dates (3,913 of which related to 2 March), amounting to more than 320 hours of footage (breakdown provided below). To review this extensive amount of material, we engaged six dedicated reviewers who were assisted by 35 Authority staff on a rostered basis over a three-week period.

	Feb 8	Feb 10	Feb 21	Feb 22	Feb 23	Mar 1	Mar 2	Total
Length of content	9 min	30 hrs, 17 mins	59 mins	2 hrs, 26 mins	2 hrs, 26 mins	10 hrs, 11 mins	273 hrs, 57 mins	320 hrs, 17 mins

³¹ See the public report of the Authority and the Privacy Commissioner relating to Police conduct when photographing members of the public. This report specifically considers Police photographing during protests and other large gatherings and can be found here: <https://www.ipca.govt.nz/Site/publications-and-media/2022-reports-on-investigations/2022-sep-08-joint-inquiry-opc-and-ipca.aspx>.

Footage that was not available

129. The Parliamentary Service and Wellington City Council did not retain all CCTV footage from their respective cameras in and around Parliament grounds.³² By the time the Authority's project team requested the footage it had already been overwritten.
130. Notwithstanding the amount of footage available over the duration of the protest, Police only sought footage for 1 or 2 March 2022 from third parties. We wrote to the Commissioner on 18 July 2022 requesting an explanation for this stance. Police outlined it was not considered in the initial operational planning phase and, subsequently, their criminal investigation team was tasked solely with identifying the potential criminal activities of protesters on 2 March. This decision had two implications. First, it eliminated any opportunity for Police to genuinely and accurately examine and reflect on the strategies they employed during the course of the protest. Secondly, it demonstrated a lack of appreciation for the possibility that Police officers would be the subject of complaints from members of the public or the possibility that they might not have acted according to Police's Code of Conduct.
131. Further, Wellington Police District Custody Unit footage for 10 February was not available due to a system upgrade that occurred, and Lower Hutt Police Station cellblock footage for 10 February had been overwritten by the time the project team requested it (further details provided below). This hindered our investigation of issues raised by people arrested on that day and taken to Wellington or Lower Hutt Police stations.
132. Upon receipt of a complaint, it is the Authority's standard practice to request any available CCTV footage, particularly when allegations are made about Police's treatment of a complainant while in custody. However, in this instance, our primary focus was managing the volume of complaints relating to the protest and ensuring that they were all properly recorded. We highlighted those complaints made to us about treatment in custody to enable Police to secure any available footage, and we understood that Police were saving available footage for those complaints that had been made directly to them (and would later be notified to the us). In fact, Police did not do this. Irrespective of this miscommunication, we consider that, given we and Police began to receive complaints during the early stages of the protest, both organisations should have been cognisant of the need to ensure that footage was preserved immediately.

Parliamentary Service CCTV

133. On 2 June 2022, we requested the Parliamentary Service to provide us with any footage they had retained from the period covering the protest. Police had obtained footage from the Parliamentary Service from 2 March 2022 to assist in their investigation of potential offences from protesters on that day, but did not request footage for the entire protest period.
134. The Parliamentary Service confirmed they had not retained any footage other than the material they provided to Police and in relation to a specific incident of alleged assault between two protesters that occurred on Parliament grounds during the protest. It is their standard practice for

³² See paragraphs 133-140.

CCTV footage to be automatically overwritten after 28 days, unless bookmarked by a specific request earlier. No change to the standard practice occurred in this instance.

135. On 18 July 2022, the Authority sought an explanation from the Chief Executive of the Parliamentary Service of the standard operating procedures and clarification about whether they had considered retaining footage from the protest period given the unique nature of the event and the likelihood of inquiries being required into the handling of the protest.

136. The Parliamentary Service has confirmed:

- It is standard practice for CCTV footage to be overwritten after a maximum of 28 days. To be retained it has to be identified, extracted and converted into an image or video format. It is then retained in a separate repository and would be kept indefinitely.
- Their CCTV system at the time did not allow for easy extraction of footage and retaining 24/7 coverage of multiple cameras was never a possibility.
- The Parliamentary Security Service has a small number of staff who were at maximum capacity during and after the protest. There is not a dedicated role managing CCTV footage.
- During the protest Police had an officer stationed in the Parliamentary Service Security Control Room who was in control of where the cameras were focused and at times asked for images and footage to be saved. After the protest Police requested images and footage which the Parliamentary Service provided. No additional footage was saved or retained.

137. The Parliamentary Service accept that “*in hindsight more focus should have been given to this task*”. They have confirmed:

“...a lesson from our Parliament Security debrief was noted that there should have been someone dedicated to managing a log for footage and/or extracting throughout to ensure this was prioritised at the end and/or downloaded daily particularly given the known constraints of the hardware and software and the level of event. We are currently in the middle of upgrading our video management software and have already completed a separation of our networks allowing more power to be dedicated to our CCTV system.”

138. The quality of the CCTV footage from the Parliamentary Service cameras is very good. It would have greatly assisted our general review and the investigation of complaints if we had been able to access CCTV footage from the whole of the period of the protest. We consider that Police should have proactively considered asking the Parliamentary Service to extract and save this footage once the protest was deemed unlawful and, certainly, as the unprecedented nature of the protest became evident (resulting in significant public and media scrutiny) and would, more than likely, be the subject of some form of inquiry.

Wellington City Council CCTV

139. Wellington City Council owns and operates an extensive network of CCTV cameras which are placed in urban public spaces throughout the city, including around the Parliament precinct. Standard operating procedures are for trained CCTV operators to proactively monitor all cameras and report

any serious disorder directly to Wellington Central Police station via radio link. Police were able to view a live feed from relevant CCTV cameras during the protest. Wellington City Council retains all CCTV footage for 26 days and it is then erased unless it has been bookmarked for retention, normally due to a request from Police or a member of the public. The CCTV footage can only be used for prescribed defined purposes, most usually relating to criminal offences and public disorder.

140. On 9 March 2022, Police requested footage from two cameras around the Parliament area covering 1 and 2 March 2022. This was the only footage retained for the protest period. Wellington City Council responded to the Police request and have advised they would have retained the CCTV footage from the entire protest period if Police had asked them to do so. It would have assisted the Authority's team if footage covering the entire protest period had been retained. As with the Parliamentary Service we consider Police should have proactively considered asking Wellington City Council to retain all CCTV footage of the protest once the protest was deemed unlawful and, certainly, as the unprecedented nature of the protest became evident (resulting in significant public and media scrutiny) and would, more than likely, be the subject of some form of any inquiry.

Wellington District Custody Unit footage

141. The custody footage from Wellington District's Central Police station was not available for consideration by the Authority's team as it was destroyed when a scheduled system rebuild by an external contractor occurred between 16 February and 28 March 2022.
142. Wellington District's standard practice is to retain custody unit footage for 90 days, at which point the footage automatically commences overwriting itself with new information as it is generated. This is why Lower Hutt Police Station cellblock footage was unavailable when requested.
143. The Wellington District Custody Unit CCTV system is managed by an external company who advised Police in late 2021 that a full rebuild of the system was required. Due to COVID-19 and resource constraints the company confirmed this would be scheduled for the first quarter of 2022. During the rebuild period, the original hard drive was replaced with temporary recorders until a new system was installed. CCTV cameras were active throughout this period and available for viewing by Police staff in real time. Police advise that their expectation and previous experience was that any upgrade or rebuild would not affect their ability to retrieve any footage on the original hard drive or the temporary recorders. However, this was not the case here as the external contractor erased the footage without advising Police that this would be occurring.
144. We would expect Police to have clear contractual arrangements with such an external provider to ensure that footage would not be destroyed during a system upgrade or rebuild and that steps would be taken to ensure it remained available for the 90-day period. In this instance, due to the fact that the protest was still ongoing and significant complaints and issues had been raised about Police actions and the treatment of those arrested on 10 February, we consider that Police should have been more cognisant about the timing and potential impact of the rebuild and better mitigation strategies should have been considered and implemented.

Part 3: Public order policing

145. To provide some historical context and a framework for our consideration of the Police’s handling of the protest at Parliament, we consider in this section the general approach Police have taken in managing public disorder and crowd control and how this has changed over time.

HOW HAS PUBLIC ORDER POLICING DEVELOPED OVER TIME?

146. Public order policing is the phrase given to a range of civil disorder policing activities, including:

- policing politically motivated protests and demonstrations;
- policing riots;
- international peacekeeping;
- policing out-of-control parties;
- noise control;
- alcohol harm reduction strategies; and
- crowd control at (often) alcohol-fuelled disturbances at private parties or sporting or music events.

147. The year 1981 is a natural starting point when looking at how the Police response to public protest has evolved. It was in 1981 that the South African rugby union team toured the country, sparking widespread protests, many of them unlawful, about South Africa’s apartheid policy. This was the largest civil disturbance since the 1951 strike by waterfront workers and “*Operation Rugby*” was the Police response. There were running battles between protesters and Police on the streets and elsewhere; images of Police with riot shields and flailing long batons; and a general sense that the Police were at war with a substantial number of “*middle New Zealand*”, many of whom had never had any real interaction with Police before. The reputation of the Police was substantially tarnished; there were large numbers of complaints; and the inadequate process by which they were dealt with contributed to the enactment of the Police Complaints Authority Act 1988.

148. Despite the watershed nature of this event, it did not at that time lead to any overall reconsideration of the approach that should be taken to the policing of large-scale public disorder – either in how such disorder was thought about or how Police actually responded. Subsequently, Police were periodically called to respond to a small number of riots, including the 1984 Queen Street riot in Aotea Square, Auckland (when a free concert deteriorated into a riot), and the Castle Street riots between 2006 and 2009 (alcohol-fuelled student riots in Dunedin). Police were also routinely called to deal with out-of-control parties. The approach continued to be dominated by an overwhelming show of force and where necessary, enforcement and prosecution, though not to anything like the scale and intensity of the Springbok Tour.

149. There is a natural distinction between the Police response to lawful and unlawful protests, with Police lacking any power to intervene in the former, regardless of public perceptions of the cause being advocated. In 2004, for example, 15,000 people converged on Parliament to protest against proposed legislation which would have vested ownership of New Zealand’s foreshore and seabed in the Crown. The hīkoi began in Northland and travelled to Wellington, and in that respect has similarities with the 2022 protests. However, unlike the 2022 protests, the hīkoi was largely lawful and did not involve extended occupation of Parliament grounds. The resulting Police response was low key.
150. Occupations of public spaces and sites are nothing new. They have long been a vehicle for publicising a grievance, and mobilising support for it, and they are therefore a form of disorder with which Police have had extensive experience. The 1995 occupation of Moutoa Gardens in Whanganui, led by Te Runanga Pakaitore, lasted 79 days. With such Treaty-related protests, as with occupations staged for environmental causes (for example, on the West Coast in relation to mining and forestry), the common characteristics have been single issue focus and organised leadership with a mandate and intent to press the matter to resolution via political negotiation. While there has often been an element of unlawfulness, both these factors have lent themselves to a policing approach based around restraint and dialogue. In contrast, as we will explain later in this report, decentralisation, lack of coordination, and limited negotiability were defining characteristics of the 2022 protests.
151. Before 2008, operational matters including public order policing were governed by general and specific ‘instructions’, rather than policies. From about the turn of the 21st century, these were converted into policies. In 2008, the first public order policing policies were published,³³ covering:
- noise control;
 - behaviour offences;
 - unlawful assembly and riot;
 - demonstrations;
 - mass arrest; and
 - public order protective equipment.
152. Around this time equipment, including helmets and personal protective equipment, was also upgraded.
153. At about the same time, concerns about New Zealand’s state of preparedness for public order events (as reflected in a 2007 internal Police report) coincided with a shift in thinking about the way in which they should be policed. Similar shifts were occurring internationally. Between 2008 and 2011, Police leadership supported a review of public order policing, with a view to modernising what was, at the time, known as ‘team policing’. A major shift in policy and philosophy began to

³³ Public Order Policing version history provided by Police National Headquarters.

evolve. The aim was to move to a 'prevention-first' approach, rather than the response-driven approach that had come before. For example, a key focus of the modernisation was the development of policing strategies to prevent alcohol-related harm, because alcohol-fuelled public disorder constituted a high proportion of public order policing. In 2011 a public order policing charter was drafted to reflect this cultural change, and it informed Police's approach to public order training for the Rugby World Cup 2011.

154. As part of the policy review, senior officers approached the New South Wales Police for training support, noting that the New South Wales public order policing model was based on the 2009 London Metropolitan Police's model. There was concern that not only should New Zealand be looking to overseas for examples of 'best practice' that could be adapted to suit New Zealand's domestic environment, but also that New Zealand Police should be inter-operable with the Australian Federal Police in the event of deploying together to restore law and order in the Pacific, as they had been doing under the Regional Assistance Mission to Solomon Islands since 2003.
155. Before that policy was finalised and approved, 'Team Policing Units', responsible for the response side of public order policing, became known as 'Police Support Units' (PSU). Officers tell us there was a good PSU structure in place by 2011. Specifically:
 - three Public Order Commanders were appointed;
 - three full-time squads established in Auckland, Wellington and Christchurch;
 - part-time squads were established in other centres;
 - the International Public Order Squad was formed, designed to be available to deploy to the Pacific region as required; and
 - New South Wales Police came to New Zealand to deliver training around the country.
156. Philosophically, the new model had a greater focus on engagement and intelligence, with the aim being to avoid escalation of public disorder to the point where Police would be required to use force. Practically, this meant Police trying to get advanced warning of protests or other events of a public order nature, so they could do the necessary planning to find a way for people to achieve their goal (whether that be to hold a function or to protest) without significant disruption to other members of the public. It included a strong focus on working with organisers to reach a mutual understanding about how the event should proceed, and to ensure their activity could be made safe for participants and for non-participating members of the public.
157. Police policy for when situations did deteriorate and force was required remained largely unchanged, although new operational systems and processes aimed to improve the professionalism, training and standardisation of the response.
158. Police policy on policing the precincts of Parliament was first published in 2011. This area of policing had previously been defined in an agreement between the Speaker of the House and the Commissioner of Police. A separate policy relating to Parliamentary precincts is desirable, partly because the grounds of Parliament naturally attract a greater number of protests than other public spaces, and partly because the close proximity of Parliament to the Executive Government and the

Courts means that the impacts of a protest escalating out of control are more profound. The 2011 policy was therefore a welcome development. However, it was (and continues to be) very light on detail, and most of it has nothing to do with public order policing. It describes the law on trespass, the role of the Speaker of Parliament and the powers of Police, but it says little about how protests should be planned for or policed. As will become evident throughout this report, we think that processes to respond to protests in Parliament should be specified in more detail, and be more widely understood, not only by Police but also by parliamentary and court security personnel. It may be more appropriate that these be contained in standard operating procedures rather than in policy.

159. The new public order policing structure and policy was first tested in May and June 2012, when Police were called to respond to two demonstrations in the streets surrounding Auckland University in the central city. On the afternoon of 24 May 2012, about 300 demonstrators blocked streets, successfully stopping traffic from leaving the city from Symonds Street. During that demonstration only two or three Police officers attended and there were no arrests. On 1 June 2012, Police received prior notice of a second demonstration by the same group. They carefully planned their response and about 50 officers attended. One of the key officers involved said his plan was for *“minimal deployment, maximum reserve and a high level of tolerance of unlawful activity”*. Police aimed to allow the protest, close roads as required, but also facilitate the flow of traffic on a Friday afternoon of a long weekend. They also appointed a liaison officer to maintain a communication link with protest leaders.
160. Forty-three people were arrested for obstruction, and several complaints were made to the Authority regarding the Police response. Our investigation found that Police balanced the rights of those demonstrating with the rights of members of the general public, and the force used by officers was appropriate, reasonable and justified in the circumstances.³⁴ It was the first real reflection of a change to a softer, less confrontational and less aggressive approach to policing public disorder, at least in the context of protests. As the Acting Area Commander expressed it to us at the time:

“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.”

161. On 20 December 2013, the new ‘Public Order Policing’ policy was approved. This was described as an amalgamation of several existing parts of Police policy, such as those described in paragraph 146, as well as new topics which were brought under the heading of ‘public order’. Some of the policies which were published for the first time included:

- Police Support Units (PSUs);
- Public Order Intervention Model; and

³⁴ [Independent Police Conduct Authority Policing of Blockade the Budget Demonstrations in May/June 2012, Public Report, October 2014.](#)

- Out of Control Gatherings.
162. There have also been regular but modest tweaks to other parts of public order policing policy since 2013, essentially along the same lines.
163. Overall, all of these policy changes have been oriented towards an approach aimed at upholding people’s rights to protest and freedom of movement, while preventing the escalation of violence, rather than simply responding to it.
164. A good example of the benefits of these changes can be found in 2016, when Police deployed 400 officers from across the country during the signing of the Trans-Pacific Partnership Agreement. Police tell us those officers undertook three weeks of dedicated operation-specific training, before successfully facilitating a peaceful protest of approximately 15,000 people with minimal arrests.
165. However, our impression is that the shift in approach has by no means been uniformly implemented or necessarily welcomed by the organisation as a whole. It is better characterised as a gradual and piecemeal evolution, with some parts of the policy but not others reflecting the new approach. As a result, there has never been an overall national agreement on what policing in this area should look like. Nor has there been a comprehensive policy and a uniform match between policy and practice. As a result, anecdotal evidence suggests that its implementation has varied between one district and another.
166. The uneven nature of changes in this area is demonstrated by an Authority report published in 2014 to address complaints about how Police responded to out-of-control parties.³⁵ That report highlighted the complex legislative basis for Police powers to shut down parties, and noted that officers did not always fully understand or consider the legal authority for their actions and took an excessively law enforcement rather than preventive approach to the problem. It was not until 2016 that the recommendations in that report fed into the implementation of a revised Out-of-Control Gatherings policy with clear guidelines on the limitations of Police powers in respect of events on private property and emphasis on the importance of prevention and Police engagement with event organisers.
167. The shift in thinking has also not been properly reflected in the training and skills of those responsible for public order policing at an operational level. Senior officers with significant public order policing experience have told us that since 2013, PSUs have struggled to get the resources required for adequate training and the development of standard operating procedures. One officer said that from 2012 or 2013: *“public order policing became a very dirty word and squads were scaled down and prevention first was going to be the answer to all our woes.”*
168. We have also been told that some supervisors have tried to implement standard operating procedures for PSU to improve consistency across the country, but that Police National Headquarters *“lacked the appetite”* for this. Police National Headquarters say the stumbling block

³⁵ [Independent Police Conduct Authority Police Handling of ‘Out of Control’ Parties Public Report, August 2014.](#)

is the failure of the three dedicated squads to settle on an agreed model to present to them, with the disagreements being on peripheral, rather than core, issues.

169. We have been told that the inconsistency in standard operating procedures from 2013 to the present has been exacerbated by a failure to provide sufficient training time. Public order commanders have advocated for a comprehensive five-day training course, but have only been able to get an hour-long training session incorporated into the general Police Integrated Tactical Training (PITT) course.
170. This is understandable. There is always a long list of training needs and pressure on available training time, and public order policing has often been given a lower priority than other things. Police told us that, given the competing demands on training, it is not feasible to train all staff in the specialist area of public order policing. We accept that the 2 March occupation and riot was a rare event, and while it would have been advantageous for all staff to have had training and experience in dealing with that situation, that was not a realistic expectation.
171. But we still think that in general terms there is something of a deficit in training in this area. The problem has been exacerbated by the devolved structure of Police, which leaves individual districts with a significant degree of discretion in the way in which they implement changes in policing doctrine. As a result, the three districts with full-time PSUs (Auckland, Wellington and Christchurch) operate largely independently. Variability (for example, in the time allocated to training) has arguably been even greater in districts with part-time PSUs.
172. A 2020 internal Police report prepared in anticipation of New Zealand hosting the Asia-Pacific Economic Cooperation forum in 2021 (APEC 2021) highlighted the unsatisfactory nature of Police policy and practice in this area. Some of the criticisms included:
- The theory behind public order tactics in New Zealand focussed on crowd control – the concept of policing the crowd rather than the individuals in it, as had occurred during the widely-criticised UK Police response to the 2009 G20 protests.
 - Police instructions (policy) offer overarching principles, but not the detail to facilitate effective planning and operations.
 - Training standards and tactical equipment differ across the country.
 - It is a mistake to adopt overseas (UK/US/Australia) overly militarised crowd-control approaches in New Zealand.
173. We note this last point was not fully supported by others in Police we spoke to, who thought it essential to maintain inter-operability with countries such as Australia, while making any necessary adjustments for the New Zealand environment.
174. Following on from that report, the National Coordinator of Public Order Training developed a new model and training package for New Zealand Police in preparation for APEC 2021. When APEC 2021 became a virtual meeting, the development of the package was abandoned, funding was withdrawn, and the model was never approved. The model developed for APEC 2021 was broadly as follows:

- intelligence gathering – identifying who the key stakeholders or the people with the most influence within an issue-motivated-group are, engaging with them early and identifying what they are actually trying to achieve;
- trying to facilitate those people and groups achieving their objectives within the confines of the law, including offering guidance on how they can get their message across without causing too much negative impact on society;
- public order management – the tactics deployed both at places like sports grounds (where there are crowds who are not necessarily issues-motivated) and at places where crowds congregate around a particular issue and behave lawfully; and
- control – the actual control of protests where there are elements of unlawfulness.

175. The architect of this plan believes that while the model may need some updating, it is still broadly relevant, and would have been relevant to the policing response to the 2022 Parliament protest. Others we have spoken to agree with some of the components but think that a plan drawn up for APEC 2021, where largely peaceful protests were anticipated, is not sufficient to cover the full spectrum of public disorder that Police may encounter.

176. We understand there is a manual created out of this work which, while never officially approved by Police leadership, has been informally implemented by PSU. The first component is a formations manual for Police in public order situations, and the second comprises standard operating procedures and tactics. This has gone some way towards addressing the inconsistency in standard operating procedures and the deficits in training. In particular, we note that some training sessions were held in various parts of the country in 2021 and 2022 based on the formations manual as a basis for training. However, the absence of a clear mandate from Police National Headquarters has resulted in variable uptake. Even in the three Districts with full-time PSUs, we understand that training and practice still has a significant degree of inconsistency, and that this is even more manifest in the other districts with part-time squads.

177. The shift in thinking about public order policing towards a more preventive and low-key approach that emphasises engagement, persuasion, and negotiation and minimises the need for confrontation and use of force is, to some degree, reflective of developments in other jurisdictions such as the UK, Canada and Australia to which New Zealand often looks for best practice guidance.³⁶

178. In summary, at the time of the protests in February and March 2022, the underlying philosophical approach to public order policing in both New Zealand and other comparable jurisdictions had undergone a substantial but gradual transformation over the previous 15 to 20 years. There is now a clear aspiration and strategic commitment to approach public order policing from an enabling point of view, rather than as an enforcer or even regulator. Ultimately this has been based on the view that it is essential to Police legitimacy in the eyes of the public that policing be seen to be undertaken with broad community support; that running battles on the street with those exercising

³⁶ See, for example, [Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services *Getting the balance right? An inspection of how effectively the police deal with protests 2021*](#).

their right to protest is likely to be at odds with that; and that negotiation and persuasion should be preferred, with force as the last resort.

179. We do not think there is anything in the Police response to the parliamentary protest that calls this overall strategic approach into question. Generally, it has served Police well in the policing of several high-profile events as well as the routine policing of crowd events such as parties held by young people. In this case, Police generally performed well in dealing with a situation that was unprecedented in many ways.
180. However, as our analysis of events in the parts that follow will demonstrate, there are several issues that need to be addressed.
181. First, as set out above, the shift in thinking has not been fully communicated on paper. More importantly, there has been inadequate articulation in policy, training manuals and standard operating procedures of what it means in practice, especially in relation to the policing of protests. As a result, the practical implications of the preferred strategy are not fully understood by general duties staff and even PSU staff. For example, while the policy states who can authorise the use of helmets, riot shields and other protective equipment, the criteria that should govern the decision is written in fairly general terms. The same applies to decisions about whether officers should be equipped with long batons, pepper spray or other tactical options. While we recognise that decisions of this sort must be context-specific, we think that more detailed guidance, supplemented by a range of scenarios, would assist decision-making and avoid some of the confusion and disagreement that occurred at the parliamentary protest in 2022.
182. Secondly, as we have noted above,³⁷ there is no real mention in policy or other operational documents of the extent to which the policing of protests in or around the precincts of Parliament involves particular considerations and risks that should be taken into account in planning and operational strategy. We recognise that Wellington District is well used to managing protests in this context, since they are a routine event. Nevertheless, the special processes and requirements for responding to protests in the Parliamentary precinct should not be left to understandings and conventions that exist in the minds and memories of senior officers. They should be specified in detail, and be widely understood, not only by Police but also by parliamentary and court security personnel.
183. Finally, while protests have always been dynamic and volatile, with a degree of unpredictability, Police policy has generally been devised on the historical assumptions that protests will be organised and single-issue, with a clear leadership structure. Ease of communication on social media (in its many guises), and the disinformation and misinformation that accompanies it, mean those assumptions are no longer valid. A constant theme throughout this report is that traditional ways of managing protests were therefore much harder to implement. There was no consistent identifiable leadership; there was a range of disparate agendas; and the response to Police actions

³⁷ See paragraph 158.

was harder to predict. The nature of an approach based on facilitation, engagement and persuasion may need some rethinking in the light of that.

184. We will discuss these issues in more detail in the concluding part of the report.

Part 4: Events preceding the protest and Police’s initial action

185. In this section we consider events from when Police first became aware of the protest on 1 February 2022, the information they had and the way they managed matters up until the end of 9 February. We consider the following three issues in detail.

- Did Police have adequate intelligence information about the protest and was that properly communicated?
- Did Police make proper use of the information the Intelligence staff provided?
- Were Police actions to handle the protest on 8 and 9 February adequate and appropriate?

DID POLICE HAVE ADEQUATE INTELLIGENCE INFORMATION ABOUT THE PROTEST AND WAS IT PROPERLY COMMUNICATED?

186. Police first became aware on 1 February 2022 that there was a plan for a convoy of vehicles to converge on Wellington to protest about the COVID-19 mandates.

187. To obtain and assess the significance of this type of information, and determine the appropriate tactical and operational response, Police depend upon the effectiveness of their “*intelligence functions*”. These comprise:

- scanning publicly available (‘open-source’) information and communications on social media (such as Zello, Telegram, and Facebook) and elsewhere;
- collating information received from other Police staff and outsiders about patterns and trends in criminal activity, protests and other behaviours that might be of concern to Police; and
- analysing that data and providing timely, accurate and relevant insight and foresight to enhance Police’s tactical, operational and strategic decision-making.

188. There are obvious limitations to this. Many social media sites are closed and accessible only to those with access approval. Police need authorisation from the courts to access those sites and cannot obtain one merely for the purpose of gathering “*intelligence*”; they must demonstrate reasonable grounds to believe that they will find evidence of a specific offence.

189. Intelligence functions are undertaken at both national and district level. At the national level the National Intelligence Centre (NIC) is structured in five broad capability groups. Among other things, they provide strategic forecasting and long-term predictive assessments of future crime and harm to inform decisions about strategy and policy.

190. The NIC also liaises with District Intelligence Units (DIUs), which sit within each of the 12 Police Districts. A DIU reports to their respective District Commander and provides direct support to decision-makers at the District and Area level, with an emphasis on the provision of operational and tactical intelligence. They play a fundamental role in supporting daily Police activities, providing

insight into the nature of demand, identifying trends, and forecasting future threats, risks, and opportunities. An intelligence problem may affect more than one district, in which case DIUs will share intelligence with one another.

191. In the period between 4 November 2021 and 27 January 2022 (before the information about the impending convoy became known), the NIC produced ten different reports about the changing nature of protest activity and the level of risk it presented. We are satisfied that, in developing these reports, they scanned the range of sources they would have been expected to, including relevant open-source social media sites.

192. In summary, they reported:

- There were *“growing frustrations with ongoing COVID-19 restrictions and the perception that vaccine mandates are infringing on personal freedoms”*, and a shift from anti-vaccine fringe ideology towards a 'freedom' movement, encompassing issues across a broader spectrum.
- This was accompanied by a notable increase in the number of, and attendance at, COVID-19 related protest events and an escalation in levels of activism and in anti-authority and anti-Police sentiment.
- There were isolated incidents of confrontation/violence and vandalism.
- There were therefore enhanced risks in the Police operating environment, particularly in the lead-up and just prior to the final vaccine mandate deadlines (January/February 2022). In particular, if COVID-19 *“fatigue”* continued, there was a risk that the frequency and levels of aggression of protest activity might increase, requiring additional Police resources.
- The most likely scenario was *“the continuation of the current activist environment, including protests, the potential for minor disorder and merging of various ‘niche’ issues”*. However, the worst-case scenario was that *“the activist environment moves away from largely peaceful demonstrations to mass protests with physical violence and civil unrest”*.
- It was possible protesters, such as the Freedom and Rights Coalition and associated groups, might escalate their behaviours and be influenced by protest tactics seen in international activism should they continue to feel overlooked or side-lined.

193. On 29 November 2021, the NIC also produced a joint report with the inter-agency Combined Threat Assessment Group that examined the Sovereign Citizen (*“SovCit”*) movement in New Zealand and assessed its nexus to violent extremism.³⁸ The report stated that the *“SovCit rhetoric has become*

³⁸ The Combined Threat Assessment Group (commonly called CTAG) is an inter-agency group for assessing terrorism threats to New Zealand. It comprises representatives of several government agencies: the New Zealand Security Intelligence Service, Government Communications Security Bureau, Defence Force, Police, Civil Aviation Authority/Aviation Security Service, Department of Corrections and Ministry of Foreign Affairs and Trade. The Sovereign Citizen movement is a loose grouping of litigants, activists and conspiracy theorists who claim to be answerable only to their particular interpretation of the common law and believe that they are therefore not subject to any government statutes or government imposed restrictions unless they consent.

increasingly prominent in New Zealand in connection to anti-authority movements opposed to COVID-19 mitigation programmes....”

194. On 1 February 2022, Intelligence staff in two separate Districts became aware of the plan for a convoy through two independent sources: firstly, a member of the public notified a State-owned Enterprise, which forwarded the email to Wellington District Police; and secondly, the Northland DIU discovered publicly available information detailing the planned convoy and indicating that vehicles would be coming to Wellington from opposite ends of the country, starting from Cape Reinga and Bluff.
195. As soon as Northland DIU found the information, they produced an Intelligence Notification which included an assessment that the planned convoy to Wellington intended to protest outside Parliament. This was distributed to the District Commander and other senior managers in Northland Police District. It was also sent to two group email boxes in the NIC.
196. The Notification included the details of organisers, communication channels and key timings for movement. However, no clear leaders were able to be identified, and at this point no information existed to indicate that the convoy intended to camp at Parliament.
197. As the convoy began to form, multiple DIUs and the NIC Open-Source Intelligence Team (‘the OSINT Team’) monitored the event.
198. Following this, multiple comprehensive intelligence reports were produced between 1 and 5 February. One of these, on 3 February, assessed that the protest was *“likely to occur but not to the scale indicated on social media, or the likes of similar protests seen in Canada”*.³⁹ Notably, however, an intelligence report on the following day from the Wellington DIU said there were suggestions of an occupation at Parliament, although it included the caveat that previous suggestions of such behaviour by similar groups had not been followed through. This report included specific comments on how to address the emerging risks, including dealing with the impact on traffic. It drew attention to the possible need for wider government liaison, engagement with protest organisers, and enhanced physical security strategies. The report was distributed *“for action”* to the following staff in Wellington District:
 - the District Commander;
 - the District Leadership Team (including the Prevention Manager, the Operations Manager, the Crime Manager, and the Road Policing Manager); and
 - the District Command Centre (DCC).
199. It was also distributed *“for information”* to the District Manager Intelligence, other District Intelligence Teams, Protection Services and the NIC.

³⁹ The protest in Canada was widely publicised in New Zealand and was notable for its use of vehicles to block major highways.

200. Police also received a media request during the morning of 3 February querying Police's preparation for the protest happening on the weekend. Specific questions were:

"Have the organisers been in contact with the police regarding their plans?"

How will police control this protest as it intends to travel the entire length of the country?"

What numbers are police expecting?"

Is police concerned about the involvement of extremists as has been seen in similar truck protests in Canada?"

What preparations will police make for the convoy's destination near Parliament?"

What actions will police take if drivers attempt to block roads?"

201. The response from the Police Media team was:

"Police is aware of the planned protest action and will be monitoring it. We will respond to any issues as they arise."

202. Police have no record confirming that Wellington DCC were consulted when this response was formulated. If they were not, they should have been, because the specific nature of the questions was relevant to the assessment of the risk that the forthcoming protest presented.

203. Over Waitangi weekend (Saturday 5 to Monday 7 February), the OSINT Team Supervisor monitored real-time communication about the protest on multiple publicly available channels, in line with Police standard operating procedures. They also sent 19 email updates to the Wellington DCC, the National Command and Coordination Centre (NCCC) and, when applicable, command centres in other districts to make them aware of the developing situation.

204. This not only provided vital information about the convoy's progress, intent, locations, and size, but made significant observations about the number of vehicles within the North Island convoy. It was reported as likely that up to 300 vehicles would be arriving in Wellington, although a report of up to 1,000 convoy vehicles being sighted in Hamilton was also included.

205. Police were aware that the term *"stay until the mandates end"* had been used by convoy participants. However, there was conflicting information about whether they intended to camp in and around Parliament. The OSINT Team Supervisor told us that this was because convoy participants were making plans organically and communicating the detail spontaneously as the convoy progressed. On the one hand, there were indications the convoy was seeking accommodation options for when it arrived in Wellington, and that it was likely they would follow a multi-day protest model (where protesters come and go to Parliament to protest during the day), not an occupation model (where protesters stay at Parliament). On the other hand, there was intelligence that resources were available from sympathisers to provide goods and donations to support an extended stay for protesters in Wellington, and that some had expressed an intent to camp on Parliament's lawn.

206. On 7 February at 10.31pm, the OSINT team sent an email providing an update on the status and likely intentions of the convoy based on scans of social media conducted over the weekend. This update repeated that some participants had “joked” on social media about camping on the lawn of Parliament. It identified that Wellington supporters were being asked to park at and around Parliament from Monday night (7 February) to secure parking spaces for the incoming convoy the next day. It also assessed that “it is likely, based on the support shown to the convoy participants so far, that the convoy could sustain a week or more of occupying central Wellington should the organisers request it.”

207. Despite that, the OSINT Team Supervisor told us he thought that the intent to camp was not solidified until the evening of 8 February (the first day of the protest and occupation):

“...even on that first day, there was still a lot of accommodation sharing stuff going on with Telegram. Like, ‘Hey, you can come stay here.’ This person’s offering a place or a car park or you can park in their driveway and use their showers.... I don’t think even at that point a lot of people thought they would necessarily stay [at Parliament].”

208. Given the conflicting indicators as to the likely nature of the protest, we think that this was a reasonable assessment and that Intelligence staff were not in a position to identify an actual formal intent to occupy Parliament grounds in advance of the occupation.

209. In summary, we are satisfied that Police Intelligence staff acted professionally in the collation and dissemination of pertinent information by:

- providing very good information on the changing nature of the protest environment;
- identifying the planned convoy at an early stage;
- appropriately monitoring developments in real time;
- identifying the risk of an occupation of Parliament, and making an appropriate assessment of its likelihood on the information realistically available to them; and
- communicating this information to a wide range of Police decision-makers.

FINDINGS

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?

210. While the information provided to Police decision-makers by Intelligence staff did not suggest that an occupation of Parliament grounds by the incoming convoy was likely, we have noted above that there was sufficient information to demonstrate that at least some of the protesters were considering that option and that it was more than a remote possibility.⁴⁰ Moreover, by Monday 7 February, while Intelligence staff were reporting that 200-300 vehicles were likely to be descending on Wellington, the possibility that approximately 1,000 vehicles might do so was also explicitly conveyed.
211. Part of the problem with the way in which this intelligence information was disseminated is that it went to a wide range of people by way of updates. For example, the Intelligence Report on 4 February (see paragraph 198) was sent to several senior managers in Wellington District for action, including the District Commander and the Operations Manager. No single person was designated as the responsible manager. This is common practice in many organisations, including Police, to ensure that everyone is kept informed. However, when vital information of this sort is communicated to a wide range of individuals across the organisation, rather than to a single individual, the obvious consequence is that there is a real risk that no one receiving it will take responsibility for ensuring that it is given proper and timely attention, especially when it is being sent after hours or over weekends. Similarly, in accordance with usual practice, the estimate that a likely 300, but potentially up to 1,000 vehicles were in the convoy was included in a generic update sent to the NCCC on the night before the convoy's arrival, in the knowledge that this would be included in the daily brief to the Executive Team the next morning. However, there was no identifiable individual with the responsibility for determining what action, if any, ought to be taken.
212. In this case, the Wellington District Duty Inspector told us he expected an operation order to be developed by the Operations Support Manager's group setting out how Police would respond to the planned protest. It was appropriate for responsibility to rest with that group, since it has responsibility for the planning function for all protests. However, the Operations Support Manager told us that, after considering the Intelligence report dated 4 February, the group assessed that an operation order was not required because the protest could be managed with existing Wellington District resources and a warning order for local staff was therefore sufficient. They took the view that, while the protest was going to cause congestion, there was no indication on 4 February of the number of vehicles anticipated or that it would be unlawful or violent, and so no special measures were required.
213. Accordingly, in a document termed a 'Warning Order' (for some unexplained reason dated 8 February), the Operations Group communicated in an email sent on 4 February to a wide range of people that:
- the Wellington DCC would be overseeing the event and deploying staff as necessary;

⁴⁰ See paragraphs 205-206.

- the Wellington City Council and Wellington Traffic Operations Centre would be monitoring their respective CCTV cameras and advising the DCC of any potential disruptions;
- Parliament Security would be contacting the DCC to notify them of any protest action occurring on Parliament grounds; and
- a “4E graduated response model” would be adopted, comprising the following strategies in order of priority: engaging with the protesters and identifying any potential threats; educating them on the requirements of a lawful protest; encouraging compliance if required; and enforcement by way of warnings or prosecution only when necessary as a last resort.⁴¹

214. The document also described the powers available to Police to move vehicles causing an obstruction or hazard on a road or a risk to public safety but said that these powers should be considered only in “exceptional circumstances”.

215. Some of this information was reiterated in an email to the District Commander and other relevant managers, sent at 3.55pm on 7 February by the District Crime Services Manager (acting in his capacity as Duty Inspector for that week). This email also said:

- traffic would likely converge on Wellington between 7am and 9am;
- although it was difficult to assess how many vehicles would actually turn up, it was “*apparent plenty would*”;
- disruption to commuters was likely;
- no additional staff had been rostered on for the day of the arrival of the convoy (which meant that the only available staff would be 16 road policing staff, five uniformed patrol (Public Safety Team) staff and a few area investigation and prevention staff if needed);
- no detailed operation order had been put in place to deal with it; and
- at least 200-300, but potentially up to 1,000, vehicles were thought to be on the way.

216. An intelligence update was attached to this email, advising that the NCCC had asked all DCCs to enter updates relating to the convoy into a shared Police database. The email included information that at 9am on 7 February, Waikato District Police had estimated 370 plus vehicles in a convoy in the Waikato District and had noted that this was likely to increase as it travelled down the island.⁴²

217. On 8 February, the Senior Sergeant in charge of Wellington DCC started work at 5.30am. He was aware of the planned protest action and requested updates from the other Police Districts about

⁴¹ The 4E model, which we note below was the term used to describe the Police approach to COVID-19 incidents, entailed essentially the same philosophical approach as that underpinning the current approach to public order policing discussed in Part 3.

⁴² The intelligence update attached to the email estimated that an additional 300 plus vehicles were coming from the South Island but that they were unlikely to get beyond Picton.

how many vehicles were involved in the convoy. He was advised by Central District Police of two convoys, one with between 400 and 500 vehicles and a second convoy with about 150 vehicles.

218. In our view, the information set out in the 4 February email (that was repeated in the email on the afternoon of 7 February) was not a sufficient substitute for an operation order. Although the assessment on 4 February that an operation order was not required may have been warranted on the basis of the information available at that time, by 7 February more information as to the number of vehicles travelling to Wellington had been provided by Intelligence, and the Duty Inspector (who was on duty in place of the Operations Support Manager due to the public holiday) should have escalated the matter to enable broader consideration of the required response by the Wellington Police leadership team. Equally, for an event of this significance, the District Commander should have recognised the importance of the information and discussed it with the Operations Support Manager. None of this occurred.
219. Although intelligence is not an indication of what *will* occur, but what *might* occur, the non-escalation of the Intelligence Reports and the consequent failure to determine the initial response at District operational supervisory level suggest an under-estimation of the potential risk that the anticipated protest posed to Police, Parliament and the community.
220. Even so, it is not clear that higher level consideration of the intelligence and a greater precautionary approach to risk would necessarily have brought about a different operational response. Wellington District's staffing constraints, and the limited availability of outside reinforcements, both in numbers and capabilities (especially at short notice), meant any meaningful alternative operational response could only have been a limited one. Furthermore, as we discuss below,⁴³ there would have been no power to warn trespassers to leave Parliament grounds until the Speaker had issued them with a warning. Police did not in any event receive a delegation from Parliamentary Security staff to act on the Speaker's behalf until 10 February.
221. Having said that, the information Police had on 7 February that possibly 1,000 (and likely 370 plus) vehicles would be arriving in Wellington on 8 February strongly suggested that this event was not going to constitute normal protest activity. This was especially so given the likely replication of blockades and other similar protest actions occurring in Canada and elsewhere at the time. It should therefore have set off enough alarm bells to prompt more active oversight at District and National command levels, and to have initiated a planning process based on a range of risk scenarios and response options. We note too that, if there had been more specific and better developed standard operating procedures about the policing of protests in the Parliamentary precinct, there might have been better procedures for an escalating response at short notice.
222. At the least, the estimated number of vehicles was bound to cause major disruption in the city centre and should have prompted consideration, and consultation with Wellington City Council about whether there was a need for a traffic management plan. This should have occurred as soon as the intelligence became available and certainly by the afternoon of 7 February.

⁴³ See paragraphs 260-271.

223. Some of those we interviewed said that such a plan should have included pre-emptive road closures in the vicinity of Parliament. We have considered whether this would have been legally feasible.
224. Under section 35 of the Policing Act 2008, Police can temporarily close a road or part of a road if they have reasonable cause to believe there is present or imminent public disorder nearby, if danger to members of the public can reasonably be expected nearby, or if an offence punishable by 10 or more years imprisonment has been committed or discovered nearby. We doubt that any such reasonable cause would have existed before the occupation of Parliament grounds had even begun; after that, the moment for pre-emptive action had passed and the horse had bolted.
225. Alternatively, a local authority can close a road temporarily under section 342 of the Local Government Act 1974, after consultation with Police and Waka Kotahi. While the Council are empowered to do so “*where public disorder exists or is anticipated*”, they can also do so “*when for any reason it is considered desirable that traffic should be temporarily diverted to other roads*”. This road closure provision therefore has a wider scope than its equivalent in the Policing Act. Police may resort to it only if they have the appropriate delegation from, in this case, the Wellington City Council, but that could readily have been obtained at short notice.
226. We recognise that, if the intelligence information had been properly scrutinised and considered, it would not necessarily have led the District Commander or Operations Support Manager to conclude that an occupation was likely or that resources should be deployed to prevent it. But the estimation of the number of vehicles reported to be headed for the Wellington city centre was fairly reliable and readily verifiable information, and certainly warranted consideration of what response was required to manage it. For example, if road closures had been put in place as part of a broader traffic management plan under section 342, vehicles could have been prevented from reaching Parliament, which might have made more difficult the logistics involved in erecting the structures that supported the occupation (such as toilets and kitchen facilities).
227. When interviewed, the District Commander acknowledged that the Police could have “*missed a beat*” in this respect. He noted that approaching Waitangi weekend the District was under considerable pressure because of staff absences due to COVID-19, and he and his staff were busy up to Friday preparing Business Continuity Plans for routine policing in response to staff absences.
228. The District Commander made the point that Wellington deals with a substantial number of protests because Parliament tends to be a focal point for them. Wellington District is therefore well used to making assessments about the requirements for policing protests. He acknowledged that, while best practice would be to prepare an operations order, he believed any order would have looked the same as the one prepared for the previous large protest that occurred in December 2021, where protesters had their say and then left peacefully. Apart from “*what’s the volume going to be like?*”, there was no information causing him any additional concern. He also pointed out that he did close roads for the subsequent protest by the Freedom and Rights Coalition in August 2022, and was criticised for doing so. The Operations Support Manager also said that previous protests in Wellington, including that in December 2021, had been resolved with no significant issues.
229. However, the December 2021 protest resulted in a 35-page operation order with 120 staff rostered to police the protest, including staff from other districts. The information available to Police for that

protest was that there was no confirmation of numbers, the group had not engaged with Wellington City Council or Parliament and it was expected to be a non-violent protest. We have been unable to discern any good reason why the pending February 2022 protest should have received less planning consideration. A plan might have looked much the same as that for December 2021, but one should have been considered, prepared and disseminated.

230. Police have submitted that, while intelligence suggested that Wellington protest supporters had been asked to hold parking spaces in advance for the convoy, there was no information to suggest they intended to block roads. While Police agree that the Local Government Act 1974 empowers the Wellington City Council to close a road whenever “*for any reason*” it is considered desirable that traffic be diverted, they say the right to freedom of movement under section 18 of the New Zealand Bill of Rights Act 1990 (NZBORA) requires that Police exercise that power only when it is necessary and proportionate in the circumstances. Police believed there was insufficient intelligence to meet that test.
231. Police have also argued that traffic diversions would have caused more disruption to a greater area of the Wellington CBD (possibly even critical infrastructure) than the protest itself, and that motivated protesters would have arranged to get in the equipment and resources they wanted (as they still subsequently did after bollards were put in place).
232. We recognise that Wellington District is well versed in dealing with protests, and that the District Commander’s decisions are often delicate balancing acts with uncertain outcomes. However, we reiterate that there was good reason to think that this event was likely to be significantly different from the ordinary run of protests and required particular attention and greater planning. The fact that this did not occur can be attributed to an initial under-estimation of risk, and perhaps an element of over-confidence and even complacency, deriving from Wellington District’s experience of and familiarity with protest events.
233. It would be easy to conclude that Police missed an opportunity to cut off the occupation before it started. Any consideration would have undoubtedly factored in the existing intelligence which included this was a ‘convoy’ (and termed such by the organisers) which had the stated purpose of travelling to Parliament to protest the government’s COVID-19 responses, mimicking the Canadian and Australian examples. Those examples used the blocking of infrastructure to make the protesters’ point. Logic may have led to the conclusion that the infrastructure around Parliament itself would be the focus of disruption and thus traffic management may be needed in mitigation. However, while we think this should have been high on the list, we agree with Police that such an ultimate conclusion cannot so readily be drawn. Even with the benefit of hindsight, proper consideration of the intelligence could well have led to a decision that the benefits of closing the roads around Parliament outweighed the costs of the consequent disruption to the Wellington community or the risks that the convoy would instead block other critical arterial routes (as had been done in the Canadian protest). It may well be that proper consideration of the intelligence would therefore not have resulted in different decisions or affected the trajectory of the occupation. We cannot go further than to conclude that Police did not properly appraise the intelligence and did not consider all available options in the light of it.

FINDINGS

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?

Was the Police mission to keep the peace, allow the protest, and ensure no breach of Parliament buildings, appropriate?

234. As the Wellington DIU reported in a written update at 5pm on 8 February, up to 3,000 protesters and several hundred vehicles had arrived in the area surrounding Parliament that morning. Vehicles were blocking or causing significant disruption to streets in the near vicinity, including Molesworth Street, Mulgrave Street, Bowen Street, Hill Street and Aitken Street. While protest organisers were trying to leave some one-way streets open, most of the streets were gridlocked.
235. We considered whether, having not put a traffic management plan in place to prevent vehicles from entering the roads around Parliament, Police should have taken any other action during the day of 8 February to prevent the protest from becoming embedded. We also looked at whether their more general strategy to manage the protest on 8 and 9 February was appropriate.
236. Putting aside the Warning Order Police circulated on 4 February,⁴⁴ the first high level version of a response strategy and a trigger for further action came on 9 February. That involved a written direction as to the District's operational strategy from the District Commander (who became the Local Controller for the District Operation called 'Operation Convoy') entitled "*Commander's Guidance*", which was prominently displayed in relevant areas of Wellington Central Police Station and circulated to staff.⁴⁵ This expressed his desire to maintain a balance between allowing the lawful right to protest and freedom of speech, and the need to move the activists from Parliament grounds and free up the movement of traffic through the central city. To that end, he expressed the "*Commander's Intent*" as follows:

"Aim:

Maintenance of law and order while restoring Parliament grounds to a safe state of peaceful lawful protest.

⁴⁴ Discussed above at paragraph 213.

⁴⁵ From here we refer to the Wellington District Commander as Local Controller as his substantive role became to lead the operation concerning the protest and occupation at Parliament. Other staff took over his BAU District Commander role and he also had assistance from other District Commanders who relieved for him as Local Controller when required.

Purpose:

To create a Police response to the current occupation of Parliament grounds by Convoy 2022, which is proportionate, while taking into consideration the impact on trust and confidence of our community and partners

Key tasks (priorities):

Develop operations plan for approval to reflect approach to this aim (both overt and covert);

Maintain Parliament Speaker of the House, Department of Prime Minister and Cabinet, and Parliamentary Service's liaison;

Develop and implement intelligence support plan to understand Convoy 2022 and risks / opportunities to effect aim;

Develop media strategy to ensure trust and confidence;

Understand community impact of our actions;

Understand legal framework for any policing response;

Development of Health and Safety plan that reflects policing in a COVID-19 operating environment; and

Develop assessment of unintended consequences.

End state: *Parliament grounds has been returned to peaceful lawful protest."*

237. The Local Controller said in an interview that his guidance to staff was based on the '4E graduated response model',⁴⁶ which was the strategy that had been adopted by Police to deal with COVID-19 events and more generally underpins the approach to public order policing in recent years.
238. We note that by then the protest had all the hallmarks of an occupation. Although the initial intent was to protest COVID-19 restrictions and vaccine mandates, the convoy now included several different protest issues including the NZBORA, censorship, the Three Waters reform, Pike River, and 1080 poison use for pest control in New Zealand. There was also evidence of a divergence of views between and among factions of protesters, with many annoyed at the involvement of the Freedom and Rights Coalition who appeared to be 'controlling' the speeches on Parliament grounds.
239. However, that is irrelevant to the appropriateness of the Local Controller's decision. The '4E graduated response model' represents a strategy to ensure the maintenance of community support for the policing approach that needs to be taken to manage the public response to a controversial issue, and it accords with the current framework for public order policing more generally. It was right for the Local Controller to adopt that as the framework for Police operations, whether or not this was seen as a protest about the Government's COVID-19 policy.

⁴⁶ As described above in paragraph 213 – fourth bullet point.

240. More problematic was the fact that the Commander's Intent did not contemplate bringing the protest to an end, but rather removing the tents and other structures and otherwise allowing protesters to express their grievances from Parliament grounds during the day. That Intent was consistent with the fact that the Speaker had not closed Parliament grounds when it was issued; this did not occur until the morning of the 10th. Notwithstanding the erection of tents and other structures, Police therefore did not have the power to shut down the protest altogether. But the result was something of a disconnection between the Local Controller's expressed Intent and the Speaker's wishes as occupier, and points to the need for Police's public order policy to incorporate an appropriate strategy to protests in the Parliamentary precinct, which is agreed with Parliamentary Services. Such a strategy would support Police and the Parliamentary Service to answer the question: If a protest remains peaceful but outlives its welcome, how and when should it be brought to an end in a manner consistent with the NZBORA?
241. It is also noteworthy that the Wellington DIU produced a detailed document for the Local Controller on 9 February that set out various scenarios that might play out during the protest, ranging from dispersal of the protesters after a warning at one extreme, to rapid escalation of unlawful activity and a possible ideologically motivated threat or attack on the other. It also presented a detailed risk analysis. There is no indication that this influenced the Local Controller's thinking or led to a change in strategic direction, but at this early stage we would not expect it to have done so. He necessarily spent the day of 9 February on more immediate issues: securing staff; setting up the operational structure; finalising his Guidance; asking for plans to be drawn up to deal with various contingencies (including attempts to breach Parliament buildings); and speaking to the DIU about the environment and nature of what they were dealing with.
242. In summary, we believe the Local Controller was right to emphasise the need to maintain a balance between the right to lawfully protest and the need to respond to unlawful activity and facilitate the freedom of movement of other Wellingtonians. He was also right to give priority to engagement, encouragement and persuasion, with law enforcement as a backup if these failed. Not only was this appropriate but given the limited number of available staff it was the only option realistically open to him in the short term. However, that may perhaps have erred on the side of restraint, and wrongly led to a failure to consider pre-emptive action to mitigate the risk of unlawful activity arising. We ourselves do not regard actions such as traffic management and road closures as in any way at odds with engagement, encouragement and persuasion.

After the arrival of the convoy, should Police have done more on 8-9 February, before tents and structures were erected, to prevent the protest from growing in numbers and becoming embedded?

243. Upon the arrival of the convoy after dawn on 8 February, Wellington District Police monitored the situation in three ways.
244. First, the DCC had access to Parliamentary security cameras, and constantly monitored what was happening in real time by watching those cameras and social media feeds. The DCC was contacted at about 6am by a protester who purported to be the nominated representative of Convoy 22. She advised that the convoy would shortly be arriving, and that there would be food available for protesters, a PA system for speeches on Parliamentary grounds and maybe some tents for shelter. She also said there was a code of conduct for protesters and, if any issues arose, the DCC should

ring her. The DCC shift manager spoke to her during the day and was told the protesters intended to leave at the end of the day.

245. Secondly, in the morning an Inspector was sent to Parliament grounds with a couple of uniformed PSU staff. He reported back to the DCC that there were no issues, and at about 4pm that protesters were beginning to disperse.
246. Thirdly, the Wellington DIU had a small number of staff on the ground among the protesters monitoring what was being said and done. As a result of their observations, the written update at 5pm said:⁴⁷

“There is an intelligence gap as to how long protesters intend to stay at Parliament. Open source reporting suggests the protesters are planning for an extended stay with catering planned for 500 persons for a week. [A location in Thorndon] has been shared as the Convoy HQ, and the source of catering.

At the time of writing, an estimated 400-500 remain at Parliament Grounds. Groups range from families having picnics to groups consuming alcohol and cannabis. A small number of tents are in place across the grounds.”

247. We are not aware of any oral reports by those staff before this 5pm update.
248. The convergence of evidence provided to the DCC during the day on 8 February was therefore that the protest would be short-lived and most or all of the protesters could be expected to start departing by the end of the afternoon. Consistent with this, the DCC saw on camera at about 4pm that only about 50 people were milling around on Parliament lawns and some protesters were leaving. As a result, at about 4.30pm the Operations Support Manager spoke to the Duty Inspector and was advised that everyone was leaving the protest. He then spoke to the Local Controller and said, *“it looks like everyone is leaving.”* The Local Controller replied that he had also been updated and that everything was fine. On that basis, the Operations Support Manager left work and went home.
249. Unfortunately, this was not the reality. It is true that, given that approximately 2,000 people arrived for the protest on that day, a substantial proportion did leave. However, several hundred remained and tents and structures started to proliferate both in Parliament grounds and elsewhere, notably Victoria University’s Pipitea Campus.
250. We do not think that the DCC, the Operations Support Manager or the Duty Inspector took sufficient steps to examine the reliability of the information upon which they were making their assessment. There are a number of reasons for that conclusion:
- The presence of one Inspector and a couple of uniformed staff at various intervals during the day was simply inadequate. The (then) Head of Parliamentary Security told us he was there all day and there was no effective Police presence, *“just us [Parliamentary Security] really”*. The Inspector came to see him during the morning and justified the absence of Police by

⁴⁷ The 5pm update is also discussed above at paragraph 234.

saying: *“I’ve got a couple of Police nearby if you need me. But we’re not going to stay here. We don’t want to antagonise the situation.”* However, the result was that they did not give themselves enough opportunity to collect information about the diverse nature of the crowd and the range of agendas as the protest was organically forming. Nor were they able to assess whether the expressed intentions of the organisers of Convoy 2022 to leave by the end of the day were credible. If they had placed themselves in a position to make a proper assessment, they may have formed the same view as one of the local residents, who told us that the blocking of the roads and the erection of structures on the roads made this quite different from other protests he had observed and that it was obvious by 1.20pm that the protesters were intending to stay when they erected a large marquee (which became the food tent) on Molesworth Street.

- The Head of Parliamentary Security also had a rather different view of things than Police did. He told us that, from relatively early in the day, the protesters were all over the Parliamentary forecourt and grounds, starting to put up structures and tents, making their intentions quite clear, and not complying with any sort of request from his team. He rang Police on a few occasions to see what assistance was available but did not get any response until the Duty Inspector came to see him at 4.30pm. This was symptomatic of the lack of effective liaison between Police and the Parliamentary Service, which was evident through to the beginning of the Police operation on 10 February, discussed in the next part of the report. We understand that since this protest the Parliamentary Service is reviewing its formal relationship with Police.
- As noted above, staff from the Wellington DIU were on the ground among the protesters during the day, but there seems to have been no arrangement for the DCC to get oral updates from them during the day. The information included in their 5pm written update might have led to a different assessment if it had been available earlier.⁴⁸
- Undue reliance appears to have been placed on the protester who was in contact with the DCC and purported to be the nominated representative for Convoy 2022. The infrastructure that quickly appeared in Parliament grounds following the erection of tents, including a commercial kitchen, demonstrates a significant amount of advance planning for a lengthy occupation. We do not know whether the organisers of Convoy 2022 were responsible for that planning, but there was at least a strong possibility that the nominated representative of Convoy 2022 was either unaware of the full intentions of the organisers or was deliberately misleading Police.

251. Despite this failure to test the reliability of information, we do not think it made any difference. Even if the Police had recognised that an occupation of the Parliamentary precinct and Victoria University’s Pipitea campus was underway, it is evident that they simply did not have enough officers to do anything about it. As we discuss below, even during the operation to clear Parliament grounds two days later (when the numbers were considerably smaller than on the opening day), Police were unable to achieve their objective.

⁴⁸ The 5pm update is also discussed above at paragraph 234.

252. That is demonstrated by events in the early evening of 8 February. The Duty Inspector, upon receiving a telephone call from the Head of Parliamentary Security at about 4.30pm, walked to Parliament and noticed five tents in Parliament grounds. By the time he left after meeting with the Speaker and Parliamentary Security, the Cenotaph area was full of protesters, there were more than 30 tents with barbecues and banners, and Lambton Quay and Molesworth Street were four deep with protester vehicles. He promptly rang the Local Controller to advise that there was a problem. He also rang the Operations Support Manager at about 6.30pm, telling him that some people had set up tents on Parliament lawns and he needed to come in and “*sort it out*”. The Operations Support Manager made his way to town from his home in the Hutt Valley, making calls to some PSU members as he went asking them to come in and assist. He said that by the time he got to Wellington, there were 20 tents (which may not be counting the tents erected around the Cenotaph), and he did not have “*anywhere near enough staff to deal with that on the night*”. The Local Controller, who had also walked to Parliament, advised the Speaker in a meeting at about 8pm that he did not have the ability to clear the grounds that night. We note that it would have been even more difficult earlier in the afternoon when there was a much greater number of people.
253. The focus instead became ensuring that the protesters did not breach the Parliament buildings. Given the relatively open environment which is designed to allow the New Zealand public free and ready access, that in itself was a challenge and required all available resources within the District.
254. Moreover, the Local Controller wanted to ensure the lawfulness of any actions he took and sought legal advice. He was wise to do so. Police power to trespass a person depended upon a delegation from the Parliamentary Service and Victoria University (as we discuss in detail in Part 5). They received no such delegation from the Speaker until Parliamentary Security staff gave it on 10 February, and no delegation from the University until 11 February.
255. In summary, therefore, we conclude that 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 consider other contrary information. They also did not allocate enough staff to monitor and manage the protest during 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 such authority, they lacked the capacity to do so. Nevertheless, they should certainly have initiated a much more detailed planning process at this stage.

FINDINGS

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.

Part 5: The decision to clear Parliament grounds and the Police operation on 10 February

256. In this section we consider the Police operation to clear Parliament grounds on 10 February. We look at the factual situation relating to trespass and the applicable law, Police's decision making, including whether there was any undue political interference, and the operation on the day in detail.

WERE THE PROTESTERS TRESPASSING ON PARLIAMENT GROUNDS?

257. The decision to bring the occupation to an end on the morning of 10 February, or at least to remove the protesters from the grounds of Parliament, was made late in the day on 9 February, and communicated to the 'Forward Commander' for the operation at about 11pm. We consider below how that decision was made and whether there was adequate consultation before that. Before doing so, we will outline the legal basis for the decision.

258. The operation was based on the view of the (then) Speaker, Rt Hon Trevor Mallard, that the protesters, at least by the time they had erected tents and other structures for the purpose of long-term occupation, were trespassing on Parliament grounds and therefore liable to arrest. That view was shared by Police, who acted on it. The first question, therefore, is whether there was a sound legal basis for that view.

259. Protesters who initially gathered at Parliament were there to protest about a number of different grievances which were to them fundamental to their democratic rights and freedoms. Freedom of expression and peaceful assembly are rights protected by sections 14 and 16 of the New Zealand Bill of Rights Act 1990 (NZBORA). We have therefore examined in some detail the extent to which members of the public have the right to use the Parliamentary precincts, including Parliament grounds, for that purpose and the circumstances in which they can be prevented from entering, or be removed.

260. The Parliamentary precincts are vested in the Crown under section 23 of the Parliamentary Service Act 2000 and are held for parliamentary purposes. The Speaker is the recognised occupier and, under section 26(2) of that Act, has the right to control and administer the precincts and to trespass people from them. The Speaker may also delegate that power to the Police.

261. The approach taken by the courts to trespass can be found in the cases of *Police v Beggs*,⁴⁹ *Rongonui v Police*,⁵⁰ and *Clarke v Police*.⁵¹ In the latter, although describing it as something of a continuum, Justice William Young divided the land from which people may be trespassed into three categories:

⁴⁹ [1999] 3 NZLR 315.

⁵⁰ HC Wellington CRI-2010-485-46, 5 October 2010.

⁵¹ HC Wellington CRI-2003-485-000028, 18 November 2003.

- areas that are “publicly owned” (that is, as it was put by Hammond J in *Ross v Police*,⁵² they have “an essential public character” and are “very distinctly made the subject of an open invitation to the public”, although they may be legally owned or occupied by a particular entity and therefore “private land” as defined by section 2 of the Trespass Act 1980;
- land to which the public has normal access for particular purposes (such as shopping malls); and
- land that is purely private, and therefore not the sort of land or premises which the public might freely access apart from through the narrow-implied licence to enter private property for the purpose of communicating with the occupier.

262. In relation to the third category, to the extent that the Police assist in serving a trespass notice, they should only do so (as their policy makes clear) in circumstances where there may otherwise be a risk of disorder or a threat to the safety of the occupier. They are not otherwise exercising a public function, although they will certainly be doing so if subsequently called upon to enforce it. However, if they are involved in giving trespass warnings or notices under the Trespass Act in relation to the first two categories, they are exercising a public function and must act reasonably in terms of the rights to freedom of expression and peaceful assembly.

263. In relation to Parliament grounds, the decisions in *Beggs* and *Rongonui* make clear that the Speaker must act in good faith when balancing the rights and freedoms of protesters under the NZBORA against the rights and wishes of others wishing to use or enter Parliament grounds. They set out criteria that should be taken into account in determining whether the Speaker’s actions are reasonable in this context, including:

- whether the assembly is unreasonably prolonged;
- the rights and freedoms of other people enjoying the privilege of being on Parliament grounds;
- the rights of parliamentarians, their staff and others whose business or duties require them to access Parliament;
- the size of the assembly and its duration, when balancing the competing interests of the Crown and the effective operation of the property it owns with the interests of individuals wishing to assemble and to express themselves; and
- the content of what is being expressed (which is likely to be relevant only when “*the message is one of hatred, racial abuse, intolerance or obscenity*”).

264. This general position is recognised in the Speaker’s Rules about access to Parliament grounds. These appear on Parliament’s website in a number of different forms. A summary reads as follows:⁵³

⁵² (2002) 6 HRNZ 734.

⁵³ [New Zealand Parliament | Protests and demonstrations - 18 January 2016 \(parliament.nz\)](#). A much longer version may be found at [New Zealand Parliament | Chapter 11 The Chamber, Buildings and Grounds – 8 June 2017 \(parliament.nz\)](#).

“Standard conditions for protests and demonstrations in Parliament Grounds

The Speaker’s expectations for the use of Parliament Grounds by protestors and demonstrators are:

- *participants must assemble within and disperse from the grounds in an orderly manner, using the pedestrian ways so as to avoid damage to the lawns and flower beds and so as not to interfere with the flow of vehicular traffic*
- *participants must not mount the main steps nor interfere with the use of Parliament buildings by those entering or leaving it in the normal course of their business*
- *sound amplification equipment may be used; it must always be directed away from the buildings and must not be operated in a manner disruptive to occupants of the buildings. Any sound equipment must be used for speeches only and kept to a reasonable level*
- *participants are to conduct themselves in such a way as to avoid any breach of the peace*
- *no food may be prepared or sold within Parliament grounds, but there is no restriction on people consuming food that they may have brought with them*
- *no vehicles may be brought on to the grounds as part of a demonstration*
- *no structure, such as a tent, may be erected. Only handheld signs are permitted.*

Source: New Zealand Parliamentary Debates, Vol. 579 (27 July 1999), pp. 18473-4.

Further notes

- *Structures including tents are not permitted and if not removed when requested, are liable for confiscation.*
- *Protests and demonstrations are only to take place during daylight hours, and therefore should not continue overnight.*
- *Members of Parliament (MPs) are not prevented from taking part in demonstrations in the grounds or from addressing the crowds, but if they do so they must abide by the same rules as apply to the public.*

Access to grounds

While Parliament grounds are open to the public, there are some restrictions placed on their use for the safety and security of the public and the protection of property.

The law relating to criminal trespass does apply to the Parliament grounds.^[54] Section 26 of the Parliamentary Services Act 2000 grants the Speaker all the powers of an occupier under the Trespass Act 1980.

If a verbal or written warning to leave the grounds is issued by the Speaker or people authorised by the Speaker (including members of the police or senior Parliamentary Service staff) then protesters or demonstrators should comply. Failure to comply may result in prosecution.”

265. These Rules were announced in 1999. In our view they reflect an appropriate balance between the right of the public to protest or otherwise enjoy the Parliamentary precincts and the need for Parliament to be able to go about its business without prolonged and undue disruption. While the Rules themselves have no legal force, they reflect how the Speaker is likely to assess reasonableness in determining whether there is a trespass.
266. In the light of this, it is clear to us that the gathering of the protesters in Parliament grounds on 8 February for the purposes of protest was lawful and did not constitute any trespass.
267. However, 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), things changed. At that point, the gathering took on the characteristics of an occupation rather than a protest.⁵⁵ Indeed, the organisation of the protest, evident from the structures erected at Parliament even at that early stage, indicated that protesters intended to be there for a significant period.
268. It is indisputable that the protest at that point was in breach of the Speaker’s Rules. More generally, the behaviour was such that it was reasonable for the Speaker to regard the need to bring it to an end as outweighing the rights to freedom of expression and peaceful assembly.
269. In any event, it is doubtful whether it could any longer be regarded as a peaceful assembly. There were a number within the group, albeit a relatively small minority, who were using aggressive or threatening language to Police and others, and carrying signs with overt or implied threats of harm to others such as government officials or service providers. Indeed, partly because of the sheer number of people and partly because of the unsettling behaviour of a small number of them, parliamentary staff by the night of 9 February had effectively been told to work from home and only come to Parliament buildings if essential. Staff could access the building via the back entrance but the front entrance was closed. There was no access to the buildings for members of the public.
270. The closure of Parliament’s grounds by the Speaker was therefore justified in law and the protesters by their continued presence became trespassers.
271. However, while that may have formed the basis for a civil claim against the protesters in the event of damage, it did not in itself constitute a criminal offence. In *Wilcox v Police* the Court held that

⁵⁴ The difference between the general law on trespass and criminal trespass is explained below at paragraph 271.

⁵⁵ As we have discussed in more detail above at paragraph 238.

two prior warnings must be given before criminal liability arises:⁵⁶ a warning revoking the person's authority to be on the property; and a warning that the person must leave the property under section 3 of the Trespass Act, and/or stay off it under section 4. Those warnings may be given orally or by notice in writing. If the person then does not leave within a reasonable time, they commit an offence and are liable to a fine not exceeding \$1,000 or to imprisonment for up to three months. We discuss below whether Police in the subsequent operation met these requirements.⁵⁷

272. It is a matter for the Courts rather than us to determine whether the individuals involved in this protest had any possible defences to a charge of trespass. However, we respond to two issues that have been raised with us and on social media forums: that the Speaker had no power to issue trespass notices or warnings because he is not the title holder of the land, and that consent to the issuing of a trespass notice should have been obtained from local iwi as holders of customary title. The short answer to this is that, where the property concerned is legally occupied by another, it cannot be a defence to a charge of trespass that it is owned by a third party or is "*customary land*" over which there are "*unextinguished native aboriginal rights*". This is because the Trespass Act concerns and protects rights of occupation rather than ownership.⁵⁸
273. The fact that protesters may have held a contrary belief is of no consequence. A stance that their actions were not an offence because they believed that they had the right to remain indefinitely on Parliament grounds to protest would have been a mistake of law rather than fact. While mistakes of law may be a mitigating factor, they do not provide a defence.

FINDINGS

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?

274. At about 6pm on Wednesday 9 February, the (then) Deputy Prime Minister (in his role as MP for Wellington Central) and the Attorney General visited the Speaker in his office to discuss developments and offer support. Both were concerned at the rapid growth in the size of the protest

⁵⁶ [1994] 1 NZLR 243.

⁵⁷ See paragraphs 306-321.

⁵⁸ *Roha v Police* [2008] NZCA 541 at [22], [27] and [30].

group, the aggressive nature of some of their behaviour and the appearance of tents and other structures that suggested an organised occupation.

275. As a group, they discussed what they thought should be done. The Speaker consequently rang the Assistant Commissioner of Police who was acting as the Wellington District Commander's line manager, to ascertain Police intentions. In that conversation he communicated his view that Police should remove protesters from Parliament grounds.
276. The Assistant Commissioner responded that he would contact the Commissioner so the matter could be discussed with him. A conversation was then held later that evening between the Speaker, the (then) Deputy Prime Minister, the Attorney General and the Commissioner.
277. Following that conversation, the Commissioner rang the Assistant Commissioner and made clear his expectation that there was to be a Police operation on the following day to clear Parliament grounds of protesters. The Assistant Commissioner told us he regarded this expectation as an order from the Commissioner, and communicated it to the Local Controller. However, when we interviewed the Local Controller, he was adamant that the final decision was still his.
278. We think this difference of view is largely semantics. In a matter such as this, the Local Controller would make the final decision in the sense that it would be open to him not to proceed if it was operationally impracticable to do so, but otherwise the Commissioner's expectations would be adhered to.
279. Many of the officers within Wellington District with whom we spoke, and some from elsewhere, were firmly of the view that the decision to conduct a Police operation on 10 February had resulted from strong political pressure. Some inferred that this pressure crossed the line and intruded on Police operational independence. The frontline staff we interviewed were overwhelmingly of the view that it was obvious to them from early in the operation (although not necessarily beforehand) that it would not succeed. We were repeatedly told that the direction to proceed with the operation would not have been given unless Police had succumbed to the political pressure.
280. The Authority would be most concerned if there had been inappropriate political interference with Police decision-making. It is a fundamental constitutional principle that Police must remain free to make independent operational decisions; that they cannot be subject to political direction on operational matters; and that they are answerable only to the law and the courts in respect of those matters. We have therefore carefully questioned all of those involved as to what occurred.
281. As a result of those enquiries, we are satisfied there was nothing inappropriate in the interaction between the Commissioner and either the Speaker or other Ministers. There is no detailed record of the conversation that occurred. However, all of those present said there was no express or implied direction to the Commissioner to take a specific course of action. They acknowledge that clear and strong views were expressed, and that there was a high level of frustration at Police's failure to intervene earlier. However, that does not in itself constitute undue political interference. Like any other occupier whose premises are unlawfully occupied by others, the Speaker was entitled to seek Police assistance and to express his view as to what they needed to do. The Commissioner was equally entitled to agree with or reject his view, and in making that determination was under a duty to consider not only the rights of the Speaker as occupier but the

wider interests of the community as well as the rights of the protesters. The assertion of a strong view by the Speaker, or for that matter by any other Minister, will only cross the bounds of propriety if accompanied by some express or implied inducement or threat of disadvantage. There is nothing to suggest anything of that nature.

282. While the Commissioner himself said the conversation with the Speaker and Ministers was “*uncomfortable*”, he was adamant that he reached his own independent judgement. He told us he did not agree that the operation was doomed from the outset. He pointed out that it was a common Police strategy to break up unlawful protests by selectively arresting ringleaders and those actively resisting, and that Police experience is that this is often successful in encouraging others to leave. In this case, he said Police leadership under-estimated the determination and organisation of the protest group, and the tactics they used to resist Police. The Wellington District Operations Support Manager, who was the Operation Commander on 10 February, shared the same view.
283. We do not necessarily agree with the view that the operation had a reasonable prospect of success. Over the previous two days, the extent of the organisation of the protest (despite the disparate nature of the groups involved) was evident to all of those observing it at first hand, including those who were inside Parliament. Given the limited capacity of Police in terms of both staff and equipment, and the evident determination, organisation and aggression of the protesters, it was doubtful that a successful plan could have been developed and implemented on 10 February. Moreover, as we discuss in more detail in the next section and as some of the Police staff we interviewed who were dealing with the protest on the ground reported, the absence of a detailed plan and any accompanying operation order made the risk much higher.
284. Nevertheless, we reiterate that our investigation did not uncover any undue political influence at any stage of the occupation. In fact, what we did find was explicit recognition of the need to respect the constitutional divide between politics and Police operations. An example is a letter from the Attorney-General to the (then) Minister of Police dated 22 February 2022 stating that, while Ministers were entitled to seek reassurance that their concerns had been understood and that the resourcing of the Police was adequate, “*decisions on what law enforcement resources are to be deployed in, and on what reasonable policy directions are to be made, are for the Commissioner. So too is the strategy in policing any particular situation.*”
285. Police leadership were acutely aware “*Police were not going to arrest their way out of [the situation]*” on 10 February, and the intention was therefore to remove the protesters from Parliament grounds peacefully. Selective arrests of a small number of protesters was a back-up option if removal could not be achieved without that. It was not necessarily inevitable that this would fail. However, we agree with Police staff that it was highly likely to do so. Indeed, we were told by officers that selective arrests, far from encouraging the rest to leave, “*fired up*” and “*angered*” the crowd and made their resistance more entrenched.
286. However, while the operation might have been doomed, or at least likely to be unsuccessful as an exercise in clearing the grounds of Parliament, that is not the only lens through which it should be

judged. As we have discussed above,⁵⁹ it was essential to the perceived legitimacy of the Police operation that they maintained a high level of community support (or what is typically called “*social licence*”). This entailed balancing two competing considerations.

287. On the one hand, the principal cause of many of the protesters – their opposition to vaccine mandates – had a significant measure of public support or sympathy, even though it represented only a minority.⁶⁰ Thus, any Police operation to clear the grounds with high levels of force such as is often seen in overseas jurisdictions (tear gas, water cannons and the like) would likely have been seen by a substantial proportion of the population as going too far, even if the Police had had the capacity to mount such an operation at that time (which they did not).
288. On the other hand, by the evening of 9 February there was a considerable measure of consternation and frustration, especially among the businesses, schools and residential dwellers in Wellington city centre, that Police were being too passive and ineffective in addressing the manifest illegality of the protesters’ actions. Without some action, that frustration at the perceived lack of an effective Police response would only have grown.
289. The operation on 10 February demonstrated that Police were confronted with a difficult situation and that easy options to end the occupation at that time were not available. In short, likelihood of success aside, it did buy Police time to plan for the eventual (and successful) operation on 2 March. The development of that plan and the marshalling of the necessary resources to implement it took a full three weeks. Arguably the degree of support for that process may well have been substantially lower if the 10 February operation had not been mounted. One senior officer recognised this when he said in interview:

“We gave it a go, got the result that you saw and I think if anything it... helped others understand the issue that we’re trying to resolve peacefully is not something that you can arrest your way through in the same way and certainly from a district’s point of view they weren’t ready for that.”

FINDINGS

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.

⁵⁹ See paragraph 239.

⁶⁰ For example, [a poll by Horizon Research Ltd on 16-17 February](#) found that only 64.5% supported the vaccine mandate policy. The [1News Kantar Public Poll on March 5-8](#) found that 32% were opposed to the vaccine mandate.

WAS THE OPERATION TO CLEAR THE GROUNDS ON 10 FEBRUARY APPROPRIATELY PLANNED AND RESOURCED?

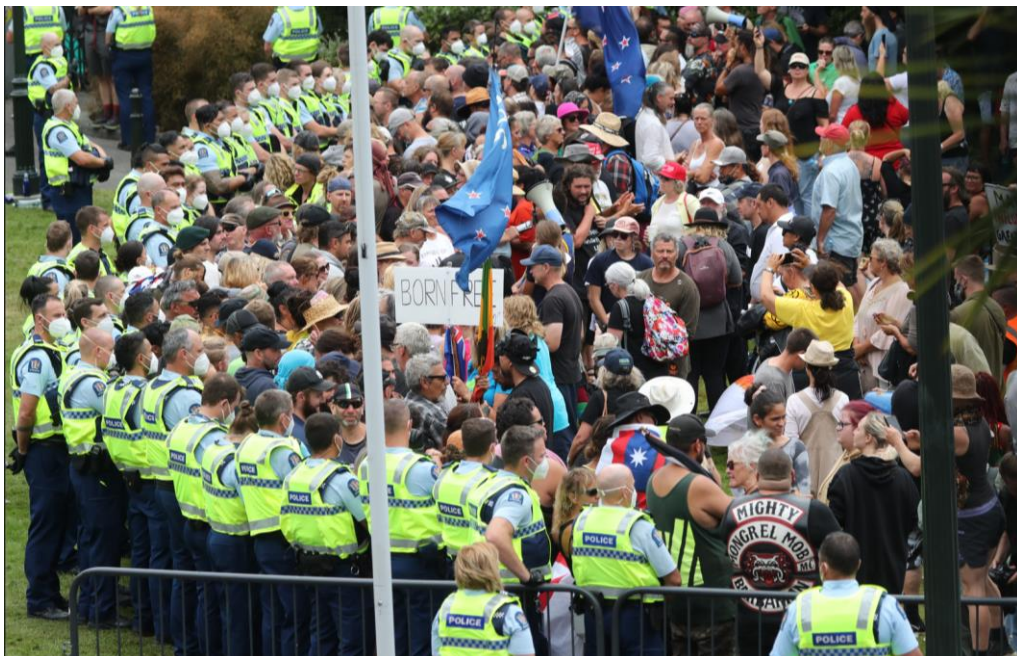
290. The Commissioner and the Deputy Commissioner: Operations told us that during the day on 9 February they had several telephone discussions about whether they were legally able to close down the protest, and the options available to them to do so. They also said that the Deputy Commissioner discussed the options with the Assistant Commissioner to whom the Local Controller reported. They said they received advice that insufficient staff resources were available on 9 February, but there would be sufficient capacity if an operation was mounted on 10 February. The Commissioner told us he was under the impression that some planning to this end was underway, and it was on this basis that he rang the Assistant Commissioner during the evening of 9 February to communicate his expectation that an operation to clear the grounds the next day would proceed.⁶¹
291. We have been unable to determine the precise nature of these communications. Neither the Commissioner nor the Deputy Commissioner have a written record of them, and the Assistant Commissioner's otherwise detailed records do not assist in detailing what transpired. The best we can say is there was a disconnect of some sort in the chain of thinking (if not command) between the key players, and the Commissioner and the Deputy Commissioner were giving more concrete consideration to the possibility of clearance action on 10 February than the Assistant Commissioner and the Local Controller realised.
292. The Wellington District Operations Support Manager is responsible for the planning function relating to major events and operations in Wellington. He told us that at some point during the day on 9 February, the Local Controller asked him, *"what can we do if we want to do something tomorrow?"* He advised the Local Controller that there would be approximately 100 staff available to form a line and try to get the protesters to move, but only about a quarter would be officers from teams specialising in public order policing, some arrests would be inevitable and he could not predict the outcome of the operation as it would depend entirely on how the protesters responded. Again, there are no records of the conversation, and it is not clear exactly what was discussed and what time this conversation took place.
293. Consequently, when the Local Controller was contacted by the Assistant Commissioner at 10pm and then made the decision to proceed with the operation to remove the protesters the next day, he did so in the absence of any detailed advance planning (though there had been some discussion and consideration of the possibility of an operation on 10 February). He called the District Duty Inspector and the Forward Commander to advise them of the operation required the following morning. The Operations Support Manager told us the operation went ahead on 10 February in the absence of any further detailed planning because *"I was asked if we could do something on that day, so that's what I prepared for."*

⁶¹ See paragraph 277.

294. The overall plan was to remove protesters from the grounds by way of a 'skirmish line'. A skirmish line is a tactic Police use in public disorder events, where officers form a line to:

- create a barrier between a crowd and a fixed point (such as the Parliament buildings); and
- disperse the crowd by walking towards it and instructing people to leave the area.

295. Skirmish lines provide the basis for many formations used in the public order policing tactics. The lines may be several officers deep when there is an increased threat and a need to have immediate back up for the front line. The role of the frontline officers on a skirmish line is to remain evenly spaced to ensure the integrity of the line and to be able to handle any breach. Officers may reinforce the line by physically holding on to each other (referred to as a 'belt grip'). Section Leaders locate themselves behind the line, in order to provide oversight of the staff, ensure the line remains unbroken and to issue instructions as necessary.



Photograph courtesy of NZME

296. Beyond the use of skirmish lines, we have not been able to discover any other detailed plan for the day, and Police have confirmed there was no written operation order. We asked whether any staff had been tasked to work on the development of a plan overnight, and were told they had not.

297. Staff brought in from other districts and required for the operation were already due to attend a briefing early the next morning. Unknown to them, their role and the briefing changed overnight, from securing Parliament buildings to an operation to clear the lawn in front of Parliament buildings.

298. A briefing commenced at Wellington Central Police Station at 7am and lasted for 30 minutes. A second briefing was given by the Forward Commander at Parliament.

299. Staff were told Police would form a 'skirmish line' across the northern end of the grassed area in front of Parliament buildings to push the protesters back towards the perimeter of Parliament

grounds and eventually over the boundary. Any resistance would be met by selective arrests of those individuals who appeared to be leaders of the resistance or who were actively resisting. That plan was initially put into effect shortly after 8am, with Team Leaders positioned behind the Police line, each responsible for teams of 5 to 10 officers.

300. Staff deployed during the operation were drawn from those rostered on early and late shift, those from the previous night shift and some staff already brought in from other districts. These comprised 125 frontline staff and 24 command staff, including custody staff. We interviewed 29 of these 149 staff and received consistently negative comments about the lack of planning for this operation. More specifically, we were told that:

- There was no strategy about how to execute the operation, supervisors kept on changing instructions, and there were no contingency plans to deal with the unexpected:

“It affected me and others as I had no confidence in what the plan was or expectation of what was to happen.”

“There was no execution, no details of what was expected and we were just told to stay fluid but with no contingencies of any sort.”

“The bosses underestimated what was going to happen. When resistance was encountered, they did not appear to have a backup plan and it all fell apart from there.”

“We were caught underprepared. If we were to successfully remove people from the lawn, then there needed to be a Plan B and a Plan C.”

“There was a general feeling of being unprepared insofar as ‘try this, then try that, then this.’”

- There were too few staff, because they had been assembled on the premise they would be utilised solely for the purpose of securing Parliament buildings as opposed to clearing the grounds:

“There’s just too many [protesters], and for us to do that we would have needed five times the [staff] numbers that we had to try and achieve that on the day.”

“I thought at that point we would not achieve our goal that day. This was from the numbers in front of us, the numbers of police and our tactics and the reaction of the crowd.”

- Of the staff who were deployed (either as supervisors or on the front line), too few had public order policing training or Police Support Unit (PSU) experience and many did not know what they were doing:⁶²

⁶² Police Support Units are specialist squads and are Police’s primary response to large scale public order policing activities, riots, protests, and international peacekeeping. They are also involved in a wide range of prevention activities, including reducing alcohol-related harm.

“The PSUs on the ground were great, we all work together and we know what we are doing. There were others and they were clueless.”

“There wasn’t a public order component to the planning team; didn’t have the right people/right skill set.”

“I felt that on the day we had the wrong people in the wrong roles.”

- Staff were not properly equipped and felt their safety was at risk:

“We left our [public order policing protective] gear in a room in Parliament. It wasn’t used or considered to be used I believe.”⁶³

“We had our [public order policing] gear but not allowed to wear it but were to use [public order policing] tactics.”

“Staff safety was not good. We had people right up in our face and less tactical options than we normally deploy with.”⁶⁴

- Although one officer told us that he, coincidentally, had run around the night before looking for mass arrest kits (including charge sheets and plastic cuffs), thinking that they might be required at some future stage, there was insufficient planning for a mass arrest situation the following day. The Custody Supervisor was told early on the morning of 10 February to expect 10-20 arrests, but there were in fact 108 arrests:

“Those refusing to move were arrested until we were running out of staff and capability.”

“They totally underestimated the whole thing. We were relying on the plan of ‘once we lock some up the rest will leave’.”

301. These consequences arising from a lack of planning significantly increased the likelihood that the operation would not succeed, although as we have said above it was unlikely to do so anyway.⁶⁵ Police were simply unprepared (in terms of planning, resourcing, staff, equipment and command and control) for the degree of resistance they encountered.

302. Within a short time of commencing the operation at 8am, the Police skirmish line was confronted by a protest group of at least 200 to 300 people four or five deep, surging forward with linked arms. Within a short time, that had progressed to a crowd that was an estimated 20 deep. Despite making a substantial number of arrests, the Police line over a period of some hours only advanced by a matter of metres across the Parliament lawn. At times, Police had to stop making arrests due to a lack of transportation and staff resources.

We note that two inspectors involved in the planning team had significant and recent public order policing experience and had been senior members of the Police Support Unit.

⁶³ See paragraph 681 for a description of the protective gear.

⁶⁴ “Tactical options” are weapons for self-defence such as batons, pepper spray, and Tasers. We note that team leaders had pepper spray and Tasers available to them. Officers involved in the skirmish lines were not wearing pepper spray or Tasers, in accordance with Public Order Policing Policy.

⁶⁵ See paragraph 283.

303. It was therefore clear from a relatively early stage that the operation was not going to achieve its objective of clearing the protesters from the lawn in front of Parliament buildings. Although the decision to retreat was not made until about 4.40pm, some officers told us that it was obviously a losing battle by 11am, and that the decision to retreat should have been made much earlier.



Photography courtesy of NZME

304. It is clear that the 10 February operation was hurriedly put together by an under-resourced and under-prepared team. If it had been deferred until 11 February, that would have given more time for detailed consideration as to how the Police should proceed, especially given the reservations that a number of officers (including the relevant Assistant Commissioner) had about the wisdom of the operation.
305. We recognise that, as we have discussed above,⁶⁶ if one of the objectives of the operation was to maintain a degree of community support by taking some action (even if it failed), time was of the essence. Any significant delay that perpetuated a perception that Police were standing by passively in the face of manifest unlawfulness affecting a substantial number of Wellington residents was likely to undermine their 'social licence'. However, we doubt that an extra day would have made much difference in this respect, and it would have allowed an operation to be mounted that was much more considered and much more appropriate in its implementation.

FINDINGS

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.

⁶⁶ See paragraphs 286-289.

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?

The warnings

306. As discussed above,⁶⁷ two discrete warnings must be given before criminal liability for trespass arises: a warning revoking the person's authority to be on the property; and a warning that the person must leave the property within a reasonable time under section 3 of the Trespass Act, and/or stay off it under section 4. Those warnings may be given verbally or in writing. They need not be given by a specific person, so long as they are given with the authority of the occupier.
307. In order for Police or any other person to take action to give effect to the Speaker's view, there needed to be an appropriate delegation. In March 2021 the Speaker had already issued a generic authorisation in writing, for named employees of the Parliamentary Service and the Office of the Clerk, including the Security Manager of Operations, to exercise the powers of an occupier of the Parliamentary precincts under the Trespass Act. However, when tents started to be erected on the lawn, the Speaker authorised the distribution of a document explaining the Speaker's Rules to those protesters who had set up tents, and delegated the Security Manager and his staff to distribute that.⁶⁸ On the night of Tuesday 8 February, they attempted to do so, but stopped after about 30 tents, concerned at the level of aggression shown by the protesters and the verbal abuse they were receiving. The next day, on Wednesday 9 February, they attempted to distribute further notices, with the assistance of eight Police officers. However, this combined group of parliamentary staff and Police officers was also met with high levels of aggression and, in the face of real safety concerns, they had to abandon their attempt after only approaching three tents.
308. According to the evidence given in *Police v Maaka*⁶⁹ on 8 September 2022, the document did not purport, and was not intended, to be a warning under the Trespass Act. Rather, it sought to remind the protesters of the Speaker's Rules on the use of Parliament grounds for protest activity (such as not erecting any structures, not directing any broadcast equipment toward Parliament buildings, and not staying overnight).
309. However, from our interview with the Speaker, we deduced that he thought the distribution of this document constituted the first warning (his revocation of the protesters' right to be on Parliament grounds), and that Police should have taken earlier action to clear the grounds.
310. We do not agree. The existence of written conditions buried in the Speaker's records, or even on the website of Parliament, is not sufficient to revoke the right of the public to be on the land if they

⁶⁷ See paragraph 271.

⁶⁸ Speaker's Rules set out paragraph 264.

⁶⁹ [2022] NZDC 22017.

are not meeting those conditions. Nor is the distribution of a document setting out those Rules, even if they had been given to everyone on site, since they do not in themselves carry any legal force.

311. That is because the warnings must be clearly and unequivocally communicated to and understood by each individual person to whom they are directed. The warnings need not be given by a specific person, so long as it is given with the authority of the occupier. Nor is there a requirement, in a group situation such as this, for the warnings to be separately given to each individual, as long as the person understands the warnings were addressed to them as an individual as well as others within the group. But there must be clear and unequivocal communication in one form or another.
312. In any event, the Speaker issued a letter to Police on Wednesday 9 February clearly communicating his decision that a trespass warning be issued and asking that Police *“accompany parliamentary staff who hold a delegation as occupier of the Parliamentary precincts while they deliver the trespass notices”*. That provided the necessary delegation to the Parliamentary Service, with the assistance of Police, to issue the required warnings.
313. On the morning of 10 February, Police and the Security Manager met and, in view of safety concerns, agreed that Police would deliver the warnings over a loudhailer. A script was prepared for the Forward Commander, that read as follows:

“Police have been requested by the Right Honourable Trevor Mallard as Speaker of the House and the lawful occupier of Parliament grounds to advise you of the following information. He has requested that all tents and structures which have been erected are to be removed now. If these tents and structures are not removed from Parliament grounds, he has requested the grounds will be shut to the public. Any person remaining following the grounds being closed will be trespassing and risks being prosecuted.”

314. We agree with the Court in *Maaka* that, in view of the safety concerns, this was a reasonable approach and in accordance with the Speaker’s delegation. We also agree that it was open to the Security Manager as the Speaker’s delegate to then delegate this to Police.
315. The delivery of that message and subsequent events are well captured in the *Maaka* decision as follows:

“Messages were read out to the protesters over a loud hailer. This was done by [the Forward Commander] standing near the steps to Parliament in the centre of the forecourt, and by [the Sergeant] from the northern end of Parliament grounds near the driveway into Molesworth Street.

Both read from copies of the script prepared for [the Forward Commander]. [The Forward Commander] started at 8.10am, and [the Sergeant] started shortly after that.

At 8.25am [the Forward Commander] addressed protesters saying that they had not responded, were not cooperating with the instruction to take down the camp, that Parliament grounds were now closed to the public, and anyone remaining would be trespassing and may be arrested.

The timing of this change in message was a decision made by [the Forward Commander].

[The Forward Commander] repeated this message several times from his position in front of Parliament steps, and then moved to the northern end of Parliament grounds where [the Sergeant] was stationed. A confrontation between the police line and protesters had formed at the northern end, and [the Forward Commander] positioned himself behind the police line and continued to deliver the message that Parliament grounds were now closed and that anyone who continued to stay would be trespassing and could be arrested.”

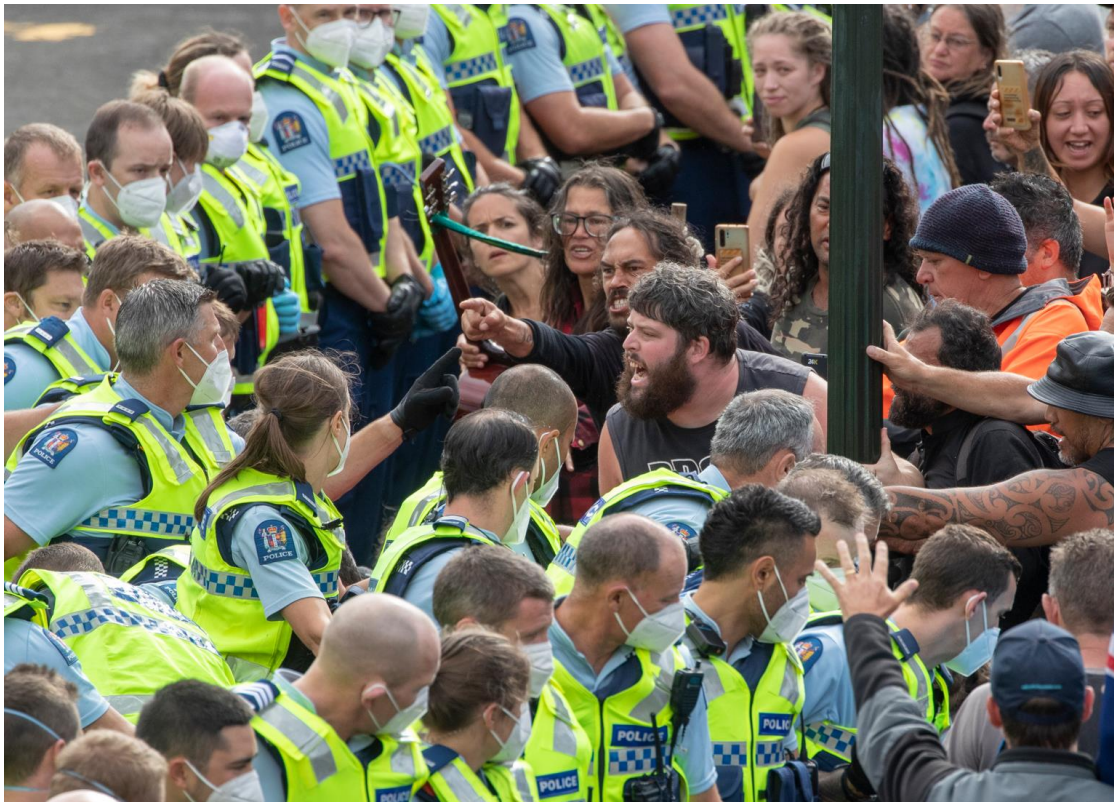
316. As found by the Court, the problem is that the script prepared for the Forward Commander did not effectively revoke the authority to remain on the land. That is because of the conditional language used: the protesters would be trespassing if the tents and other structures were not removed. Until they had failed to do that, Parliament grounds remained open.
317. Accordingly, it was only after the 8.25am warning had been given twice – the first revoking the authority, and the second warning people to leave – that the communication from the Forward Commander was sufficient to enable protesters to be lawfully arrested.
318. However, there was a further problem. The Forward Commander’s changed message at 8.25am was first delivered in front of Parliament steps. He repeated this several times. He then later moved across the forecourt to the northern end of Parliament grounds and continued to deliver his closure message over loud hailer. However, between 8.25am and 9.10am the Sergeant, unaware that the Forward Commander had changed the message, continued to broadcast the first, conditional, message. As a result, protesters at the northern end were receiving two conflicting messages, and during that time some arrests were made. They no doubt heard the message from the Forward Commander making clear that they were liable to arrest, but they also heard the message from the Sergeant that they still had time to remove the tents and structures.
319. As a result of this confusion, the Court in *Maaka* found that the warnings required by the Trespass Act lacked the clarity the law requires. The arrests that occurred before 9.10am were accordingly unlawful.
320. We note, too, that the warnings were given under section 3. They therefore required protesters to leave the grounds of Parliament within a reasonable time, but that did not prevent them from returning. For that to be achieved, a warning under section 4 would have been required.⁷⁰
321. In making these findings, we level no criticism at the individual officers involved. The events here demonstrate the unsatisfactory nature of the law of trespass. Even if Police policy and training were more fully developed, the law of trespass as set out in legislation and developed by the courts is simply ill-equipped to deal with large-scale public order events. It is, for example, unrealistic to expect Police officers to understand the fine nuances of the requirement to give two sequential warnings, and the law is unworkable if an officer needs to seek legal advice about the wording of those warnings. In our view, trespass law needs to be reviewed, and perhaps a different approach

⁷⁰ See paragraph 271.

to public order policing in these situations that does not depend on the law of trespass needs to be developed.

The arrest process

322. As described above,⁷¹ the plan to clear the grounds revolved around the formation of a skirmish line to push protesters back to the perimeter and over the boundary. Any resistance was to be met by selective arrests. For this purpose, small 'arrest teams' were formed to stand behind the skirmish line. When instructed to do so, an officer or officers from these teams would reach through the Police skirmish line and pull a protester from their front line, and forward through the Police line. The protester would then be escorted away by a different officer (the 'transport officer') to an area between Parliament and the Parliamentary library in order to be formally arrested, processed and put in a transporter van.



Photograph courtesy of NZME

323. The Police's 'Demonstrations' policy provides that there should be an Operation Commander and a Scene Commander (generally referred to by Police staff as the 'Forward Commander'). The Operation Commander should direct, coordinate and control the operation; appoint a second in charge, a liaison officer, and a safety officer; and generally assess the situation. The Operation Commander must also give regular situation reports to the Local Controller. The Forward

⁷¹ See paragraphs 294-295.

Commander should direct, co-ordinate and control Police activities at the scene; is responsible for briefing group commanders;⁷² and should ensure that there is a high degree of teamwork.

324. The fact that the numbers being arrested far exceeded expectations, exposed the lack of advance planning relating to possible contingencies, such as potential responses by the protesters or the need for mass arrests. The event was not treated from the outset as a potential mass arrest, and the operation was therefore not set up in accordance with this policy. Because there was no clear plan of how to respond to the resistance and protesters' resolve, it is no surprise to find that the frontline officers felt command and control was ineffective. Officers we interviewed told us that decisions to arrest individuals often seemed haphazard and uncontrolled, and that they did not feel that an overall plan was being consistently and coherently executed.
325. The Commissioner told us that in many protest situations a plan to move protesters away from the area *en masse*, combined with selective arrests, may be a reasonable way of bringing it to a successful conclusion. With sufficient Police resources and a less confrontational crowd, it may have worked here. But responding to the resistance officers were faced with, and a decision to continue to make arrests over an extended period of time, requires considerably more planning in relation to staffing, arrests and custody, for example, than was apparent here.
326. Moreover, as a basis for bringing criminal proceedings against individual protesters, the process was problematic for three reasons:
- 1) The law requires that the individual officer making the arrest must have reasonable cause to suspect that the person being arrested has committed an imprisonable offence. Although that suspicion may be based on hearsay (including information provided by a supervising officer giving an instruction to effect an arrest), arresting officers must still turn their mind to whether reasonable suspicion exists. Because of the way in which the Police were necessarily organised to carry out the operation, there is nothing to suggest that the officers who were designated as the 'arrest teams' were always assessing the circumstances of the particular individuals being arrested and turning their minds to whether the necessary reasonable suspicion existed. They were simply following orders to extract them from the protest line by force.
 - 2) It was in any event not always clear who the arresting officer actually was. It may have been the officer giving the order that the individual be extracted; the member of the arrest team carrying out the extraction; or the officer to whom the extracted individual was then passed. Whichever one it was, sometimes none of this was recorded and sometimes only the identity of the transporting officer was recorded. As the officer in charge of the subsequent arrest and charging process described it:

"A problem was with what we termed transport officers. A 'transport officer' would take [the] prisoner from the arresting officer and walk them back to the custody process area at Parliament. That was happening quite a lot. They (the transport

⁷² Group commanders are frontline commanders responsible for various aspects of the operation, including protesters, crowd and traffic control, and criminal investigation.

officer) would be handed protesters who had been pulled out of line by other Police. That seems to be something that wasn't made clear in the briefing that if you arrest someone then 'you' take them. It wasn't clear in some cases who actually made the arrest. There could have been up to 20 protesters from that day for whom it wasn't clear who actually arrested. The charge sheet only recorded the [identifier] of the 'transport officer'."

- 3) As a result, when the supervising officer who was responsible for managing the arrests and the subsequent charging process began to contact officers who had formed the arrest teams, he found that no details had been provided, and officers could not remember the individual arrests. Essentially, therefore, there was little or no documentation as to who the arresting officer was; the precise circumstances in which the person had been arrested; what offence they were reasonably suspected to have committed; or the evidential basis for that reasonable suspicion.⁷³

327. These problems do not necessarily make the arrest itself unlawful. "Reasonable suspicion" is an objective test with a relatively low threshold. Since we are satisfied that all the protesters would have heard the loudhailer messages by the Forward Commander at least twice by some point in time after 9.10am, it is arguable that all officers had reasonable cause to suspect that all of the protesters at or near the front line had committed the offence of trespass, even if they did not specifically turn their minds to that. However, the existence of that reasonable suspicion is quite a different matter from whether the offence can be proved to the criminal standard of beyond reasonable doubt.

328. In recognition of this, the later operation on 2 March established additional 'investigation teams' to ensure the collation of the evidence required for subsequent prosecution. However, as we discuss below,⁷⁴ that did not work well either.

329. The consequence of these problems with the arrest process can be seen in this table, which sets out the outcome of the charges that have been laid against protesters as at 8 February 2023:

Arrest Date	Arrest Total	Overall Charge Breakdown	Result (as at 8 February 2023)
10 Feb 2022	108	<ul style="list-style-type: none"> • Trespass = 87 • Trespass and Obstruction = 19 • Trespass and Fails to Provide Particulars = 1 • Trespass and Assaults Police = 1 	<ul style="list-style-type: none"> • Active = 12 • Resolve Guilty = 6 • Resolve Diversion = 19 • Not Guilty = 1 (<i>Maaka</i> case) • Withdrawn = 70

330. The high proportion of cases in which all charges have been withdrawn (65%) can be attributed to one or more of the following: the failure to give the appropriate trespass warning (as discussed above at paragraph 271); the inability by the prosecution to identify the arresting officer;

⁷³ As a consequence of the protest, Wellington District Police have changed this so that a receiving senior sergeant will immediately release an arrested individual from custody if the details of the arresting officer have not been provided.

⁷⁴ See paragraphs 861-867.

inadequate documentation by the arresting officer as to what the arrested person had done; and insufficient evidence to prove the charges.

331. We received complaints from some protesters that they were told they had been arrested for trespass but were subsequently charged with obstructing Police in the execution of their duty. There is nothing untoward about that. It is common for prosecutors to lay charges that differ from those that formed the basis for the arrest. The arrest is based on reasonable suspicion, but it is the duty of the custody supervisor and thereafter the prosecutor to assess whether there is sufficient evidence to provide a reasonable prospect of conviction. That is a separate and independent role.
332. However, the fact remains that the subsequent withdrawal of so many charges strongly suggests they should not have been laid in the first place.
333. In our view, this points to a wider issue with the legal framework governing the policing of public order situations. The law of arrest is largely predicated on the assumption that the process is a one-on-one interaction. It is ill-equipped to deal with volatile crowd control and public order situations. The establishment of ‘arrest teams’ in this instance manifestly failed to address that problem effectively. In our view, a different legislative framework for these types of large-scale public order events is required.

The force used to effect the arrests

334. The Crimes Act 1961 provides legal justification for using force in certain circumstances. The provisions cited most often as potentially relevant to Police action on 10 February are:
- Section 39 – Police may use “*such force as may be necessary*” to overcome any force used in resisting an arrest.
 - Section 40 – Police may use “*such force as may be necessary*” to prevent the escape of someone who takes to flight to avoid arrest.
 - Section 48 – Any person is *justified* in using “*reasonable*” force in defence of themselves or another.
335. Police policy on the use of force reflects the legal provisions outlined above, in that any force used must be necessary, proportionate and reasonable. Police officers must assess the threat a person poses (on an ascending scale from ‘Cooperative’ to ‘Passive resistance’ to ‘Active resistance’ to ‘Assaultive’ to ‘Grievous bodily harm/Death’) and then use the least amount of force needed to counter that threat.
336. In order of increasing force and potential harm, the tactical options available to Police include:
- Police presence and “*tactical communication*”;
 - mechanical restraints (handcuffing);
 - “*empty hand*” techniques (physically restraining and/or striking someone);

- pepper spray;
- batons, Tasers, Police dogs or “*weapons of opportunity*”;⁷⁵ and
- firearms and other “*force with serious implications*”.

337. We received 11 complaints about the use of force during the arrests made on 10 February. We are independently investigating four of these and our findings will be reported directly to the respective complainants. We intend to publish a summary of our findings in those cases.

338. We have confined our comments here to the use of force generally during the operation and whether it was appropriate. We consider the issues raised by the other seven complaints, where we determined no further action was necessary, to be adequately addressed by these general comments and have reported that to the individual complainants.

339. As we have outlined above,⁷⁶ the approach adopted by the Local Controller, who was in overall charge of the operation, was that enforcement was to be a last resort, and that the stated objective of restoring the protest to a peaceful one was to be attempted in the first instance by encouragement and persuasion.

340. When he decided, following the Commissioner’s expressed expectation that an attempt should be made to clear Parliament grounds on 10 February, things changed. Legal enforcement involving a skirmish line⁷⁷ in an attempt to move an initially compliant crowd was likely to (and did) entail at least some arrests. But it was consistent with the Local Controller’s approach that he and his senior managers emphasised the need for restraint and tried to minimise the appearance of confrontation and coercion. To that end, officers were instructed not to wear or carry public order policing protective gear.⁷⁸ Only team leaders were carrying further tactical equipment.

341. Police also used communication as a tactical option in their efforts to move protesters from Parliament grounds. Initially this included the use of loud hailers to amplify messaging to the large crowd. Loud hailers were used to broadcast messages that the Parliament grounds were now closed and that any person who remained was at risk of being arrested. Messages on the loud hailers later changed to stating that protesters were now trespassing on Parliament grounds:

“I issued the warning over the loud hailer several times in different locations on the skirmish line over a period of 15 minutes. This was met with little compliance and several of the gathered protesters began to sit down and interlock arms in front of the skirmish line.”

342. As well as the use of the loud hailer to disseminate messages to the protesters, some Police officers gave individual warnings to protesters:

⁷⁵ A weapon of opportunity is defined as: “*an object, or substance taken from the immediate environment, for use in self-defence or defence of another, where no other appropriate and approved tactical option is accessible or available*”.

⁷⁶ See paragraph 242.

⁷⁷ See paragraph 294.

⁷⁸ See paragraph 681 for a description of the protective gear.

“I then instructed the team leaders to begin the arrest procedure of the protesters that were seated in front of the skirmish lines. The arrest teams were to individually warn the protesters that they were dealing with, if the protester failed to acquiesce then they were to be arrested for obstruction.”

343. As we have outlined above,⁷⁹ some staff were critical of what they regarded as inadequate equipment to ensure staff safety. But many of the front-line officers we interviewed did recognise that restraint was essential in maintaining community support:

“I believe because of the nature of the protesters at that time being there were a lot of older people and children involved there, the force or the level of force used was quite minimal. While there were some arrests, most of those were for either obstruction or assaultive behaviour but we were quite restrained in the level of force used that day.”

344. Although the Team Leaders were able to carry pepper spray, staff were told they were not to use pepper spray and the Local Controller declined a request for permission for it to be used during the operation. He told us that this decision related to the style of policing they wished to employ, which they had been explicit about in their operational briefings to staff. He was also mindful of the risk of cross-contamination when used in a crowd. Frontline officers told us:

“I don’t remember who exactly said. But we weren’t to use spray and to the point where you know during the operation I was rung by Headquarters to say ‘Has somebody used the spray down there’ you know and I said well ‘No, not that I was aware of’ because they’d been getting reports and it wasn’t to be used.”

“I certainly like, during the day, I asked ‘We need to be using spray’ because what actually happened was you were getting into – so we were going to arrest somebody and you get in to a tug-of-war scenario which is usually fairly easily fixed with a bit of the spray scenario and it would make people think differently, so that might have had an impact and a lower level of force. Yeah, but we weren’t given the go for that.”

345. Irrespective of the Local Controller’s decision and the fact he declined a specific request for staff to use pepper spray as events escalated during the day, it is evident that it was used on at least two occasions:

“Actually, it was used by one of the PSU Sergeants on the skirmish line and it was used by me in another part of the day. It’s the first time I’ve used spray in probably about 10 years so, it was certainly justified in my view.”

346. On one occasion a sergeant used pepper spray to facilitate the release of a constable who was being pulled into the crowd by protesters. On the other occasion Police tried to remove a tent to distract protesters and draw them away from the skirmish line at the north end of Parliament grounds. Police officers became trapped by protesters who were pushing them with a metal barrier up against a concrete wall. The protesters ignored warnings, and were consequently sprayed by an officer. In both instances the use of spray was immediately effective.

⁷⁹ See paragraph 300.

347. The Local Controller responded to this in the following terms:

“My people, I’ve got to trust them to have full autonomy and you play to the mass, in terms of my intent and they were clear when I verbalised that. ‘Your style of policing is on show today team, we’re on national news now, be really conscious of that, we’re a values based organisation,’ so I like to think, in essence, the hearts and minds of my people were there with me there but there’s always some that won’t and I’ll never knock them – if I was out there and I feared GBH or whatever, in terms of my threat, then who am I to stand in the way of them making a decision. So I think, organically, they’ve accessed their spray, they’ve deemed it necessary to do that.”

348. We agree with the Local Controller’s assessment and believe that the officers acted appropriately in these two circumstances. His refusal to authorise the use of pepper spray must be taken to mean that it was not available as a general tactical option. If he had intended to ban its use altogether regardless of the circumstances, he would not have allowed it to be available through the Team Leaders.

349. Apart from this use of pepper spray, some significant degree of force in the course of making arrests was inevitable. Officers were confronted with a line of protesters with linked arms who were actively resisting attempts to remove a particular individual from that line and were sometimes physically assaulting the officer attempting to do so. Officers were occasionally required to defend themselves or their colleagues, as the following description of an attempted arrest where pepper spray was used demonstrates:

“I looked to my right while supervising the line and saw what I initially believed to be a Police member striking a protester. I approached to intervene and saw that the Police member was actually striking the arms of a male who was pulling a Police officer into the crowd. The Police member was face down forward into the crowd and I could see at least 4 male protesters holding onto his glow vest and BAS and pulling him forcefully into the crowd. A number of Police staff were holding his duty belt and trying to pull him back however they were not successful, and the Police member was being pulled further into the crowd. The demeanour of the four that I identified as pulling the police member was aggressive. The hostile nature of the crowd was such that they were intent on either injuring or threatening him. The secondary risk was of him falling further to the ground and being crushed under the large number of people present. The other staff were attempting to rescue the Police officer but were also being exposed due to them reaching out of the line and into the crowd to try and rescue him.”

350. Given the volatile circumstances and the duration of the operation, we are not able to say with confidence that there was no excessive force at all. As referred to above, there are some allegations of excessive force that we are independently investigating. However, in a general sense we think that the level of force used during the operation was reasonable and that the right balance was struck.

351. In this respect, we agree with the assessment of the Commissioner, who said to us in interview:

“When we’re balancing functions of law enforcement and public safety it’s relevant, we had half the people after the first day hating us for trying to arrest people and

we had half the people congratulating us for our effort to intervene and the restraint that we showed in doing it. So, it was very clear to me that had we ridden in with high levels of force that would have been seen as completely illegitimate and I don't think it would have been legally justified at that time. We had to test whether we could resolve it with a lesser level of force. Restraint was the first step we had to take."

352. Having said that, we think the operation continued for considerably longer than it should have, and that this resulted in the use of force to no productive end. As described above,⁸⁰ many officers told us that their tactic was having virtually no impact in moving the protesters towards the perimeter of the ground and it was evident from as early as 11am, and certainly by early afternoon, that the operation was not going to succeed.

FINDINGS

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.

WERE THOSE TAKEN INTO CUSTODY TREATED LAWFULLY, APPROPRIATELY AND IN ACCORDANCE WITH POLICY?

Were protesters treated appropriately at Parliament after their arrest?

353. On the morning of 10 February, a Parliament 'Custody Hub' was hurriedly set up in an area behind Parliament House. The hub was tasked with undertaking the initial processing and search of those arrested until they could be transported to the District Custody Unit (DCU) at the Wellington Central Police Station. The officers working at this temporary hub held those arrested, secured any possessions into a plastic exhibit bag and completed a charge sheet with the person's name or, if a name was refused, a description.

354. Because of the inadequate planning already discussed above,⁸¹ Police were ill-prepared for the number of arrests actually made. One of the sergeants responsible for effecting this process told us

⁸⁰ See paragraph 303.

⁸¹ See paragraphs 290-305.

that the charge sheets that had been assembled for this mass arrest process were not fit for purpose: they were outdated; there was confusion on what was supposed to be filled in; and information was collected in an inconsistent fashion that significantly contributed to subsequent difficulties during the preparation of the prosecution files. No cameras were available in the mass arrest processing area to take photos of those arrested, so that other time-consuming and unreliable methods of identifying individuals had to be used, such as recording a description of their clothing.

355. The lack of a contingency plan to deal with the unexpected number of arrests also meant that there were too few officers to process them. We were told that there could be up to 30 arrested people waiting around to be processed. While this did not cause any particular problem because they were compliant, the numbers made it difficult for the responsible officers to meet any needs the protesters had.
356. Once those arrested had been processed, they were asked to sit on the grass and wait until custody vans arrived, as there was nowhere else to hold them. However, there were only two available custody vans - one with a capacity of four and another (obtained by Police from Corrections) with a capacity of 20. A round trip to the DCU for each vehicle took between 40 minutes and one hour. As a result, those arrested sometimes had to wait patiently for a prolonged period in the heat with limited access to water and toilet facilities until transport arrived. We have been told that officers shared their own water with protesters and gained access to toilet facilities in the Parliamentary Library for them. At times, Police simply had to stop making arrests due to a lack of transportation and staff resources. The staff at the hub acknowledged in interview how compliant the arrested protesters were in sitting and waiting for transportation to the DCU.
357. Police custodial management policy requires that, prior to their transport, those in custody should be the subject of a “*rub down*” search where practicable to ensure that they do not have any weapons or other implements that might be used to harm themselves or others. This is authorised by section 85 of the Search and Surveillance Act 2012. We received some complaints from protesters that there were inadequate searches before transportation. We have been unable to determine whether searches were always undertaken, and whether they were always thorough enough, but we are satisfied that this was generally done to an adequate standard.
358. In summary, we find that officers at the temporary hub at Parliament did the best they could to deal with the arrested protesters when they were handed over to them. The circumstances were far from ideal; the fact that those arrested were sometimes left sitting around for a lengthy period before transport arrived was unsatisfactory and carried an element of risk. However, these shortcomings all stemmed from inadequate planning rather than poor decision-making on the ground.

Were protesters processed at the Wellington District Custody Unit in accordance with law and policy?

359. The Wellington DCU is divided into male and female wings with a total of 46 overnight cells, two holding cells (male and female) with capacity for 10 people in each, and two day rooms each with capacity for 15 people. The maximum short-term holding capacity is 96 people. Each of the day rooms has a water tap and a partially screened toilet. In addition, the DCU has a room with a

telephone for those in custody to contact a lawyer and another small room for them to meet with a lawyer.

360. The DCU normally operates with a sergeant and three staff working early shifts as well as a group of custodial staff of up to 12 to service the District Courts. On a typical day, the DCU would have approximately 10-16 people in custody. The Senior Sergeant in charge of the DCU was only advised of the planned action on the morning of 10 February, effectively allowing no time to prepare for what became a mass arrest situation and to arrange for additional capacity, including staff, to process the arrests. Moreover, the Senior Sergeant told us that a typical hypothetical scenario of a mass arrest might be an arrest of no more than 10 people, following a pub brawl.
361. The first arrests began arriving about 9am. Initially there was only one four-cell van to transport prisoners, so the Senior Sergeant was counting on a maximum of four prisoners at a time. The Senior Sergeant had not been told that Police had obtained a second 20 cell transporter from Corrections. When the arrested protesters started to arrive in groups of four and then 20, the Senior Sergeant realised more staff would be needed and obtained sworn officers from around the station and an experienced Authorised Officer. The staff in the DCU had various levels of experience in custody processing. The DCU was therefore confronted with circumstances beyond the experience and capacity of available staff. The limited space within the DCU also limits the number of detainees who can be processed at any one time. It is certainly not designed to manage over 100 people arriving in van loads at 20-30 minute intervals as occurred on 10 February. The large number of arrests arriving in rapid succession placed pressure on the DCU that staff could not reasonably be expected to cope with. Nor is the DCU itself equipped for it.
362. Because of this, a van load of protesters was taken to the Lower Hutt Police Station, although the cells there are generally no longer used to hold those in custody for any significant period. They were supervised by a Wellington DCU officer, who told us that he accompanied them and “*helped to provide some structure and order around the safe processing of arrests and handling of property*”, since staff at Lower Hutt had not been expecting an influx of arrests and did not necessarily have the training or experience to deal with them. Once released from Lower Hutt, Police provided these protesters with train tickets so they could return to Wellington if they so wished.
363. Despite the diversion of 30 protesters to Lower Hutt, the numbers remaining still made it impossible for the DCU to follow their normal processes. As we have explained above,⁸² we have been somewhat hampered in our analysis of what staff *did* do by the fact that CCTV footage was not retained, so that we have been unable to view what occurred. However, we have interviewed both Police staff and complainants, and Authority staff made an unannounced visit to the DCU on the afternoon of 10 February, so we are satisfied we are able to reach reliable conclusions.
364. It is normal practice for those arrested to be searched for any items that may pose a safety or security risk when they first arrive at the custody unit (even if they have been the subject of a rub-down search on arrest). On arrival at the DCU protesters were asked to remove items such as jewellery, shoes and hats. These items were added to each individual’s property bag. The officer in

⁸² See paragraphs 141-144.

charge of the DCU made a risk-based decision that a more thorough (section 11) search of individuals would be completed at the time the detainee was being processed from the holding cell and into the day room. This deviation from normal practice can be attributed to the need to ensure that the large numbers of detainees were quickly moved out of the transport vehicles and into a secure area. This also allowed for the transport vehicles to be released for a faster return to Parliament to uplift the next contingent of detainees:

“We didn’t give the section 11 search then [upon arrival at the DCU] and that was a risk. But I made that decision based on the fact that there was such a good level of, I guess, compliance to a degree and also camaraderie that – I didn’t think there would be any issues in terms of them wanting to do anything silly with items on them.”

365. We see nothing untoward in this. As noted above,⁸³ we are satisfied that most, if not all, were searched before being put in a transport van, and further items were removed and secured on arrival at the DCU. The decision to delay the section 11 search until the detainee was being moved between holding cell and day room seems like a pragmatic step to ensure the overall mass arrest process could be maintained within the DCU.
366. Given the numbers, it took time for custody staff to process each person upon their arrival in the DCU despite efforts to do this as quickly as possible. While they waited to be processed, protesters were placed in holding cells (that at times were occupied by two protesters) and also the male and female day rooms. Some protesters failed to co-operate with custodial management procedures, refusing to sign custody papers, or failing to identify themselves or sign bail forms. Non-compliance with these requirements compounded delays in processing and release.
367. The DCU by its nature is a restrictive space and when crowded, ventilation can become compromised. On 10 February, the area became crowded and hot. Not surprisingly, therefore, we received a number of complaints about over-crowding and inadequate ventilation during this process.
368. Staff took several steps to alleviate this and make the conditions less uncomfortable. Two further processing bays were set up in the sally port area to speed up the receiving process.⁸⁴ The doors of the holding cells and male and female day rooms were kept open, allowing protesters access to corridor space and improving airflow.
369. Again, we think that staff handled the situation well. They were affected by the lack of warning about the number of arrests they might receive, and their ability to process them quickly was affected by this and the lack of co-operation from some of those arrested. The DCU staff did the best they could in the circumstances.

⁸³ See paragraph 357.

⁸⁴ The sally port is the garage area where transport vehicles arrive with detainees. They are unloaded, normally given a rub-down search if this has not already occurred and taken from the sally port to an adjacent holding cell.

Was risk properly assessed and managed?

370. Police custodial management policy requires that, as part of initial processing, detainees receive a formal health and welfare risk assessment to determine whether they pose any risk of harm to themselves or others and whether there are any health, medication, or other needs that custodial staff need to be aware of. This assessment informs the level of monitoring required while they are in custody depending on the assessed level of risk. Until that formal assessment is undertaken, detainees must be individually checked at least five times per hour at regular intervals.
371. In this case, because of the large number of arrivals, DCU staff completed some initial risk assessments as a group in order to triage any person who may have had a medical condition. Staff asked some groups arriving to let them know if they had any urgent medical needs, a practice observed by Authority staff. Custody staff were then stationed in the corridors to monitor the protesters and ensure order was maintained until they were individually assessed.
372. The formal health and welfare risk assessment was completed when the individual was taken to the receiving area. The need for staff to act in this way arose both from the absence of a sound mass arrest policy and from the lack of advance notice of the pending influx of detainees. We recognise there was an inherent risk to delaying this process until the individual was being formally processed. However, given the limited number of staff available, we accept that the reception and risk assessment process was undertaken appropriately by the staff on the ground. The protesters were processed on a priority basis so they could be released. The officer in charge asked the protesters to help staff prioritise who should be processed for release first, on the basis of criteria such as child or animal care responsibilities or health needs.

Were welfare needs met?

373. Police have a duty of care to those in their custody. In recognition of this, Police custodial management policy provides that detainees should have access to fluids and meals if they are in custody at a normal mealtime. They must also have any physical and mental health needs addressed.
374. We received some complaints that Police did not fulfil this duty and provided inadequate food and water.
375. Police have told us that, on arrival at the DCU, protesters were given a muesli bar and paper cup to access water in the day rooms. Authority staff observed staff offering protesters water. We were told those held overnight were given an evening meal and breakfast in accordance with policy.
376. The officer in charge arranged for a paramedic to be available if required to assess any injuries or other health needs. The paramedic stayed in the custody area all day. There were few health concerns. One protester complained of a sore shoulder. Another suffered an anxiety attack. He was placed in a separate cell and assessed by the onsite paramedic. An ambulance was called to take him to hospital for observation. He was provided with medication and discharged himself.

377. COVID-19 was also a risk for the DCU to manage. Given the numbers arrested and the limited space in the DCU, social distancing was not physically possible. Custody staff wore KN95 masks and gloves at all times. Masks and hand sanitiser were available in the receiving area. Staff offered masks to protesters as they arrived. These were declined and eventually staff stopped offering them.
378. One protester advised staff that he had COVID-19. As policy requires anyone with an infectious disease to be segregated, and in line with COVID-19 protocols, he was placed in a separate cell until he could be released. Staff wore additional protection (gowns) when interacting with him.
379. Overall, we are satisfied that Police took appropriate action to address the welfare needs of the arrested protesters.

Were protesters advised of their rights and given access to a lawyer?

380. Section 23 of the NZBORA provides that individuals who are arrested or detained have the right to consult and instruct a lawyer without delay and to be informed of that right.
381. It is standard custodial management practice to provide each person arrested with a 'Notice to Person in Custody'. This document lists their legal rights and entitlements under the NZBORA, including the right to speak with a lawyer as soon as practicable.
382. Advising those arrested of their rights normally occurs at the time of the arrest or shortly thereafter. Those arrested are asked to sign the Notice to Person in Custody; if they refuse, this is noted on the form. On 10 February, this process was not followed. Instead, the Notice of Person in Custody form was included in the release documentation that many refused to sign. The officer in charge made this decision to reduce delays:

"When we initially processed them, I told my team not to print out any paperwork, just get them into the electronic system, we'll print the paperwork upon their release...we'll do the one stop shop where we print all the custody forms plus their bail bond and the trespass notices."

383. By the same token, detainees under normal circumstances are able to make a phone call in private to a lawyer if they wish to do so. Given the numbers in custody on 10 February, staff recognised that this would be impracticable as there is only one telephone in the DCU⁸⁵.
384. As an alternative to individual phone calls, staff gave female protesters the option of selecting a representative to contact a solicitor on their behalf. One protester phoned a solicitor who then passed the advice to the other women that they should not provide their name or sign papers.
385. Male protesters were given the same option. The officer in charge advised them that, unless they put forward a representative, the call could not be facilitated. They argued among themselves and were unable to agree on a representative with the result that no phone call was made to a solicitor on behalf of the male protesters.

⁸⁵ Some individual phone calls were facilitated by mid-afternoon as numbers dwindled.

386. The failure to follow the law in these respects can be explained by the large numbers arriving at the station; the fact, as noted above, the DCU was operating with only its normal staff complement supplemented at the request of the DCU on the day by some additional staff with little experience of custodial management; and the availability of only one telephone in the DCU. The responsible custody staff did what they could in what, for them, were unforeseen and unprecedented circumstances.
387. However, this does not justify the fact that the Police as an organisation failed to comply with the law; as part of the operation, there should have been contingency planning for the possibility that numbers exceeded expectations.
388. This is not the first time the Authority has encountered a situation where detainees have not been given personal access to a lawyer because of inadequate facilities. In a report in 2014⁸⁶, the Authority noted that this had occurred because of the availability of only one telephone in the Auckland City Custody Unit and were told by Police that plans were underway to provide further telephones. While we appreciate that these mass events happen only infrequently, it is still concerning and disappointing that a fundamental breach of the rights of detainees has recurred partly for the same reason.

Was the length of time in custody unreasonable?

389. Section 23 of the NZBORA states that anyone who is arrested should be charged promptly or be released. Section 316 of the Crimes Act requires that every person who is arrested on a charge of any offence shall be brought before a court, as soon as possible, to be dealt with according to law. There is no timeframe set in law, so this becomes a question of what is reasonable or practicable in the circumstances.
390. To streamline the release process and to gain some “buy in” from the protesters, the officer in charge told us protesters were asked to prioritise who should be bailed first given factors such as dependent children, dogs in cars, and health issues. Protesters were then released following photographing and fingerprinting. Given the numbers of people they were dealing with, the DCU’s strategy of seeking the protesters’ assistance to determine individuals’ needs and communicate that priority to the custody staff seems reasonable and appropriate.
391. Once protesters had been processed on a priority basis, they were either placed in a cell or were kept in the holding cell or day room awaiting fingerprinting and photographing before being released. Those who did not provide their details or refused to sign bail forms were not released but kept in custody to appear in court the following morning.
392. This was an appropriate process. The problem was the length of time it took. Because staff were giving priority to processing new arrivals, those who were to be released waited longer than they

⁸⁶ [Independent Police Conduct Authority Policing of Blockade the Budget Demonstrations in May/June 2012, Public Report, October 2014.](#)

needed to, which simply contributed to the over-crowding, heat and generally uncomfortable conditions. As one officer summarised the situation:

“It kind of got to the stage where we were still getting detainees in but [the ones already there] were starting to complain that they were being kept in for too long and I realised – I can’t even remember what the timeframe was to be perfectly honest, and I didn’t write notes, which was really bad, but I was like, crikey - they’d probably had been in here for a couple of hours, if not longer, three or four, so we need to stop one of the processing groups for receiving and turn it into a releasing booth.”

393. While that was done, there should have been earlier planning for how the overall process would work. Again, 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.

FINDINGS

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.

Part 6: The Police operation from 11 February – 1 March

394. After the attempt on 10 February to clear the lawn in front of Parliament House, and the level of resistance encountered, it was clear to Police that they needed to plan a more significant operation, requiring considerable staff resource. Planning was ongoing between 11 February and 1 March. While this planning was taking place, Police had to continue dealing with the protest situation and maintain law and order and public safety.
395. Throughout the course of the protest the number of people attending fluctuated but generally increased from 10 February until later in the month. Police estimated the number of protesters peaked at 3,000 on 14 February. Generally, more people attended during the weekends and not everybody stayed on site overnight. From Thursday, 24 February the estimated numbers of protesters started to decrease (400 on 24 and 25 February), with only about 300 protesters estimated to be present on Saturday 26 February, about 200 on Sunday 27 February and 200-300 on Tuesday 1 March (see the graph after paragraph 84).
396. Wellington District was responsible for the operational and tactical response to the protest. This operation was referred to as Operation Convoy. Their mission, as stated in the Commander's Intent, was *"To maintain law and order through exceptional policing, while restoring Parliament grounds and environs to a safe state of peaceful and lawful protest."*
397. Wellington District staff were tasked by the Local Controller with maintaining a *"strong overt presence at Parliament grounds and in the adjacent roadways and spaces"*. The style of policing adopted sought to build trust and to de-escalate the situation with any actions to be reasonable and proportionate. Wellington District staff were assisted by additional resources from across the country including Māori Wardens.
398. Ensuring there was no breach of Parliament buildings was the Local Controller's highest priority. An Incident Management team was established at the Wellington Central Police station and a Venue Operations Centre set up in Parliament buildings. The Incident Management team were given access to Parliament's CCTV cameras enabling them to closely monitor activities on Parliament grounds. Initially, 65 officers were redeployed to Wellington District to support the operation and ensure the security of Parliament buildings and protect people working there. Additional officers continued to be deployed to Wellington over the period of the occupation, culminating in about 530 out-of-district officers supporting the operation undertaken on 2 March.
399. The nature and scale of the protest changed during this period. While the protest environment was initially predominantly calm, there were aggressive elements from the first night that became more pronounced over time as more protesters and their vehicles arrived. In addition to tents, the protesters erected structures including showers, toilet blocks and kitchen facilities. The area occupied by the protesters expanded around the vicinity of Parliament grounds onto nearby Victoria University's Law Faculty grounds and roads which are normally busy major thoroughfares. Over this period, protesters trespassed onto private property, including the Cathedral and Victoria University, and significantly affected the courts, local organisations, businesses, residents, schools, and commuters in the area around Parliament.

400. As the protest continued, disputes broke out between different factions and Police observed stockpiling of potential weapons. The local community experienced increased levels of harassment and abuse, resulting in many demands on Police to respond to incidents and provide reassurance. Managing these many demands proved challenging given the number of resources needed to secure Parliament buildings, respond to ‘business-as-usual’ demand and manage the impact of COVID-19 on the number of available officers. There was growing frustration from local residents and businesses and the Victoria University of Wellington Students’ Association that Police should have acted more quickly and were not doing enough to clear the protesters. Many businesses and government agencies in the immediate area closed their doors or instructed their staff to work from home, given growing concerns for personal safety and security and deteriorating sanitary conditions around the protest site.
401. In addition to the protest in Wellington, Police were also dealing with anti-mandate protests in other centres across New Zealand and becoming increasingly concerned about the strategic risk protesters posed to the country’s transport and freight network, as had occurred in Canada and other jurisdictions. Given the wider threat posed, a national operation was established by Police on 15 February and the National Security System activated by the Department of Prime Minister and Cabinet (DPMC) at Police’s request. When a national operation was established the Assistant Commissioner to whom the Local Controller reported was appointed to lead that operation (called ‘Operation Oversight’) and became the National Controller.
402. In this part, we address the following questions in respect of the Police operation between 11 February and 1 March:
- How did Police plan to manage the occupation until it was brought to an end and was this appropriate and effective?
 - 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?⁸⁷
 - What was the nature of Police’s engagement with protest groups and was it appropriate and effective?
 - Did Police engage effectively and appropriately with interested parties?
 - How appropriate was traffic management and the seizure of vehicles?
 - Did the operation do enough to secure public access to the courts?

HOW DID POLICE PLAN TO MANAGE THE OCCUPATION UNTIL IT WAS BROUGHT TO AN END AND WAS THIS APPROPRIATE AND EFFECTIVE?

403. A Wellington District planning team was formed in the initial stages of Police’s response to the occupation. During the first few days of ‘Operation Convoy’ the team was engaged in activities

⁸⁷ The Major Operations Centre was set up at Police National Headquarters with dedicated staff to support Police Districts dealing with protest activity. This is discussed at paragraph 415 onwards.

prioritised by the Local Controller. These included planning to move vehicles and enlist the assistance of tow and heavy haulage companies for that purpose, and other tasks related to ensuring the security of Parliament buildings.

404. The planning team was initially tasked on 12 February with creating a plan to clear Molesworth Street to get traffic in the city flowing again. Later that day they were tasked with creating a plan to clear both Molesworth Street and Parliament grounds, which became known by Police as the ‘deliberate action’ plan.⁸⁸ The planning process and plan to clear the grounds is discussed further in Part 7.

405. The team developed a concept plan for a three-phase ongoing operation:

- negotiation;
- if that did not work, disruption (moving cars, upsetting and disrupting supply chains) to encourage negotiation; and
- continuing negotiation through to a final operation to bring the occupation to an end.

406. On Sunday 13 February, officers from the planning team, together with the Tactical Commander and Deliberate Action Commander, briefed members of the Police Executive and Wellington District Leadership Team, who approved the concept plan.

407. The planning team were responsible for planning for the day-to-day tactical response required by Wellington Police to the occupation. This meant the planning team’s first week was spent initiating the work to be done by the negotiation team,⁸⁹ and planning for the removal of protesters’ vehicles from Molesworth Street,⁹⁰ as well as developing a plan for clearing protesters from Molesworth Street and Parliament grounds (the ‘deliberate action’ plan).

408. Although Police established a national operation on 15 February,⁹¹ and set up a Major Operations Centre (MOC), the planning function for the Police response to the occupation continued initially to be led by the Wellington District planning team.

409. Following discussions with the National Controller and his Deputy, it became clear that the Wellington District planning team needed support and were under-resourced to meet all the competing demands:

“The view of what the long term plan was, was not clear ... we started to request that (to understand the resourcing required) and then it became obvious that there wasn’t that view because that planning team didn’t have the capacity to develop that plan. Not until resource was thrown at it and time and space for that team to really do that planning, did that plan really start to take shape.”

⁸⁸ Police describe “deliberate action” as the “best plan to succeed. It’s at a time of our choosing, it’s under the conditions that we choose and it’s with the resourcing capability that will make the plan succeed”.

⁸⁹ See paragraphs 454-476.

⁹⁰ See paragraphs 585-608.

⁹¹ Discussed from paragraph 415 below.

410. Following a four-hour planning meeting at Police National Headquarters on Saturday 19 February, the Deputy National Controller decided to hold a two-day MOC strategic planning workshop. He told us the purpose of the workshop was to provide the time and space required to develop the long-term planning.

411. The workshop was held on 21 and 22 February. As well as a tactical plan for clearing the grounds around Parliament (discussed further in Part 7), a strategic plan for the national operation, entitled ‘Operation Instructions Operation Oversight’, was developed and signed by the National Controller on 28 February 2022. The purpose of the Operation Instructions was to:

“...provide New Zealand Police with direction on the security requirements for disbanding the unlawful occupation of the Wellington CBD and within the Parliamentary Precinct and environs associated with the Convoy protest.”

412. The Operation Instructions set out a five-stage operation to “conclude the occupation”:

- Stage One: to continue the current security arrangements.
- Stage Two: to begin immediately on the signing of the Operation Instructions and involved activity to cause fatigue within the occupation, gather intelligence about their tactics, continue negotiation and seek concessions and engagement from central Government.
- Stage Three: the selection, staged travel and training of additional personnel required for the execution of Stage Four.
- Stage Four: the deliberate, incremental, forced removal of structures and vehicles from the affected area, as well as the removal of people who were unlawfully in the area of protest (the ‘deliberate action’).
- Stage Five: the consolidation of the protest environs.

413. The Operation Instructions said: “...end state is achieved when Parliament and its surrounds are cleared of unlawful occupiers, vehicles and structures”. The Operation Instructions set out the various roles and responsibilities to implement the plan.

414. The Wellington District planning team were tasked with:

- *“Planning the training for the Public Order Policing contingent.*
- *Planning the execution of Stages Four and Five.*
- *Planning for the mass arrest of unlawful occupiers.*
- *Establishing a vehicle extraction plan that passed the custody of towed vehicles to Wellington City Council.*
- *Establishing a property plan to pass the tents, structures and placards to the custody of Parliamentary Security for property on their grounds and Wellington City Council for surrounding public areas.*

- *Ensuring that an armed response capability was available throughout the operation.*
- *Completion of a community impact assessment in support of Stages Four and Five.*
- *Ensuring that measures to protect people from hostile vehicles were in place throughout the operation.*
- *Establishing a traffic management plan to help occupiers leave in vehicles.*
- *Engaging with affected partners to ensure collaboration across the various roles.”*

FINDINGS

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.

THE ESTABLISHMENT OF A NATIONAL OPERATION

415. In parallel with the changing nature and scale of the protest in Wellington, other anti-mandate protests sprang up across the country, such as in Picton (on the route to the ferry terminal) and Christchurch. As a result of these developments, on 15 February the Commissioner decided to establish a national operation (called ‘Operation Oversight’) to have strategic oversight of all responses to the local events across the country and provide support to the relevant Districts, including Wellington District’s ‘Operation Convoy’ which maintained responsibility for and was continuing to lead the operational response to the protest at Parliament.

416. A MOC was accordingly set up and led by one of the Assistant Commissioner: Districts who was appointed to be National Controller. The MOC was based at Police National Headquarters and staff assigned to it from their normal roles. It was established primarily to provide logistical support for the Wellington District Operation, and to assess the District’s short and long term logistical and resourcing needs.

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?

417. From our interviews we determined that, while the decision was made on 15 February, it took several days to get the MOC fully resourced. There were issues with staff being available to be assigned within Police National Headquarters, staff not having the necessary experience required,

and no comprehensive documented operating procedures for how a MOC should run, despite Police having used such an approach at earlier major incidents. Police say an aide memoire has been in place since 2017 and was used in the establishment of this MOC. That is not the case. One of the MOC managers told us he had never seen this 2017 aide memoire and it was not used. In any event this document is equivalent to a 'joining instruction' and does not set out any required operating procedures. It was also not helpful that the MOC and District used different case management systems to run their operations, which meant daily actions and decisions were not recorded in one central place visible to all Police staff working on both operations. It is unclear why they used different systems.

418. One senior officer told us that the decision to establish the MOC should have occurred earlier. We agree. Many staff felt national support should have been provided to Wellington District at an earlier stage, regardless of whether it turned into a national operation or not. For example, it was inefficient and counter-productive for Wellington District staff to have to find staff from other districts, as this took them away from operational duties and planning at a time when resources were fully stretched.
419. One senior officer told us that *"had strategic planning capability been in place even prior to the establishment of the MOC, it might have made a difference"*. However, it is hard to determine the extent to which this is the case: there were still difficulties in assessing the way in which the protest would develop, and a need to wait until protester fatigue reduced the size of the occupation.
420. The same pressure was felt by those in Wellington District responsible for developing the plan for the operation subsequently undertaken on 2 March. As discussed above, the District team began planning for this almost immediately after 10 February, but were frequently distracted from that task by other operational planning requirements such as the strategy for containing the protest and the plan for removing protesters' vehicles.
421. As a further example of the multiple demands on an under-resourced team, while it was tasked with preparing a plan for dealing with protesters' personal property, the District team acknowledged that there was little or no planning for anything other than vehicles. The Tactical Commander has told us Police had a verbal understanding with Parliamentary Security and private property owners that responsibility for dealing with the property rested with the latter and they did not need to plan for it. Parliamentary Security is adamant this was not the case, and Police have been unable to provide any documentary evidence of it. At the least, Police failed to adequately determine respective roles and responsibilities in Police planning and to communicate these to other parties.
422. The adverse consequences of the delay in establishing the MOC were compounded by the fact that there were insufficient staff with the necessary level of training. This was described to us by a senior officer in the following terms:

"We didn't have people trained...I was pretty disappointed with the approach and I was pretty disappointed that the MOC hadn't moved on from previous learnings. So it was always the aim of the MOC that you'd have three or four people trained up in each of the positions out of this building so that if it was decreed that the MOC had to stand up you could immediately stand it up. It should take an hour. An hour to get

your commander's intent established, an hour to get the staffing released out of what they're doing and then to kick in. Seven days later we were still looking for staff, and we had staff that were untrained...I think it was really disappointing, the lack of ability to stand up."

423. This was exacerbated by the fact there were no detailed standard operating procedures for such an event, so that staff were unclear what was expected of them.
424. The inadequacy of training and the absence of standard operating procedures might not have mattered so much if the staff concerned had all had experience of undertaking such a role. But that was not always the case. For example, one of the two MOC managers had no experience running a MOC, and some other staff had minimal experience.
425. The District planning team, despite being under extreme pressure with other operational matters and under-resourced, continued to shoulder much of the responsibility for planning for 'Deliberate Action Day'. They were supported by the National Support Command Team (NSCT), referred to colloquially as the "fly-in fly-out" team. The NSCT is designed as a support team to assist District command during an incident. However, that resource was split between the MOC and Wellington District. The planning for the deliberate action operation remained under-resourced and was initially more fragmented and uncoordinated than it needed to be. This problem was not remedied until the two-day workshop held on 21-22 February, attended by 14 Police staff, including officers with experience in both public order policing and Armed Offender Squad (AOS) or Special Tactics Group (STG) tactical planning. The workshop was also attended by representatives from the New Zealand Defence Force (NZDF) with expertise in planning and representatives from Corrections and Wellington Free Ambulance.
426. We also heard from some of the officers interviewed that the NSCT did not bring the level of expertise or experience anticipated. A senior officer told us:

"...over and above some briefings and lectures, they offered very little over their own experience. Everything we are doing is purely based on experience, i.e. I've been here before so we should do this...I worked with a military planner who spent four years learning how to plan operations. In Police, Police will appoint you into the role and say today you are the planning manager and there's nothing, no depth apart from experience to support those functions."

427. Three other senior officers we interviewed also all separately identified an issue with Police capability related to strategic planning and told us the following:

"The long-term planning is definitely lacking."

"I don't think, as an organisation we really nailed or gained any real agreement around strategic planning versus tactical planning."

"We ended up making a really good connection with NZDF planners...their strategic and planning brain was a real enhancement. We've tried to implement a fly-in planning team that assist in these operations, but I don't think they've got that...training all right. I think it's a real specific skill set...so I think that's another area the Police could be better at. Again, I look at the NZDF, who joined us. That's

their career, that planning and strategizing space. Police don't do that with any of our people, so great we could utilise them in that, but again, we should be better at that."

428. The NZDF planning expert helping Police with planning told us: *"There seemed to be very little understanding of how to plan a complex activity of this nature."*
429. The command structure of MOC was established using the Co-ordinated Incident Management System (CIMS) framework and methodology.⁹² This is a common framework used by different agencies in New Zealand and internationally. The purpose of CIMS is to achieve effective co-ordinated incident management by responding agencies through coordination both within and across functions and organisations. This is achieved by:
- establishing common structures, functions and terminology in a framework that is flexible, modular, and scalable so that the framework can be tailored to specific circumstances; and
 - providing organisations with a framework to develop CIMS-aligned processes and procedures in a way that supports their own responses and ensures multi-organisation coordination.
430. The National Controller's role was to have primary oversight of the whole Police response. His wide and diverse responsibilities, which were consistent with those in the CIMS framework, ranged from *"directing and monitoring the response to ensuring responder, public, and animal wellbeing and safety."*
431. The MOC was located at Police National Headquarters, close to where the Police Executive worked. The Commissioner and Executive Team had an understandable interest and need to receive regular updates about how the local and national operations were progressing. They had an overall governance responsibility.
432. While the operation remained at a District level, the Deputy Commissioner: Operations was the main member of the Executive receiving updates and providing information to the Commissioner and Executive team. That continued for the first five days of the national operation. But on Sunday 20 February he advised the National Controller, Local Controller and Police Executive that he had asked the Deputy Commissioner: Strategy and Service to take over his role in Operation Oversight/Convoy starting at midday that day, allowing him to return to his usual role overseeing District operations across the whole country.
433. The Deputy Commissioner: Strategy and Service effectively assumed responsibility from that time. His role has been described to us by the District and National Command team members as either Executive Lead or Senior Responsible Owner (SRO) for Operation Oversight.
434. An Executive Lead role is not mentioned in Police policy, instruction or documents, and this term is confusing and unhelpful. A SRO is defined in policy, but it is a role confined to projects rather than

⁹² [National Emergency Management Agency | Coordinated Incident Management System \(CIMS\) third edition.](#)

operational matters within Police and is described as including responsibility for providing strategic leadership and direction to ensure the successful delivery of the project.

435. One senior officer told us in interview:

“We seem to have invented this role of Senior Responsible Officer, an Executive member [as] Senior Responsible Officer. It actually doesn’t sit or fit within the CIMS framework. It doesn’t exist, so why have Police run off and created it... It’s like an executive lead, so then does that usurp the National Controller or not? And there is a question around that.”

436. Although the concept of a SRO is not included in the CIMS terminology or structure at all, the CIMS framework is designed to provide guidance to the public sector rather than a set of prescriptive roles. The fact that it does not recognise a SRO position does not in any way preclude the creation of such a position. The Commissioner believed that, in addition to the National Controller, he needed a Deputy Commissioner to be involved in the operation because of its scale, length, and impact across the country and its reputational and political implications. The Commissioner wanted that Deputy Commissioner *“to stay connected to the operation, provide strategic advice and context management, enable ‘up and out’ engagement, including with Ministers and provide support to the setting of overall strategy and expectations for the operation”*. We agree this is an appropriate role for a Deputy Commissioner to take in such a high-profile matter as this.

437. So how is a SRO different from a National Controller? Police have told us that the role *“provided the Commissioner with a person who was independent of operational command to assist with managing the broader operational, reputational, and political implications”*. This included managing the political interface, keeping the Commissioner informed of risks and opportunities, engaging with Police’s partner agencies and other interested parties, and thinking strategically about the impacts of the operation and how to mitigate them. We would go further than that. The role was not merely acting as a conduit between operational command and the Commissioner. It was also designed to provide assurance to the Police Executive that operational decisions were appropriate. To that end, it would have been entirely appropriate for the Deputy Commissioner to intervene and, if necessary, elevate an operational decision to the Commissioner, if he had thought that an operational strategy or decision was wrong. In other words, the National Controller should have been seen as having operational autonomy, subject to the intervention of the Deputy Commissioner by exception.

438. An internal Police review of the MOC suggested that Executive members should provide governance advice and guidance from the side, not within the operational command structure, because this creates confusion about who is in ultimate command because of rank. In our view, that takes a very narrow view of the role. If the Deputy Commissioner can intervene operationally as set out above, then he or she should also be able to attend some relevant meetings to hear the discussion.

439. However, the fact that the Deputy Commissioner: Strategy and Service regularly attended Operation Oversight briefings which took place at the MOC twice a day went further than was strictly necessary for the role to be performed properly. That was compounded by the fact that there was no document setting out what the Deputy Commissioner’s role and responsibility was.

As a result, his role was not understood by Police staff within either the MOC or the District command structure, and they told us that they were confused about where decision-making lay. In our view, to provide clarity for everyone in Police, the purpose and responsibilities of such a role should be clearly articulated and documented when it is created, so staff understand what it encompasses and how it fits with the National Controller role and the CIMS framework. That needs to be done on a case-by-case basis as well as in general policy, because the precise ambit of the role will be circumstance-specific.

440. In this instance other senior Police staff, who were not part of the command structure for the operation, often also attended the daily operational briefings which occurred at the MOC. The internal Police review of the MOC identified this as an issue,⁹³ commenting:

- *“There appeared to be too many ‘non-command team’ members interjecting with their ideas on what action to take etc.*
- *Because the national structure lacked clarity, this resulted in various Executive members attending on the belief they should be present.*
- *Those members did not have a functional lead role and were not critical to the decision-making of the National Controller.*
- *Executive leaders not directly involved in the operation need to understand their support role and the need to provide the Controller with the environment to work and not get distracted by multiple requests.”*

441. The review also noted that Executive members physically arrived at the MOC at various times requesting information and recommended that, in future, requests for information should be emailed to the MOC Inbox or directed to the Chief of Staff who acted as the filter for the National Controller. Again, we agree.

442. CIMS sets out the structure of command and control within an operation and the responsibilities of each role. All Police staff need to understand the CIMS framework, as it is used by other agencies within New Zealand, although the level of knowledge required is dependent on their roles within Police and the likelihood of them being given a role at an incident. Despite the Authority making recommendations in July 2018 that Police introduce additional relevant training for Police staff at all levels focusing on the control and command structure during critical incidents, many staff advised us that no training occurs generally and what does exist is limited to specific tactical groups or as part of the promotional framework. They are concerned at the lack of table-top exercises which means that Police staff generally are not well prepared when an exacting incident such as the occupation occurs. As one tactical commander said:

“It was pretty clear that between Police Headquarters and District we didn’t know our roles, functions and responsibilities as well as we should have....”

⁹³ Two reviews were commissioned by Director: Major Operations as he undertook a Quality Assurance role of the MOC. These covered MOC process and deliverables and Operation Convoy.

Somewhere along the journey Police have lost the ability to do that I think...we don't train command and control outside of your tactical groups... we don't have a culture of command and control training, experience and understanding of what it is your role is and where your discipline needs to stay...

[There was a] real lack of structure and lack of discipline and how the command and control of a major operation works."

443. Since this protest Police are developing guidelines for a three-tier system, comprising local command, local command with national support, and national command.

444. This three-tier system was explained to us as follows:

"So at the very base level, you've got a locally led, locally supported operation. So in the Convoy context for an example, my understanding was that, certainly in the early stages, Wellington District were responsible for the planning and for executing that plan, whatever plan they came up with.

The next tier up from that is locally led, nationally supported and that's when a local controller says, 'Hey, I don't have all the resources I need to execute my intent, can the Centre please provide me some support?'

So, at that point, that's when a Major Operation Centre, or something like it, might be stood up in support of a locally led operation.

And then the next tier up from that is nationally led, nationally supported. So that's when the approval for the planning to execute the commander's intent, so the commander's intent, so it's at the national level, the responsibility for the planning and the approval of those plans and the execution of those plans, it's at the national level."

FINDINGS

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.

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?

Who were the protesters and what did they want?

445. As outlined in Part 1,⁹⁴ Police identified the main groups during the period as:

- Convoy 2022 NZ
- The Freedom and Rights Coalition
- New Zealand Doctors Speaking out with Science (NZDSOS)
- New Zealand Outdoors & Freedom Party
- Voices for Freedom, and
- Counterspin Media.

446. These groups had varied stated objectives and mandates, but the common objective was to achieve an end to the vaccine mandates and a lessening of the COVID-19 measures imposed on the public. To achieve this purpose they wanted a dialogue with the Government.

447. After the attempt to remove the protesters from Parliament grounds on Thursday 10 February other groups and individuals joined the protest. For example, Voices for Freedom were not part of the initial protest but joined after 10 February. Protesters we spoke to said they were appalled at Police's attempt to clear what they viewed a peaceful and lawful protest and wanted to support the call for an end to vaccine mandates.



Photograph courtesy of LibertyBites

⁹⁴ See paragraph 82.

448. There was no single leader of the protest at Parliament or common voice. Police struggled to identify leaders of the various factions/groups or to get engagement with relevant spokespeople who had influence over the protesters. This was extremely challenging for Police. A leader of one of the groups referred to the protest leaders as *'like a jazz band,'* as they would come and go, and different members would pop up. There were three people who became Police's main contact points during the protest who were considered spokespeople for the protest groups, although it was unclear what influence each had within the protest as a whole. These were:

- A lawyer for Voices for Freedom based in Melbourne, Australia who had regular contact with the Deputy Commissioner: Strategy and Service from 18 February.
- A pastor for Destiny Church based in Wellington who was affiliated to the Freedom and Rights Coalition and had regular contact with the Deputy Commissioner: Iwi & Communities from 15 February.
- Leighton Baker who was not affiliated to any particular protest group but joined after 10 February and was appointed by the protest leaders as a spokesperson for them. He had regular contact with Police's Advanced Police Negotiation Team and met with the Deputy Commissioner: Strategy and Service and the Deputy Commissioner: Iwi & Communities.

449. As part of our investigation, we interviewed 60 individual protesters and representatives of protest groups, including activists and social media influencers. Of these, 38 were individual protesters who had complained to us about Police actions or were friends/relatives of complainants. These 38 individuals were aged 17-74 years and had been at the protest for between two and 23 days (14 were present on 10 February, 15 were present on 2 March and 13 were present on both of those days).

450. All those we spoke to were keen to talk to us, passionate and genuine in their belief they were morally and legally justified in protesting. They conveyed a strong sense of grievance and injustice for how they were treated and regarded by others. This stemmed from a feeling of being stigmatised because they had refused to be vaccinated. They described feeling like *"lepers"* as they were not able to go to the shops, restaurants or participate in everyday activities.

451. They all described feeling a sense of joy being at the protest as they were with like-minded people, in a community where they were accepted and free from COVID-19 measures. They commonly used words such as *"peaceful"*, *"friendly"*, *"lovely"*, *"beautiful"* and *"calm"* to describe what it was like for them at the *"Freedom Village"*, as they called the protest area. Freedom Village was described as a peaceful, accepting, friendly and supportive community. They felt a sense of freedom at the protest as it was a place where they did not have to wear masks or show vaccine passports and did not feel judged. Protesters soon set up infrastructure on the site, including a commercial kitchen, showers and childcare facilities.



Photograph courtesy of LibertyBites

452. There were common views expressed by the protesters we interviewed as follows:

- Protesters were law-abiding New Zealanders who were suffering under the Government’s public health measures. Many of the protesters present were professionals who had lost their jobs and some even their houses.
- Not all protesters were unvaccinated. Almost all said they were protesting the Government’s ‘radical’ actions, such as vaccine pass requirements and especially the vaccine mandates. They said these actions were dividing society.
- Protesters did nothing violent and were innocent. Some admitted other individual protesters did act violently (namely, by throwing bricks). They said they did not condone this, but these actions were only in retaliation to Police aggression.
- Protesters were vilified by the media and Police.
- They were adamant they were lawfully on Parliament grounds. Some said they could not be trespassed from public property. Several said protesters had been given permission by Ngati Tama to be on Parliament grounds and others by the Diocese to camp on the grounds of the Cathedral.
- Many said they had interactions with individual officers, mainly those on Parliament grounds. While a few officers did not respond or made nasty comments about protesters, they said most were friendly, pleasant, professional and ‘doing their job’. They had casual conversations with them. Several protesters gave these interactions as examples of ‘good policing’. Some said they could tell some officers did not want to be there – they said they saw some with tears running down their faces. A few said they were personally helped by individual officers on 10 February and 2 March.
- Protesters nevertheless said the use of force by Police on 2 March was shocking. They described Police actions as “*indiscriminate*”, “*brutal*”, “*unjustified*” and “*unlawful*”.

- Protesters said they had lost trust and confidence in Police. Several said that, even now, seeing Police officers frightens and traumatises them. A few said their disrespect is for the Commissioner and that he should resign. Many said that they would no longer report crime or seek protection or assistance from Police.
- Protesters said it was very wrong of the Prime Minister and Members of Parliament to refuse to speak to them. They said this had a big impact on their behaviour and on the outcome.

453. We received three complaints alleging that officers had used derogatory language towards individual protesters. While these matters did not meet the threshold for independent investigation and could not be reconciled due to the challenges of identifying the specific officers involved, we have no reason to disbelieve the complainants. While we are satisfied that, for the most part, officers showed professionalism and restraint in their communication with protesters, we accept that there may have been instances when communication was unprofessional and a departure from the standard expected from Police. In our interviews with frontline officers, some have commented on the frustration and fatigue they experienced from long days standing on cordons and being subjected to taunts and abusive behaviour from some protesters. While any derogatory comments from officers are undesirable, we accept that lapses of professionalism can be expected in the stressful conditions under which officers were working.

What was the Police communication and engagement strategy with protesters?

454. Police policy and training manuals dealing with demonstrations and public order policing set out the importance of establishing and maintaining good communication, liaison and negotiation.

455. Police conducted an internal review of their policing of the protest at Parliament while the protest was still ongoing. The report was completed on 24 February 2022 and clarified that Police should endeavour to have dialogue with protest groups, event organisers and other key stakeholders aiming to:

- *“reduce and minimise conflict between Police and other stakeholders;*
- *strengthen the relationship between protest groups and Police, thereby improving the capability of Police to facilitate and support peaceful protest;*
- *support the principles of no surprises; and*
- *identify the appropriate Police resource required for the operation.”*

456. The same internal review identified that Police *“objectives for early dialogue should be to:*

- *gain a comprehensive understanding of the intent and nature of the protest activity;*
- *enable legitimate aims of both Police and protest organisers to be aired and understood;*
- *discuss (and if possible, agree) the terms of what is desirable, acceptable, and unacceptable to Police and protest organisers;*

- *ensure that protest organisers fully understand their liability in respect of health and safety;*
- *ensure that protest organisers fully understand the threshold between acceptable (i.e., peaceful) protest activity and unacceptable crime and disorder;*
- *ensure there is a clear understanding of the Police role in balancing the rights of protesters against the rights of protest subject(s) and the wider public;*
- *reach an agreement with protest organisers on the types and duration of protest activities that will be undertaken; and*
- *minimise, as far as practicable, the element of surprise.”*

457. As the protest continued and after the attempt to end the occupation on 10 February, Wellington District appointed a Tactical Commander who told us:

“...central to everything that we did was negotiation. We had to negotiate our way out of this, because we’d tried to arrest our way out.”

458. A member of Wellington District Police Negotiation Team (PNT) was asked on 8 February to contact a protest spokesperson. This same member was also asked to prepare a negotiation strategy on 12 February. Apart from this, Wellington PNT were not involved at the early stages. They were not briefed or used as the activity at the protest site developed and the occupation commenced.

459. The Advanced Police Negotiation Team (APNT) started work on 13 February to engage with the protest groups. This team routinely deal with protracted sieges, demonstrations, and serious incidents with distressed offenders, and have additional training and expertise to the regular Police negotiators. A specialist squad was established with a four-person team on 8-hour shifts comprising a primary negotiator, secondary negotiator, log keeper and team leader. They maintained coverage for 16 hours each day and were also available outside those hours if required. They said their focus was:

“...to continue to engage with these people, gain intelligence, build a rapport with them to see where we could find some inroads to negotiating a peaceful resolution to the incident... Touching base with them each day on numerous occasions to see how things were going, reinforce the issues that the protest could remain peaceful and lawful but to do that they would need to clear the streets and leave Parliament grounds each day and they could return.”

460. Throughout the duration of the protest there was no documented communication and engagement strategy setting out the goals, tasks and responsibilities. Initially, Police expected the protest would dissipate after a short period. As soon as it was clear that protesters were setting up tents and showed no sign of leaving soon, we would have expected a comprehensive communications and engagement strategy to be quickly developed and documented as a critical feature of such an event. We accept that the communications and engagement plan would have needed to be

dynamic and change as the protest evolved but it was essential that it be developed, regularly reviewed and updated, and cover the following aspects:

- the purpose and aim of communication and engagement tactics or activities;
- the key communication messages which would likely be updated over time;
- the approach to be undertaken to communications and engagement (in this instance multi-pronged due to the disparate nature of the protesters);
- the roles and responsibilities of those undertaking communication and engagement activities (including who would undertake those roles and what resources, if any, would be required);
- how various work groups, including members of the Executive, would interact and share information about their communications tactics and activities; and
- evaluation of communication and engagement tactics and activities to measure their effectiveness and adapt as required.

461. Instead, the only written plan was that developed by the APNT to cover their own activities.

What Police engagement with protesters occurred?

462. Between 8 February and 13 February there was no organised engagement or negotiation with protest leaders. Rather, communication occurred on the ground between frontline Police officers and protesters in line with the intent to restore Parliament grounds to a lawful protest which meant Police officers told the protesters they were trespassing, they needed to remove their tents and structures from Parliament grounds and leave.

463. On 13 February, the APNT started work with a structured plan to contact people and identify protest leaders. They aimed to build trust and rapport and find a single contact point within protest leaders as their liaison point. They engaged daily with those they regarded as protest leaders. Their key messages were that vehicles should be moved, roads cleared, and access gained for emergency vehicles. They emphasised the wellbeing of the crowd and positive aspects of Police activity. They completed daily logs and reports. They were based at Wellington Central Police station and fed the information to District Command.

464. On 13 February Leighton Baker was identified as a protest spokesperson. The relieving Local Controller met with him alone. APNT offered to brief the relieving Local Controller and attend the meeting, but this offer was not taken up to minimise duplication and allow the relieving Local Controller to have an initial face to face meeting with Mr Baker. Following this meeting the relieving Local Controller asked APNT to manage ongoing engagement.

465. On 15 February the Deputy Commissioner: Iwi & Communities (who had been on planned leave the previous week) called his known contacts to try to establish who was involved with the protests. This would be expected as part of his normal role. He spoke to the Wellington Pastor of Destiny Church and established he was present at the protest and had influence. As a result of that contact, Leighton Baker refused to engage with APNT, as he advised them that another protest leader (the

Wellington Pastor) was dealing with a high-ranking Police member. APNT did not know of the contact that had been made by the Deputy Commissioner: Iwi & Communities.

466. That night the pastor called APNT, as he could not get hold of the Deputy Commissioner: Iwi & Communities about an agreement allegedly reached with him concerning movement of vehicles from Molesworth Street. APNT had no knowledge of this.
467. On 16 February the Deputy Commissioner: Iwi & Communities and an Inspector in his team met with the pastor to get general information. The pastor was later contacted by APNT who had been unaware of the earlier meeting and had no knowledge of what had been discussed. The following day the pastor told APNT he was confused about who he should be dealing with and queried whether it should be the Deputy Commissioner or APNT.
468. On 17 February APNT told the protest leaders that they wanted to organise a face-to-face meeting between Police and their nominated spokespeople. Leighton Baker contacted APNT later saying he and the pastor had been nominated for that purpose.
469. Also, on 17 February information was passed to the Commissioner that a prominent mediator based in Wellington had details of a contact person for Voices for Freedom, a lawyer based in Melbourne, Australia. The Commissioner got those details from the mediator and passed them to the Deputy Commissioner: Strategy and Service and asked him to make contact.
470. On 18 February the Deputy Commissioner: Strategy and Service contacted the lawyer. For almost two weeks through until 1 March, there was regular, mostly daily text and phone communication between them. No notes were taken, and the details of the communications were not provided to the APNT. The Deputy Commissioner: Strategy and Service says he gave oral briefings daily to MOC about this contact and it should have been passed to APNT based at District Command, but APNT said they were not aware of the detail.
471. On 20 February a face-to-face meeting occurred between Police and several protest spokespeople including Leighton Baker, the pastor and the Melbourne-based Voices for Freedom lawyer who attended remotely. The Deputy Commissioner: Iwi & Communities and the Deputy Commissioner: Strategy and Service attended as well as the APNT Co-ordinator and the Chief of Staff to the Local Controller. There was a discussion about traffic management and the installation of bollards around the surrounding streets, health and safety of protesters, access for food and toilets and other general matters. The effectiveness of this engagement is difficult to gauge. By this time, the APNT was increasingly concerned that matters were getting out of hand and the protest leaders had lost control. This is evidenced by the fact that, despite protest leaders having supported Police regarding the installation of the bollards (which were put in place overnight on 21 February) there was backlash from protesters and the APNT received calls from their contacts unhappy with this move. The APNT were able to message back that protest spokespeople were aware and had, in fact, supported Police's initiative.
472. On 22 February the Human Rights Commissioner hosted a meeting with several protest leaders. An Inspector from the Iwi & Communities team attended. The APNT were not aware of this meeting and did not attend.

473. Also, on 22 February a vehicle rammed through the Police line on Molesworth Street. From that point, the APNT amended their communications plan as they had determined that protest spokespeople had limited influence on the behaviour of the protesters. Their assessment was that the protest was becoming unsafe, the spokespeople could not identify any leaders, the leaders had lost control because there were multiple protest groups with differing approaches and agendas (such as the installation of the bollards), and the safest option was for people to leave the protest in an orderly fashion. APNT gave that message to all protest spokespeople from that point on through the operation.
474. On 23 February the Mayor of Wellington City hosted a meeting with several protesters. The Deputy Commissioner: Iwi & Communities and an Inspector from his team attended. APNT were not aware of this meeting and did not attend.
475. On 24 February the Deputy Commissioner: Iwi & Communities met with the Wellington pastor and another Destiny Church pastor and then accompanied them to a meeting with local iwi leaders at Pipitea Marae. This was to enable the iwi leaders to express their concerns about the actions of the protesters and their disrespectful behaviour, and to try and reach a resolution. ANPT were not aware of this meeting and did not attend.
476. By this time, Police's assessment was that the protest was in the hands of people with no particular agenda. Social unrest and division were developing. While the APNT continued to encourage people to leave, Police realised that engaging and trying to negotiate with the protest groups was not going to achieve anything.

What was the role of others in engaging with protesters?

Mayor of Wellington

477. The Mayor arranged two meetings with protest spokespeople. He had regular engagement with the Commissioner and was at the daily briefings provided to Ministers by Police. He ensured Police were aware that he was meeting protesters and that they were comfortable with him taking that step. As noted above, the Deputy Commissioner: Iwi & Communities attended the second meeting on 23 February.
478. The Mayor felt engagement was appropriate and necessary. He believed he, his staff and Police were developing a positive relationship with the protest spokespeople through these meetings. He asked the protest spokespeople to influence positive action such as moving away from the cenotaph, removing showers and graffiti from the bus interchange and monitoring threatening behaviour from protesters towards the public.

Human Rights Commissioner

479. Protest leaders approached the Human Rights Commissioner to discuss human rights concerns and he attempted to broker a meeting between Government officials and the protesters, but that did not eventuate. He met privately with the protest leaders on a couple of occasions and then hosted a meeting on 22 February which an Inspector from the Iwi & Communities team attended. The purpose of this meeting was for the Human Rights Commissioner to talk about rights and

responsibilities, and the challenging balancing act to be struck between competing rights, including the rights to life, healthcare, and protection. It also gave the protest leaders the opportunity to discuss their issues and what they wanted to achieve.

Mana whenua

480. As outlined to us by the Chair of Pipitea Marae, local iwi would normally hold a pōwhiri or mihi whakatau for protesters. He told us: “...we also have a responsibility to welcome, do a pōwhiri for protesters because Parliament is a place where people have protested and in the past we've always done a form of mihi whakatau for all different protests.” This did not occur as there was no advance notice and, in any event, COVID-19 measures prevented this.
481. There was no formal engagement between Te Ātiawa or Taranaki Whānui ki te Upoko o te Ika a Maui (Port Nicholson Block Settlement Trust) and the protesters.
482. On 21 February a member of the local iwi brought more than 20 protest leaders and protesters to Pipitea Marae. This was an unannounced visit and the Chairs of Taranaki Whānui ki te Upoko o te Ika a Maui and Te Ātiawa met with them for a couple of hours and listened to their grievances and issues which were numerous and varied. No Police were present for that hui.

Cabinet Ministers and Parliamentarians

483. There was no engagement between the protest leaders and Cabinet Ministers or current Members of Parliament apart from the leader of the ACT party who met with a group of protesters on 16 February. The protest leaders sought such engagement, and this was one of their main aims. They raised this with Police, other agencies and through the media.
484. The Commissioner discussed this request directly with the (then) Prime Minister at a ministerial briefing on 16 February and asked if she would meet with the protesters. She told us that her inclination was always to meet with people but, in this instance, she had thought carefully about such an option and had over a week (since 8 February) observed the protesters’ actions, signs, bollards and behaviours on Parliament grounds. The (then) Prime Minister explained that, after COVID-19 lockdowns were lifted, certain individuals began following her and protesting as she travelled around the country, and this had become a regular practice. On two separate occasions she had tried to engage with those protesters directly (in much smaller numbers than the 2022 protest) but found it impossible to do so because she was shouted down, abused and had to withdraw in fear for her safety.
485. In her view there were the following considerations against engagement:
- A sector of the protesters at Parliament were not a new gathering – they had followed her before and raised their issues. Only the size of the protest was different.
 - There was no designated leadership which made it difficult to engage.
 - The group had violent and threatening elements – witnessed by the bollards/signs and direct threats to her and politicians generally.

- She did not want to set a precedent that if protesters occupy Parliament grounds the Prime Minister will talk to them.
- All Ministers, and indeed all Members of Parliament (from all parties), agreed that they would not engage directly with the protesters.

486. Police's Diplomatic Protection Service (DPS) Manager told us that DPS staff did not provide the (then) Prime Minister (or other ministers) with any specific advice about the risks of engaging, or not engaging, with protesters, as this is not their role.⁹⁵ Their primary function, as it would be in any other context, was to develop and execute a plan to ensure the Prime Minister's safety should she have decided to meet with protesters. However, we were told that the information that helped to inform DPS's operational decision-making was the same provided to the overall operational leadership through National and District Intelligence reporting, which had for some months noted a discernible rise in threatening behaviours.⁹⁶

Was Police engagement with the protesters effective?

487. Police did not have an engagement strategy and there is nothing which sets out the purpose or nature of the engagement that Police wanted to undertake and who would be responsible for the various levels of engagement. We accept that Police in effect had a multi-pronged approach with APNT, District leadership and Deputy Commissioners all having engagement with different people involved with the protest. All Police staff had the best intentions but as seen from the detailed chronology above there was no co-ordinated approach and often Police themselves were unaware what communication was actually occurring which led to frustrations and difficulties. While it may have been appropriate for members of the Executive to assist with communications, especially given their seniority, this should have been done with the clear knowledge of those tasked with overall responsibility for engagement.

488. Wellington District were responsible for the policing operation throughout and Operation Convoy included the capabilities of APNT which was assigned primary responsibility for engaging with protesters. That was the correct decision and all of Police should have supported APNT in undertaking that role, but they did not.

489. It was the core role for APNT to undertake engagement with protesters, identify key leaders/spokespeople, build rapport and establish relationships so that negotiation could occur. At a basic level once APNT was brought in, it is arguable that engagement did work in the sense that several key people within the protest were identified that Police could start to build relationships with to foster engagement. APNT sought to undertake their core role but were hampered by a number of factors which are considered more fully below.

490. APNT was only brought in on 13 February which was six days after the start of the protest and after the attempt on 10 February to clear protesters from the lawn in front of Parliament House. For five

⁹⁵ The DPS is a specialist team of Police officers tasked with providing protection to national and international dignitaries, including New Zealand's Prime Minister and Governor General.

⁹⁶ See paragraph 192.

days Police had put limited resource into developing an engagement strategy or communicating with protesters.⁹⁷ As a result, when APNT did try and engage, Police were already at a disadvantage.

491. The difficulties confronted by APNT were exacerbated by the fact that they were not part of the District Incident Management Team or present at the daily operation briefings. Their skills and experience were not well understood, and their input was not sought or included in tactical or strategic decision-making to the extent that it should have been.
492. The makeup of the protest was challenging with numerous factions, fluctuating attendance and an unwillingness from those within the protest to agree or confirm who the leaders were. The spokespeople put forward did not represent or have influence over all the protesters. APNT's assessment was:

"The unwillingness to nominate a dedicated leader for fear of repercussions from Police, or from the collective for being seen to communicate with Police, further complicates negotiation efforts."

493. Senior members of the Executive engaged with specific protest representatives in a way that created confusion within Police and within the protest groups. The Deputy Commissioner: Iwi & Communities had existing relationships which he used to obtain information about who was engaged in the protest and their roles. It was appropriate for him to make those initial enquiries given those pre-existing relationships. He had substantial ongoing involvement with local and national iwi during the life of the protest and advised and supported the Commissioner in his engagement with iwi leaders. That was a core responsibility for that Deputy Commissioner and appropriate for him to act in that way. However, the Deputy Commissioner's ongoing engagement with the Wellington Pastor of Destiny Church, Leighton Baker or others should not have occurred without the involvement and knowledge of the APNT. Detailed notes of those meetings were not kept or passed on to the APNT who were side-lined on many occasions. Police were made to look incompetent when the APNT did not know what somebody else within Police was doing or agreeing to. Protest spokespeople themselves were confused about who their contact point within Police should be.
494. The engagement role played by the Deputy Commissioner: Strategy and Service was not clearly understood. He had no pre-existing relationships, and it was not part of his normal role within Police or as Executive Lead to undertake such engagement or operational tasks. He was asked by the Commissioner to contact the lawyer based in Melbourne and did so. He and the Commissioner have submitted that this lawyer represented six of the protest groups present at the protest when this is not correct. The lawyer told us she represented Voices for Freedom only. She was not at the protest or in New Zealand and, in effect, passed information to her client and provided them with advice. That was a meaningful conduit for Police for a period during the protest and allowed the Deputy Commissioner: Strategy and Service to have a way of communication with Voices for Freedom.

⁹⁷ See paragraph 458.

495. We had many Police staff raise their frustration at Executive involvement in this area. An example is encapsulated in this from the APNT Co-Ordinator:

“A lot of information was being passed back to me from the OC PNT about conversations that were being had with subjects on the phone and the theme across all of these conversations was that the spokespeople were having conversations and physical meetings with senior Police members that we weren’t aware of, which is effectively just cutting us out of the loop and making it very difficult.”

496. In contrast, the Commissioner told us that it is sometimes helpful for things to be approached from several different angles, and that the Deputy Commissioner: Strategy and Service was more successful in interacting with the Voices for Freedom lawyer than others would have been. This may be correct but there was no opportunity for APNT to try to engage with the lawyer as they were not given the details. We would expect APNT expertise to have added value.
497. We accept that it is appropriate for members of the Executive to become involved in a matter such as this when they have specific skills or expertise they can bring to bear; the Deputy Commissioner: Iwi & Communities is in that category. A specific engagement strategy would have been able to set out what role any specific members of the Executive would have and provide transparency. The problem here, however, was they did not make any notes of their discussions or meetings, and the APNT had no knowledge of what they were doing. In particular, they were completely unaware of the level of engagement between the Deputy Commissioner: Strategy and Service and the Voices for Freedom lawyer.
498. In our view both Deputy Commissioners should have been more transparent with the District team. If they felt they needed to make initial contact they could have done so and explained the role of APNT to the relevant protest group spokespersons and passed their details on to APNT. They should then have become involved only to the extent that this was part of an agreed overall strategy.
499. With the fractured nature of the protest and multiple spokespeople, the importance of Police presenting a united front cannot be overstated. Having one voice or source of truth with clear messaging would certainly have assisted in this situation.
500. While there may have been some relationships established, overall, the Police engagement was not a success, they had no overarching strategy or detailed plan with designated roles and responsibilities. Engagement with protesters should have been attempted from the first day of the protest in a meaningful way.
501. Police also overlooked a key opportunity to have outside assistance. Voices for Freedom had engaged a well-known Wellington mediator to assist with negotiations with the Government. He was contacted by the Commissioner who simply passed over the lawyer’s details. The mediator expected to be contacted further and could have potentially assisted the protest groups and Police to formulate an engagement strategy or plan. Police accept that they did not explore that possibility, and this was an oversight on their part.

FINDINGS

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?

502. Many people and organisations were impacted by the protest, directly and indirectly, while others were more integral to supporting the Police operation in a partnership role. These individuals and groups we have termed 'interested parties'. We interviewed 122 interested parties (in addition to the protesters interviewed) to understand their experience of engagement with Police throughout this period. In this section we refer to them in groupings correlating roughly to their role as:

- Holders of legal rights - we have defined this group as those whose property was impacted by the protest – namely, the Speaker, Wellington City Council, Victoria University, the Cathedral, local iwi/Pipitea Marae and local schools;
- Partner agencies – that is, organisations having an independent statutory function or role that will be impacted by Police action and who, because of their function or role, would expect to be closely and actively consulted by Police about proposed actions; and
- Those with a right, or who would expect, to be kept informed – residents, businesses, and other entities impacted by the protest.

503. Members of the judiciary and senior Ministry of Justice officials were also interviewed in relation to the impact of the protest on public access to the courts. This issue is discussed separately below.⁹⁸

504. On 12 April 2022, Police held a debrief with representatives from 15 partner agencies and those holding legal rights. The purpose of the debrief was to identify what went well and whether any opportunities for improvement could be identified. The debrief notes record that, overall, attendees expressed positive views about the professionalism of Police officers despite the challenging conditions, and the way they handled the protest and occupation. Nearly all praised Police's engagement with them. Several attendees identified ways their relationships with Police could be improved, such as better information sharing or participation in joint planning exercises.

⁹⁸ See paragraphs 609-622.

Our interviews with these interested parties and others provided further detail about Police's engagement with them, as discussed below.

Did Police engage effectively with those holding legal rights?

505. In addition to the Speaker as the legal occupier of Parliament grounds, Victoria University's Pipitea campus, the Cathedral, Wellington City Council, local iwi (Pipitea Marae) and some local schools were concerned about or directly affected by protesters trespassing on their property and causing damage. These organisations delegated authority to Police to issue trespass notices to the protesters on their behalf and, as such, had decision rights over aspects of the operation as it impacted on their property.

The Speaker

506. The Speaker had a regular point of contact with Police and engaged frequently with senior officers during the protest. There was a strong existing relationship and Police engagement seems to have been satisfactory. We note that the Speaker made the decision to play music and turn on sprinklers to encourage the protesters to leave the grounds. The Commissioner of Police and National Controller did not support the use of either and both recommended against this action, concerned that it might harden the protesters' resolve and would impact negatively on their ability to negotiate with the protest leaders. The Speaker told us that he was not convinced by this argument and he had not seen "*any sign of negotiating with leaders up until that point.*"

The Parliamentary Service

507. The Parliamentary Service's security team's routine relationship is with the National Intelligence Centre rather than Wellington District Police. However, when the protest began, District Police staff were given access to the Parliament Service's security control room and an officer was assigned to work with the security team. Police set up a Venue Operations Centre (VOC) in Parliament buildings, which was in a separate area from the security team. Senior Parliamentary Service security and operations staff were also based at the Wellington DCC for the period of the protest, providing a remote link to the Parliament CCTV security system. The effectiveness of this engagement was limited by Police's reluctance to share information or recognise that Parliamentary Service security staff had knowledge, experience and intelligence that could have assisted the Police operation.

508. The experience of the Parliamentary Service highlighted opportunities to strengthen engagement and, potentially, formalise the relationship with Police at an operational level to complement the memorandum of understanding that exists between the Speaker and the Commissioner of Police. Our interviews uncovered instances of confusion and mixed messages resulting from engagement with the Parliamentary Service by members of the Police Executive and District Command officers.

509. Parliament's Security Team has a fortnightly multi-agency intelligence meeting but other than that, has no specific Police liaison or formal information-sharing arrangement in place. As part of our investigation, both the Speaker and the Chief Executive of the Parliamentary Service commented on the desirability of a stronger operational level of engagement including regular Police liaison officers.

510. We understand that Police are reviewing the policing presence (including liaison and strategic leadership) within the Parliament precinct in consultation with the Parliamentary Service.

Wellington City Council

511. The Wellington City Council (WCC) was both a decision-maker and a key partner to the Police operation.

512. The WCC has a process that protest organisers are supposed to follow to notify the Council in writing of their intention to protest enabling the Council to assess its impacts, plan for road closures and other operational needs as necessary. A Council bylaw states that permission is required for any event, including protests, that will impact vehicle or pedestrian traffic. The protesters did not follow this process. The WCC became aware of the convoy through social media and realised there was the potential for disruption.

513. Both WCC and Police recognised early in the protest the need to work very closely together. The Council acknowledged Police was the lead agency in managing the protest and WCC's role was to support them. Strategies were mutually agreed to ensure good lines of communication existed between the two organisations. Police engaged closely with WCC both at the mayoral level and, increasingly, with the WCC's Chief Executive Officer on operational matters, such as traffic management and delegation to Police of the legal powers to act to trespass people on council owned or controlled land, and appoint Police officers as enforcement officers under the Local Government Act 2002 to seize and impound any property, such as illegally parked vehicles, from public land.

514. The Council proposed that a senior staff member be included in the Wellington District's Incident Management team to act as a coordination point between Council staff and its contractors. This arrangement seemed to work well.

515. There was a strong existing relationship between Police and WCC and regular engagement as part of the Pōneke Promise, a community-driven partnership to improve safety in Wellington. Extensive engagement between Police and WCC throughout this period was based on an existing relationship and understanding of respective roles.

516. Council staff we spoke with highlighted that, in retrospect, the experience of the protest improved understanding of each other's processes, and of the importance of relationships at an operational level in addition to the strategic level. It also provided clarity over respective legal powers.

Te Herenga Waka – Victoria University of Wellington

517. Te Herenga Waka – Victoria University of Wellington (VUW) was very directly and significantly impacted by the protest, with protesters' tents and vehicles trespassing on the grounds of the Law Faculty that is part of the Pipitea campus. VUW first interacted with Police on 8 February when they called Police to report that people were setting up tents on the grounds of the Old Government Building that houses the Law Faculty. Police responded that they were watching and waiting to see how things developed but gave no advice.

518. In the absence of further contact by Police about the unfolding situation and the trespass on their grounds, the Vice Chancellor contacted senior Police officers seeking information and advice. Other VUW senior management did not have functioning relationships at the Wellington Area and District Command levels and had to build these throughout the protest. Once contacts were established, Police were quick to respond and there was more regular engagement.
519. As the protest continued, it became increasingly unsafe for University staff and students to access the Pipitea campus buildings and to access public transport to the University's main campus in Kelburn. The Victoria University of Wellington Students' Association wrote an open letter to the Minister of Education, the Vice Chancellor and the Commissioner of Police on 22 February setting out their concerns about the impact the protest was having on students and started a petition, "*Give VUW Students their campus back*" signed by over 30,000 people. The Commissioner responded to the open letter on 3 March. Overall, the Students' Association acknowledged Police had a difficult balancing act but considered that Police overlooked an opportunity to engage with students as an interested party. The Association did, however, have indirect engagement through the VUW's Incident Management team.
520. Our assessment is that Police should have been more proactive in their engagement with VUW given the very direct and immediate impact the protest had on the University property and its operation, affecting thousands of students and staff.

Wellington Cathedral of St Paul

521. The Cathedral is located on Molesworth Street close to Parliament grounds and was directly impacted. Tents were erected on the Cathedral's grounds and their grounds used as a toilet by protesters. The Cathedral tried to maintain an open and peaceful relationship with protesters but doing so became increasingly difficult as more threatening behaviours were exhibited. Police were in regular contact, and the Cathedral staff told us they felt well-supported.
522. We have more to say in Part 7 about the interaction between the Cathedral and Police in respect of protesters' property left on Cathedral grounds on 2 March.

Local schools

523. The occupation impacted over 2000 preschool, primary, and secondary school students. As a result of several incidents involving protesters abusing staff, students and their parents coming to school, as well as concerns about the possibility of protesters trespassing onto school property, the principals of several local schools reached out to the Ministry of Education which, in turn, contacted Police. A series of daily meetings were scheduled between Police, local school principals and the Ministry of Education enabling Police to provide updates, advice and reassurance and for schools to raise their concerns.
524. Police suggested to the schools they delegate authority to Police to trespass unwanted intruders from school properties. This was coordinated through the Ministry. The concept of creating a safe corridor for the students, including an alternative route to use if the primary corridor became unsafe, was developed in conjunction with Wellington City Council, Māori Wardens and Metlink,

the Greater Wellington Regional Council's public transport provider. This was effective from Monday 28 February.

525. While Police shared some information and were positively responsive to any concerns raised by the schools, they did not share all their operational plans and strategy. There were mixed views among the school principals we interviewed about whether Police should have told them in advance about the operation on 2 March. They all received a phone call from the Ministry at about 6am to tell schools they should use the alternative route. Given the sensitivity of the information and the risk it could 'leak' to protesters, we think this was sufficient warning for principals.
526. Both the Ministry and the schools told us they valued the engagement between them and Police. The communications they received through the meetings reassured them, and allowed them to keep staff, students, and parents and caregivers informed. This made communications more efficient for both schools and Police, and the coordinated approach meant Police did not need to have the same conversation multiple times.

Iwi leaders / Mana whenua

527. We interviewed the Chair of Pipitea Marae, and both the Chair and Chief Executive of Taranaki Whānui ki te Upoko o te Ika a Maui (Port Nicholson Block Settlement Trust). This was due to their roles as leaders within Te Ātiawa iwi, the protest and occupation occurring close to Pipitea Marae, and the extensive engagement they had with Police for the duration of the protest. They were very positive about their engagement with Police and the maturity of their relationship.

Mana whenua experiences

528. Initially local iwi leaders maintained a position of neutrality on the protest.
529. Mana whenua had not been made aware of the protest in advance. This made their ability to engage with protest organisers very difficult as iwi were not aware of the groups, people and logistics that were about to take place on their lands. This also meant that normal cultural protocol and processes such as a welcome (pōwhiri or mihi whakatau), hui etc were not followed and that the protest in itself did not have the support of mana whenua. As the protest developed, iwi leaders were eventually contacted by a group of protesters who sought their assistance with efforts to de-escalate the protest and find a path to peaceful resolution and to urge politicians to engage with the protesters.
530. On 17 February leaders of Taranaki Whānui in Wellington issued a media statement urging political representatives to resolve the occupation of Parliament and surrounding streets which were part of the historic Pipitea Pā. By this time these iwi leaders reported that windows of the office of Taranaki Whānui ki te Upoko o te Ika a Maui (Port Nicholson Block Settlement Trust) had been smashed and threats had been made against some of their kuia, kaumātua and uri involved with the COVID-19 response.
531. Comments and comparisons were being made by protesters between this occupation and the historical passive resistance movement on Parihaka. However, mana whenua strongly disagree with these comparisons and believe it amounts to the cultural misappropriation of Taranaki history.

Finding a way forward

532. Meetings were held with those identified as protest leaders and Police were invited to attend these discussions. The efforts by iwi were eventually abandoned, as it became increasingly unclear who the protest leaders were.
533. As the protesters' behaviour became more offensive, they began to damage the community, the whenua and the moana. Mana whenua leaders were then supported by iwi nationally calling for protesters to respect the whenua and moana and leave the Parliament grounds.
534. The Deputy Commissioner: Iwi & Communities had been active in garnering iwi support at a national level. On 21 February Taranaki Whānui ki te Upoko o te Ika a Maui issued a media statement outlining that members were "*appalled at the desecration of their whenua and moana, with protestors putting sewerage into the stormwater drains around Parliament and polluting the harbour*". They again urged political leaders to work on resolving the ongoing occupation that had caused serious disruption and harm to local businesses and residents.

Te Kaho o Raukura

535. On 28 February a dawn ceremony was held at Pipitea Marae entitled 'Te Kaho o te Raukura' which was a spiritual laying of a cloak for peace. This served as a form of rāhui covering all of Wellington aimed at healing the land and those on it. Iwi leaders across the motu condemned the violent actions of the protesters. They stated that protesters were misusing and abusing tikanga and it needed to stop. Iwi leaders from around the motu told their people to leave the occupation and return home.

Iwi and Police engagement

536. Pipitea Marae made its facilities available to Police and Māori Wardens during the protest, providing food, refreshments and a place to rest between patrols. Police were required to provide additional security to Pipitea Marae following an invasion on 23 February by a group of protesters demanding Police and Māori wardens leave.
537. There was substantial engagement between Police and local iwi at a District level and with the Deputy Commissioner: Iwi & Communities. These relationships were already well established and the communication occurred on a daily basis after 10 February and was effective. The Commissioner and Deputy Commissioner: Iwi & Communities ensured there was regular engagement with the Commissioner's Māori Focus Forum which meant they were well informed of what was happening from a Police perspective and were willing to support the Police operation where appropriate.
538. Our assessment is that Police liaison with mana whenua and wider Māori leaders was comprehensive, timely and effective. The established relationships held by the Deputy Commissioner: Iwi & Communities provided a sound basis for engagement.

Mana whenua and Ngāti Tama

539. In addition to the engagement outlined above, APNT had contact throughout the protest with protesters or representatives affiliated to Ngāti Tama and a group referring to themselves as ‘the Māori Government’. The APNT log records that APNT did not consider Ngāti Tama to be mana whenua and indicated they would not get involved with formal discussions or meetings without the local area iwi as it was important they adhered to Tikanga Māori and their local relationships.
540. Ngāti Tama is a historic iwi whose whakapapa descends back to Tama Ariki, the chief navigator on the Tokomaru waka. The iwi of Ngāti Tama is located in north Taranaki but has historic links to Wellington. Two iwi, Te Ātiawa and Ngāti Mutunga, share a common heritage with Ngāti Tama back to the Tokomaru waka.
541. On 9 February, Ngāti Tama Te Kaeaea Trust sent a letter to the Speaker stating that the Crown did not hold clear title to Parliament grounds and ownership is still to be resolved. Their position is that Parliament grounds sit on the former Ngāti Tama Raurimu Pā site belonging to Taringa kuri, a distant relative. A protester affiliated to Ngāti Tama had contact with APNT between 15 February and 2 March. Ngāti Tama consider the land around Parliament belongs to them and the representative issued trespass notices to individuals throughout the protest. While some telephone discussions occurred and APNT provided advice to leave the area and ensure protesters were safe, there was no formal engagement between Police and Ngāti Tama.

The Māori Government

542. The Māori Government is described as the administrative arm of Te Wakaminenga o Nga Hapu o Nu Tireni and helps to operationalise decisions made in the national Te Wakaminenga o Nga Hapu o Nu Tireni, or a hapu wakaminenga. The Māori Government states that it operates under “*Native Māori Jurisdiction*” and its national constitution ‘He Wakaputanga o Tino Rangatiratanga o Nu Tireni 1835’. An emissary on behalf of the Māori Government had several phone calls with APNT staff between 15 February and 2 March.
543. On 2 March the Māori Government sent a letter to campsite leaders at Parliament grounds which many protesters saw. This stated that “*the Police negotiating team*” contacted the Leader of the Māori Government on 28 February requesting assistance to resolve the situation in Wellington and the Māori Government had engaged in good faith with protest representatives on 1 March. The letter states an agreement was reached to hold a hui over the weekend of 4-6 March with Police to discuss a peaceful resolution, and part of the agreement was that no hostile action would be undertaken. The Māori Government letter went on to say: “*...when the Commissioner ordered police to use force this was in direct breach of this agreement, an act of bad faith and a violation of their oath to protect people.*”
544. The APNT log records a call was received from an emissary of the Māori Government who talked about the issuing of trespass notices and concerns about land issues. He advised he could be of assistance to Police if required to talk to other parties. On 1 March the emissary again called APNT and advised he would be talking to various groups to try and get a peaceful outcome on behalf of the Māori Government. We are satisfied there was no discussion or agreement to hold a hui

between parties and Police over the forthcoming weekend or assurance provided by Police about what action they would or would not take.

Police engagement with those parties with the right to be consulted

Cabinet Ministers, Parliamentarians and the Mayor of Wellington

545. Throughout this period, Police provided daily briefings for senior Cabinet Ministers and the Mayor of Wellington. The Commissioner also briefed the Leader of the Opposition and leaders of other political parties on 16 and 17 February respectively.
546. Ministers, parliamentarians and the Mayor were clear on the outcome they wanted, and anxious to ensure Police had the resources and legal powers they needed to bring the occupation of Parliament grounds and surrounding areas to an end as soon as possible. As a result of the level of resolve shown by protesters in resisting the Police action on 10 February, there was an appreciation that ending the occupation was going to be complex and require considerable planning for Police to mobilise the necessary resources.
547. Police's engagement provided these interested parties with a level of assurance that planning was in hand and significant resources were being deployed to both maintain law and order and public safety, and plan for further action. The professionalism of Police throughout this period and their responsiveness to the mounting level of abuse and threats, including death threats, that Ministers, parliamentarians and their families experienced was acknowledged:

"I think they dealt with a situation that we'd never seen before – they dealt with it very professionally from the Commissioner right the way down to the ranks."

548. As discussed above in Part 5, we are satisfied that undue influence was not placed on the Police by the Ministers, and that the operational independence of Police and other operational leaders was never in question.

The National Security System

549. The Commissioner of Police contacted the Department of Prime Minister and Cabinet (DPMC) on 15 February to request that the National Security System be activated. This was done on 16 February. Activation involves the convening of an Officials' Committee for Domestic and External Security Coordination (ODESC) chaired by the DPMC. This was an appropriate step as the protest was evolving, becoming more complex and a risk to wider national security. This had a number of potential benefits: it enabled information-sharing and whole-of-government visibility of Police decision-making; and it provided a vehicle for other agencies to raise concerns and make suggestions about the strategy being adopted. We consider, however, that this should have been done earlier, given the unsuccessful operation on 10 February and the course of events in similar protests in other jurisdictions.
550. Following the Commissioner's request, ODESC first met on 17 February. The Commissioner briefed the Committee on the options under consideration for resolving the protest situation, risks and possible mitigations. Specifically, the Commissioner wanted to ensure leaders across the National

Security System understood the risks posed by protesters to the country's critical infrastructure. The protest was not just a Wellington issue. Protesters in Picton, for example, had the potential to obstruct ferries and roads and, in doing so, impede delivery of essential food and other supplies across the country's transport network. Canada and other jurisdictions had experienced similar protest situations, and the measures taken, including the appropriate use of emergency powers, were discussed and further information sought on the overseas experience.

551. ODESC tasked the DPMC with convening an inter-agency working group of Police and other relevant agencies. While DPMC would normally chair any cross-government initiative, Police were asked to chair these meetings, presumably in deference to Police's operational independence, and to prepare a National Strategic Response Plan. Police found little guidance available on how to prepare such a plan. They nevertheless did so, but it was high level and lacked the specificity and detail that might have been expected in such a plan. The plan was considered and confirmed at the inter-agency meeting held on 24 February. The inter-agency group met six times in the period from 22 February to 4 March.
552. We have considered the effectiveness of this engagement. The inter-agency meetings provided a forum for Police to provide updates and share information that, in turn, helped to ensure there was a "single source of truth" across government agencies on the protest and Police's actions. Agencies offered support to Police and were able to ensure their own contingency plans were informed by the latest developments. However, because the National Strategic Response Plan was at a high level of generality it did not include any specific taskings for other agencies. Nor was it referred to ODESC for endorsement. Our impression is that the engagement through this structure was useful primarily as a vehicle for keeping agencies informed rather than as a means of consulting other agencies and forming a collective view as to the best courses of action.
553. The 'Coordinated Review of the Management of the Lynn Mall Supermarket Attacker', published on 14 December 2022,⁹⁹ made several observations about the National Security System and the effectiveness of mechanisms such as inter-agency working groups in achieving co-ordination when facing a crisis or emergency. In that Review, we suggested that some form of independent scrutiny of operations and testing of the available options would strengthen the effectiveness of this system. Our rationale for this observation was that *"if the threat is of sufficient concern and complexity to activate the National Security System, it is critical the system covers all bases"*.
554. We believe this observation is equally pertinent to the Parliament protest. While there is no question that decision rights ultimately rested with Police, an independent strategic assessment of the available options, risks and potential mitigations may have provided some additional, or alternative, insights. To that end, we think it would have been preferable for the Group to have been chaired by DPMC (as is usually the case) rather than Police. That would not have intruded on Police operational independence, since they would have remained the ultimate decision-maker,

⁹⁹ [Independent Police Conduct Authority Coordinated Review of the Management of the LynnMall Supermarket Attacker, 14 December 2022.](#)

but it would have been appropriate given the widespread impact of the protest and broader risks to national security.

Greater Wellington Regional Council

555. The protest caused major disruption to Wellington’s public transport infrastructure and network, as the affected areas included the Wellington Railway Station and the Wellington Station Bus Interchange (operated by Metlink), which are used by thousands of commuters every day. As the agency responsible for this infrastructure and network, Greater Wellington Regional Council (GWRC) was critical of the lack of Police engagement and what they saw as Police’s failure to appreciate the impact on the city’s critical public transport infrastructure. One GWRC senior staff member told us that, despite the likely disruption to commuters, they had to make a decision on 12 February to close the bus interchange and move it elsewhere, after viewing a live stream on Tik Tok of protesters moving towards the interchange.

556. Initially the GWRC Chair reached out to the Police Executive to raise concerns and some ad hoc communication via phone and text messages was subsequently established at a strategic level. However, at an operational level, Police primarily relied on their WCC contact to keep GWRC informed, despite the very different services provided by the two councils. While GWRC did recognise the difficulties confronting Police, they were clear that Police’s information sharing was inadequate. For example, the Chief Executive told us:

“As the protest went on the Police would every now and then do things quite early in the morning either to try and break the protest up or intervene or put some concrete blocks up and that sort of thing... but we didn’t always know that was occurring and coming. For instance, the No 2 bus comes down Bowen Street, it’s the major feeder for Karori and all the western suburbs. It wasn’t always completely aware to us that that was going to happen, therefore there were a couple of occasions we had quite major bus disruption in the network as the Police were undertaking an operation to kind of shore up some of the boundaries and I completely understand that. I also completely understand that they may not have been able to tell us anyway.”

557. In addition to its public transport responsibilities, the GWRC has a wide range of regulatory responsibilities under various pieces of legislation. These responsibilities were relevant to aspects of the protest and the issues it raised around public health, for example, the potential discharge of sewage into Wellington harbour from the toilet block protesters plumbed into storm water drains. We were told Police offered to escort any enforcement officers onsite, but GWRC determined this was not practical due to fears for the safety of their staff.

558. GWRC staff reported that information sharing improved from about 15 February, which coincided with Māori Wardens and Police being provided office space in a GWRC building. However, the GWRC was not advised in advance of the Police’s decision to install concrete bollards around the protest site on 21 February, which had a significant impact on the public bus network and on commuters. Also, the GWRC was not represented on Wellington District’s Incident Management Team or in joint planning for the operation on 2 March despite the considerable impact on public transport and the safety of commuters. The GWRC was informed of the 2 March operation that

morning, and they made a rare decision later in the day to close the railway station based on information obtained from mainstream and social media.

559. Apart from the emergency management response teams, Police did not have regular contact with GWRC prior to the protest, so there were no established lines of communication. A more established working relationship, dedicated contact points and better understanding of respective needs, operational processes and legal powers should be developed for the future.

Fire and Emergency New Zealand

560. As the protest continued, Fire and Emergency New Zealand (FENZ) became concerned about their ability to respond to fire or other emergencies. Protesters' vehicles were not only blocking main arterial routes but also access to a key fire hydrant. FENZ also had concerns about the risk of fire and other hazards within the protest site.
561. In the absence of any contact from Police, FENZ's concerns prompted them to reach out to Police a few days into the occupation. From that point on a FENZ Assistant Commander became the main liaison with Police and attended the pre-planning meetings and preparation for the operation on 2 March.
562. During this latter period, therefore, the relationship with FENZ worked effectively and did not give rise to any concerns, although as we discuss below there were issues between the two agencies on 2 March itself.¹⁰⁰

Māori Wardens

563. The relationship between Police and Māori Wardens is a special one. Many wardens are recognised as community leaders and can support those reluctant to interact with Police. Māori Wardens played an important role in supporting the Police operation throughout the occupation, engaging in the early stages about how they could work together. On 12 February, the Wellington District Māori Council and the New Zealand Māori Council signed a deployment notice, the first of its kind, officially setting up 'Operation Pipitea'. From 13 February, Māori Wardens began deploying volunteers to the protest.
564. Police oversaw this operation, with the District Commander Māori Wardens reporting through to Wellington District Police's Māori Responsiveness Manager. Police provided leadership and support, and Māori Wardens brought complementary skills in engagement with the protesters and providing reassurance to the community.
565. Māori Wardens often worked with Police's Iwi Liaison Officers, providing reassurance patrols and supporting safe corridors in areas around the protest site and between the Wellington railway station and nearby schools to ensure children could get to school safely and commuters to their workplace.

¹⁰⁰ See paragraphs 812-816.

Wellington Free Ambulance and Wellington Hospital

566. Wellington Free Ambulance was positive about their engagement with Police. The Wellington Free Ambulance's Tactical Emergency Medical Support (TEMS) team was embedded within Police's Special Tactics Group, so were involved in the operation at an early stage. This team liaised with Wellington Free Ambulance who became more formally involved in discussions with Police during this period and supported the operation on 2 March.
567. Wellington Hospital had an existing Police liaison officer (established during COVID-19), who gave them weekly updates during the occupation. The officer was not authorised to provide the hospital with advance warning of the operation on 2 March, other than reportedly saying, "*just bear in mind that conversations are happening.*" A senior hospital staff member heard about the operation on the way to work that morning. The hospital immediately began to clear its emergency department and prepare for mass casualties and alerted the Lower Hutt hospital in case of burns injuries. In the event, because Wellington Free Ambulance provided a minor injuries clinic near the protest site, only six officers and six protesters presented at Wellington Hospital on 2 March. This demonstrates the problems that can arise when appropriate information is not shared with trusted parties. When there is a vacuum, misunderstandings or assumptions can too readily occur. In this case, the extent to which hospitals needed to plan for mass casualties would have been better determined in consultation with Police.
568. Those interviewed understood the need for Police to hold operational information closely but were equally clear that there is a need for a mature, high trust relationship with a small number of individuals in situations where an agency needs lead time to be operationally ready. We agree. Establishing a formal working agreement, and trusted points of contact within hospitals who can be contacted in major incidents would prevent a repetition of this situation:

"Lessons learned, I suppose, is one about building up that trust. If we can be trusted to have a select group with some confidential information, that will pay dividends for us in terms of managing the event...But it's just more about from a relationship perspective, that trust, that we can be trusted with something that was so important."

Oranga Tamariki

569. Police engaged with many central government agencies throughout this period including Oranga Tamariki. Police worked closely with Oranga Tamariki given their shared concern for the welfare of children and young people participating in the protest, and particularly the occupation, due to the sanitation conditions, the risk of COVID-19, and the presence of some individuals among the protesters with criminal histories or concerning backgrounds.
570. Engagement between Police and Oranga Tamariki ensured that the latter was well prepared for protecting young people at the protest site if matters escalated. Police did not share details of their operational planning or anything outside the remit of the Child Protection Protocol that exists between Police and Oranga Tamariki, and we accept that this was appropriate. Police asked the agency to have a staff member in the command centre leading up to 2 March and another staff

member was in regular contact with District Command to ensure there was 24-hour coverage if the protest escalated and if any children or young people were arrested or needed care and protection.

Police engagement with those parties that had a right, or an expectation, to be informed

571. The protest caused a significant level of disruption to everyday life in central Wellington and directly impacted residents, businesses and other entities located close to Parliament. As the protest continued throughout February, the community experienced increasing levels of aggression and harassment as more disruptive elements joined the protest, and as factions resulted in disputes among the protesters themselves.

572. As outlined above,¹⁰¹ Police commenced reassurance patrols, working closely with the Māori wardens, from 13 February and allocated staff to areas of the community directly impacted by the protest:

“We had to have a reassurance phase. We couldn't just worry about the protest group. There was a lot happening around the outskirts. There was a lot of people, other people. Commuters still had to get to their office of work, so our job was to have the right for people to protest, yes, but also to make sure that people were safe.”

573. On 17 February, Police implemented a Reassurance Deployment plan for Operation Convoy. The plan set out the Local Controller's intent *“to increase and expand through high visibility and engagement to the wider environs of Parliament and surrounding streets including businesses and schools”*. Parliament and the immediate surrounding areas were divided into four zones within which officers were deployed to conduct foot patrols. Business owners and residents told us that they noticed the increased numbers of officers as the occupation progressed, and were appreciative of their visibility.

574. The presence of Māori wardens, increased foot patrols and officers at the cordons provided the local community with some level of reassurance. While most recognised that Police were working under challenging conditions and had *“a tough balancing act”*, these initiatives were not always apparent to all members of the community, and/or were insufficient to satisfy them. Police undertook one-off engagements to provide assurance but these were relatively ad hoc and often prompted by personal contact between, for example, distressed residents and their local Member of Parliament.

575. COVID-19 reduced Police's capacity and required careful prioritisation of where resources were deployed. Two senior Police staff told us:

“...I respect the fact that a lot of people were impacted and a lot of different layers of people in the community. But we had to be really careful about where we put our effort...”

¹⁰¹ See paragraph 565.

“People were ringing us because of the stuff that was going on in their streets, their communities, so we responded to that... We were just so busy with other stuff going on that we couldn’t get to every complaint.”

576. Twenty-six residents made complaints to the Authority about Police’s inaction and the subsequent impacts on them. We did not investigate any of these complaints individually given the issues raised by the complainants were general in nature and we intended to address them as part of our broader review. In order to inform our Review, we interviewed 40 residents, eight complainants and 32 who agreed to speak to us during a random ‘door knock’ we undertook of premises in the vicinity of Parliament grounds. Most residents were critical of the timeliness of Police’s response to the protest and the impact the protest had on them and their families. Equally, however, many members of the community expressed their admiration for those Police officers on the frontline and at cordons reassuring residents and school children. One local resident emailed this comment to Police: *“Thank you for taking the time to come and talk with us and to offer us reassurance that the police are working to resolve the untenable situation for those of us living in the middle of the occupation.”*
577. Local businesses were significantly impacted by the protest. We interviewed owners or managers of 31 businesses as part of our investigation. Some closed their business as it became too unsafe to operate during this period, with both their staff and customers confronted by intimidating behaviours. Of those that continued, including essential businesses like supermarkets and pharmacies, almost all reported they had to make adjustments to their operating hours and/or change how they served customers as they faced abuse from protesters, and increasing numbers of incidents, including vandalism and shoplifting. Some we interviewed felt they received insufficient support from Police and were left to deal with the safety and security challenges by themselves. Initially, they had little contact from Police but as time went on, they observed an increase in foot patrols and were occasionally visited by an officer.

Overall, how effective was Police interaction with interested parties?

578. Our overall assessment is that Police engagement was more reactive than proactive. In many instances, it was the interested party that initiated contact with Police. Those we interviewed, however, acknowledged the competing priorities and pressures that Police were managing and nearly all observed that the level of engagement did improve during this period.
579. We found that those parties with existing working relationships such as government departments, local iwi, Māori Wardens, WCC and Wellington Free Ambulance, for example, were positive about the nature of their engagement with Police. These agencies had existing points of contact within Police and experience in working closely with them on a range of issues. If Police did not contact them, they knew who to contact themselves to seek information. Organisations such as WCC and Oranga Tamariki, for example, also had existing agreements or protocols in place governing how the organisations would work with Police.
580. We observed that parties without a formalised relationship, for example GWRC, were more critical of the lack of proactive communication from Police about what was happening, particularly where there were operational implications for their management of the public transport network.

581. From our investigation, we consider that the absence of an engagement strategy and plan was a major omission particularly given the many interested parties and the length of the operation. Similar to our findings in relation to Police's engagement with protesters, a clear engagement strategy would have helped to ensure consistent and planned contact, as well as providing a more efficient use of Police resources. A more planned approach to engagement might also have ensured that existing community channels were more fully leveraged to provide 'one to many' messaging, reducing the demand for some of the one-off engagements that Police undertook.
582. There is a fine balance between the need for Police to maintain operational secrecy and working with a small group of trusted partner agencies who have a role to play in supporting an operation. Those parties that played a partnership role in supporting the Police operation for the most part appreciated that Police were unwilling to share operational details in advance. This meant, however, there was little, if any, warning of some of the actions taken, including the operation on 2 March.
583. While a level of operational secrecy was important for the Police operation on 2 March, for agencies needing to prepare their own operations, such as GWRC in relation to the public transport network and Wellington hospital in preparing for casualties, this gap in communication proved problematic and indicated a significant gap in Police's impact assessment.
584. As a result of their own review, we understand that Police intend to review their community impact assessment policy and outcomes to ensure they have a fuller understanding of the impact of major operations. We support this intent.

FINDINGS

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?

585. With the arrival of the convoy on 8 February, a large number of vehicles parked illegally in the streets around Parliament. The convoy included cars, trucks, vans, caravans, motorhomes, heavy motor vehicles and buses. Several main thoroughfares around Parliament were completely impassable. The affected areas included Aitken and Bunny Streets, and parts of Molesworth, Mulgrave and Hill Streets, Kate Sheppard Place, Eccleston Hill and Lambton Quay. Throughout this period the estimated number of vehicles in the streets around Parliament and in nearby streets fluctuated considerably, ranging from 300 to 2,000.

586. The lack of earlier action to prevent vehicles blocking roads when they first arrived made it very difficult for Police to further contain the area occupied by the protest and to remove the vehicles.¹⁰² Developing a strategy for removing vehicles was a major focus for the Wellington District planning team. One of the first steps was to identify a place where the vehicles, once removed, could be stored until claimed by their owners.
587. Following a discussion with WCC on 11 February, Sky Stadium agreed that protesters' vehicles could be relocated to their carpark. This plan evolved and, on 13 February, Police's planning team proposed using Sky Stadium to provide free parking for protesters as an incentive to unblock streets – in particular, Molesworth Street as it is a main arterial route. The APNT encouraged people identified as protest leaders and influencers to relocate their vehicles. The stadium's management agreed that from 14 February (for a fee of \$1.00), the ground level of their parking area could be used. Police put flyers on vehicles advising of this arrangement, but this was met with abuse and the flyers were torn up.
588. The offer of free parking by Sky Stadium was a helpful gesture that assisted Police in constraining the growth of the protest, in that it incentivised those protesters still coming into the city to park at the stadium rather than block more roads. A number of existing protesters also moved their vehicles. Police reported that as at 20 February, approximately 300 protest vehicles were parked at the stadium. Vehicles remained at Sky Stadium under this arrangement until 24 February when the space was needed for a planned event. From this date, protesters needed to pay the standard parking fee.
589. However, although this was a worthwhile initiative, it had limited impact because a majority of protesters did not move their vehicles, with many apparently believing it was a trick. Some protesters also messaged their supporters that there was free parking at Sky Stadium in order to attract even more to join the protest, and many did.
590. In relation to the large number of vehicles that remained blocking roads, Police needed to find ways to manage them, without the consent of their owners.
591. The first step was to close the roads on which the obstructing vehicles were located. Other than the Land Transport Act 1998 which deals largely (from a policing perspective) with traffic offences, there are two legislative mechanisms by which Police can manage traffic. These are section 35 of the Policing Act, and section 342 of the Local Government Act 1974. Either of these provisions can be used to close all or part of a road. In addition, under section 342, WCC can give notice of temporary prohibition of traffic due to public disorder by issuing either a traffic management plan or a temporary traffic management plan. These plans are usually created to control activity that is planned and known in advance.
592. Police and WCC decided to rely upon section 35 of the Policing Act which provides greater powers to enforce any closure – for example, powers of arrest for either obstruction or wilful damage. We agree that this was appropriate. Furthermore, WCC was very clear that Police were leading the

¹⁰² See discussion of the lack of earlier action at paragraphs 222-232.

response with WCC playing a supporting role, providing resources, and leveraging their network of contractors and suppliers. It was Police's responsibility to guard the cordons around the protest site and manage any offences or breaches of the peace resulting from the road closures.

593. Initially, road signage and road cones together with actual Police presence at cordons were used to manage traffic flows around the roads. The practical effect was that many roads were closed, parts of the city were no-go areas, and traffic diversions were necessary. For example, as at 20 February, Police estimated there were 1,270 protest vehicles, 800 of which were parked on the streets, 300 at Sky Stadium and the balance in upper Molesworth Street and the carpark behind Parliament. Residents, businesses and organisations, including the Court of Appeal and the High Court, located in closed street areas were directly affected and some had considerable difficulty in gaining access to their properties. Public transport and commuters were significantly impacted, and urban buses required re-scheduling and re-routing (including school bus services).
594. Police also worked in partnership with WCC to have vehicles ticketed for parking illegally from 15 February, but some of the fines were swiftly paid by those funding the protest,¹⁰³ so this proved ineffective in getting vehicles moved.
595. On 21 February, Police moved to put concrete bollards in place. This was a critical strategy in changing the protest's trajectory, requiring the deployment of 300 staff. It not only maintained traffic flow through significant roads and intersections, but much more importantly provided a mechanism for Police to control the protest. In particular, the strategy prevented the occupation's footprint from being expanded by the arrival of additional vehicles, and enabled its size to be gradually shrunk over time. It also mitigated any risks that hostile vehicles might be used to cause harm to members of the public. The reduction in the number of vehicles on site over time demonstrates the effectiveness of this strategy, and contributed to the success of the final operation discussed in Part 7.

Seizure of vehicles

596. In conjunction with this strategy, Police needed to look for other ways to have the offending vehicles removed, with or without their owners' consent.
597. The powers under section 342 of the Local Government Act 1974 and section 35 of the Policing Act are not explicitly accompanied by any power to seize vehicles that, for example, are already on a road when it is closed or subsequently try to enter it. For that Police must rely upon the Land Transport Act which has several seizure and impoundment provisions. In the context of this protest, the relevant provisions are:

¹⁰³ WCC's website reports that between 10 February and 1 March, 615 infringements were issued but, as at 27 April 2022, only 213 had been paid.

- Section 113: Police may move any obstructing vehicle to a place where it does not constitute a traffic hazard. However, this section does not provide a power to impound. Towed vehicles are left in a safe place to be recovered by the owner.
 - Section 122: Police may seize and impound a vehicle for up to 12 hours (which may be extended for a further 12 hours) when it is in the interests of public safety to do so, and it is unlikely that those interests could be secured in any other way.
598. The latter power would have been available only in specific circumstances (for example, where the location of the vehicle might have created the risk of a traffic accident), and would not have been generally applicable. The only power realistically available to Police, therefore, was section 113. That section does not provide a power to impound. Thus, moving vehicles under this section would not have prevented the owners from immediately re-joining the blockade once they had recovered their vehicle.
599. Despite the limited nature of their powers, Wellington District Police recognised from an early stage that they needed a plan to remove vehicles blocking the roads. However, they recognised that they did not have the staff capacity to do this. Indeed, they estimated on 9 February that they would need 340 staff to remove vehicles safely from Molesworth Street alone. Moreover, they lacked the capability; many protester vehicles required specialist, heavy haulage equipment and were tightly packed, making access difficult. Engagement with vehicle transport operators was therefore critical.
600. On 10 February, after initial attempts to secure assistance from local operators, the District planning team contacted the New Zealand Defence Force (NZDF) to request their assistance with the removal of protesters' vehicles. NZDF has heavy haulage equipment designed to transport military vehicles. NZDF responded promptly the following day, telling Police that, while it was legally able to assist,¹⁰⁴ NZDF heavy haulage equipment was not suited to urban environments and would cause "*extensive damage*" to vehicles and roads, with consequent legal liability for NZDF. In addition, few staff were sufficiently trained to operate the equipment, as they had been working in MIQ facilities for some time. Further training would be required. To be ready within a few days, the operation would also require NZDF to waive its post-MIQ stand-down period for these staff.
601. On 14 February, the Chief of Defence Force advised the Minister of Defence that, because of these operational limitations and risks, he did not intend to assist Police. However, he invited the Minister to "*provide direction regarding conducting the task, should it be felt by Government that the NZDF should undertake the removal of protest vehicles from the vicinity of Parliament.*" The Chief of Defence Force's concern was that the use of the armed forces in response to a civil protest would have a negative impact on the reputation of NZDF and the Government. The Minister did not direct NZDF to assist Police to remove vehicles blocking Wellington roads.
602. Police then looked further afield for assistance and started efforts to contact tow operators and heavy transport companies. By 15 February, Police had contacted at least 30 operators nationwide. Two to three smaller tow operators had agreed to help. They also started discussions with a large

¹⁰⁴ Under section 9(1)(a) of the Defence Act 1990, NZDF would be working under the direction of Police under sections 113(1) and 113(2)(c) of the Land Transport Act 1998.

company, who were in a position to provide substantial assistance. The Wellington District planning team initially coordinated this activity across Districts (each of whom have arrangements with local tow operators) but once the MOC was set up, the vehicle planning team and the towing function transferred to the MOC on 16 February.

603. Police records and two large operators we spoke to said that they initially agreed to assist Police or began discussing details about the work, but then changed their mind. One told us discussions ended because they felt the risk was too high and that the \$10 million indemnity offered to them by Police was insufficient relative to the risk to their company¹⁰⁵. All seven operators we spoke to told us that safety – for themselves, their families, staff, business, and equipment - was their biggest concern. One owner-operator said he was reliant on his phone for his business but was “*reluctant to answer...knowing it could be a torrent of abuse*”. Another reported receiving over 20 intimidating phone calls in one day in the first week of the protest, as well as abusive emails and online posts and messages.
604. Those operators we spoke to who declined to be involved said that there were a variety of reasons for this, including that Police were asking them to tow in a way they knew would put them at risk. Two said they were asked to trust that Police would protect them, despite Police not having a considered plan and ignoring their advice about how towing could be done safely.
605. Matters were not helped when media reported the Commissioner of Police saying at a press conference on 15 February that Police “*had very great reluctance from tow operators to support us in clearing this situation*”. Many of the operators we spoke to felt the Commissioner had unfairly painted them as unhelpful when they were being threatened by protesters and were genuinely fearful. One said intimidation “*blew up*” after the Commissioner’s public comments. We spoke to three operators who made formal reports of intimidation to Police. Understandably, all said they were very affected by the threats they received. We agree that the Commissioner’s statement did not adequately explain the context for their general lack of co-operation. In particular, it did not make clear that:
- not all operators had been contacted - one who regularly tows for Police in the Wellington region told us there had been no contact with him (although Police have told us that they made extensive efforts to contact everyone);
 - not all operators had been unwilling; and
 - operators were facing considerable risk to themselves, their families and their businesses.
606. Notwithstanding the reluctance of many, by 16 February Police did manage to secure the services of three operators, one of whom had made an offer of additional equipment. This provided Police with sufficient resources to tow individual cars blocking accessways in the streets around

¹⁰⁵ The Minister of Finance delegated to the Secretary to the Treasury the power in section 65ZD of the Public Finance Act 1989 to give indemnities to tow operators contracted by Police to remove unlawfully parked vehicles. The Secretary to the Treasury in turn sub-delegated this power to the Commissioner of Police.

Parliament. On 19 February, they also cleared illegally parked vehicles on Thorndon Quay; 15 were moved by protesters after Police spoke with them and two were towed. The few vehicles that were towed away in this period were not impounded, they were left on public roads, well away from Parliament.

607. Several attempts to tow were made but abandoned given the level of risk involved to both tow operators and Police, and the level of resource needed for crowd control. Police used other extraordinary means to move vehicles, for example, on 20 February, Police staff physically lifted and moved at least six cars with the help of protesters. Police have said that one of the lessons learned is that when vehicles are being moved in a protest environment, the risk to people increases significantly because of the time it takes. Photographs show in several cases at least 30 officers surrounding a vehicle and the tow truck in an endeavour to keep order.
608. However, Police did not abandon further plans to extract vehicles. They began the process of developing a Vehicle Extraction Plan led by an officer in the planning team who consulted with his contacts from working on the Pike River Mine recovery operation, and later with NZDF heavy haulage experts, on how to go about moving such an array of vehicles. As we discuss in more detail below,¹⁰⁶ this was a well-thought-out plan that was in draft by 21 February and confirmed on 27 February. Preparations were finalised in consultation with civilian operators in the days before 2 March and well executed on the day.

FINDINGS

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.

DID POLICE DO ENOUGH TO SECURE PUBLIC ACCESS TO THE COURTS?

609. In our system, there are three equal and independent branches of government: the executive (Cabinet supported by officials); the legislature (Parliament); and the judiciary (Courts). Therefore, the operation of the courts and access to them are of fundamental constitutional importance.
610. The occupation of Parliament grounds and the surrounding streets created difficulties for the continued operation of the courts. Protesters and their vehicles made access to the Court of Appeal

¹⁰⁶ See paragraph 916.

and the High Court difficult for judges, court staff and the public. Both courts are located on Molesworth Street and are directly opposite Parliament.

611. While one entrance remained accessible for both judges and staff, access to the courts' underground car parks was effectively controlled by protesters. Accessing these courts became increasingly difficult and risky. As the number of protesters grew, the area outside these courts was not only surrounded with protesters and vehicles but became filled with rubbish, including human waste. Some protesters even used the water feature on the Court of Appeal grounds fronting Molesworth Street to wash themselves or their clothes, or even on occasion to urinate into.
612. These difficulties and growing concerns for safety led to decisions to close both courts to the public. The Court of Appeal was closed to the public from 14 February, and the High Court from 22 February.
613. The Court of Appeal continued to hear selected civil and criminal cases remotely, using audio-visual technology, with minimal numbers of staff and judges on site.
614. The Wellington High Court also continued to operate remotely but could not conduct jury trials where the accused was in custody because access to the court cells was via the blocked carpark. The immediate impact was the adjournment of a jury trial, a rape case, for several months because it was not possible to secure safe access to the Court for the jury, the custody van, and the victim.
615. The Wellington District Court, located at Ballance Street and therefore at some distance from the Parliament grounds, remained open to the public during this period. There was concern that protest vehicles in the area could put the District Court's operation at risk, but this did not eventuate.
616. The obstruction caused by the protesters to public access to the courts during this period was compounded by the number of court security officers who contracted COVID-19. The Supreme Court was closed to the public due to the shortage of court security officers but continued to receive documents and conduct hearings remotely.
617. Both the judiciary and the Ministry of Justice requested assistance from Police to address the shortage of security officers. Police did provide some officers to help address this need. Given the other pressures on Police resources because of both the protest and absences through COVID-19 this was not always to the extent that those affected wanted.
618. The Chief Justice, the Attorney-General and senior officials in the Ministry of Justice, all expressed the view that Police did not seem to have had sufficient appreciation of the constitutional position of the judiciary, and the corresponding importance of maintaining access to the courts. There was a view that Police had given priority to ensuring Parliament buildings were not breached and did not attach the same importance to the protection and accessibility of the courts. As a result, the courts as institutions critical to the maintenance of the rule of law were compromised. The concerns expressed by senior justice-sector parties related to the fundamental importance, within New Zealand's constitutional arrangements, of ensuring access to the courts and the physical and symbolic effect of that access being denied.

619. Police rejected this criticism when we put it to them. The Local Controller pointed out that it was relatively straightforward for Police to take steps to prevent protesters from breaching the small number of access points to Parliament. It was quite another matter to ensure that the High Court and Court of Appeal remained open to the public. It was logistically difficult for Police to ensure access to Parliament for non-protesters was maintained; to the extent that this occurred, it largely relied upon the goodwill of the protesters. It was a much more difficult proposition to maintain safe access to the courts given they were surrounded by streets occupied by protesters.
620. We ourselves are satisfied that Police did not lack an appreciation of the constitutional significance of the courts. Lack of foresight and planning was the problem. As we have discussed above, they could and should have done more on 8 February to consider whether there was a need for a traffic management plan, when they knew that a convoy likely to consist of at least 370 vehicles, and possibly up to 1,000, was descending on Wellington. But having failed to do that, their options for maintaining safe access to the courts were very limited and constrained by limited staff resource.
621. We note that Police did go to considerable lengths to listen to the concerns of both the judiciary and the Ministry of Justice, to inform them of the actions they were taking and to address their requests to the extent possible. There was discussion and correspondence between the Chief Justice and the Commissioner of Police in which Crown Law and the Ministry of Justice were also involved. The National Controller spoke daily with the Chief Operating Officer of the Ministry of Justice who, in turn, conveyed this information to the Heads of the Judiciary at their daily meeting with the Ministry. We also note that, in most respects, the courts were able to continue to function, albeit remotely which prevented the public from viewing cases being heard. The principal impact was on a jury trial that had to be suspended in the High Court for the duration of the protest. This was highly undesirable, and perhaps more should have been done to explore options for proceeding with this trial.
622. Overall, however, while we accept the importance of access to the courts, we are satisfied that, at least by the afternoon of 8 February, it was not practicable for Police to do any more than they did to ensure the ongoing operation of the courts. The actions they did take to address the concerns of the judiciary and the courts were reasonable in these exceptional circumstances. However, we think there would be value in including within Police public order policing policy specific mention of the constitutional position of the Courts and the primary importance of maintaining access to justice by ensuring physical access to courthouses to the extent reasonably practicable. This would help to ensure that officers planning and implementing an operation in similar circumstances have this in front of mind.

FINDING

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.

Part 7: Clearing the Parliament grounds and surrounding area on 2 March 2022

623. In this section, we discuss the Police operation to end the occupation on 2 March. We consider the following issues:

- Was the Police’s plan to end the occupation adequate?
- Did Police adequately protect their officers from potential injury?
- Did Police use appropriate tactics to end the occupation?
- Were Police justified in arresting and charging protesters?
- Did Police appropriately manage people taken into custody on 2 March?
- Was the protesters’ property handled and disposed of lawfully and appropriately?

624. We begin with a timeline of the events on 2 March.

TIMELINE OF EVENTS ON 2 MARCH

625. On Wednesday 2 March 2022, Police began a large-scale operation to “*restore Parliament grounds and environs to a safe state of a peaceful lawful protest*”.



6.00
AM



- Police helicopter begins circling above protest site.
- One Police team moves from the rear of Parliament buildings to Bowen Street to distract and draw protesters' attention away from other Police teams clearing protesters and structures from Hill Street and securing the Parliament Library forecourt.
- Police begin broadcasting warning messages using two LRADs, located on the roof of Parliament House and Aitken Street. The warnings inform protesters that Parliament grounds and Aitken Street are closed, that if they do not leave, they are trespassing, and that any obstruction of Police may result in arrest. This message is relayed every few minutes throughout the morning.

6.10-6.40
AM



- As a Police team push protesters down Hill Street, protesters respond by making barricades with plywood. Protesters have metal poles, pitchforks and fire extinguishers, and some point lasers at the Police helicopter.
- Police clash with protesters but move them down Hill Street towards the intersection of Hill, Molesworth and Aitken Streets. The intersection is secured by 6.17am and protesters are forced onto Molesworth and Aitken Streets.
- Police commence a planned operation to clear the roads surrounding Parliament by towing vehicles, starting in Molesworth Street.

6.45-8.00
AM



- Police clear Aitken Street and begin clearing Molesworth Street. Police and protesters clash in front of the Court of Appeal. Police use an LRAD to warn protesters to step back, and those that do not comply are pepper sprayed.
- Police remain at this location as progress is hampered by protesters' resistance and vehicles parked across Molesworth Street.

8.00-9.40
AM



- Police report significant resistance at the intersection of Molesworth and Aitken Streets as protesters throw paint and empty bottles, and use and throw fire extinguishers.
- The LRAD message is changed to include trespass warnings for Molesworth Street and other roads surrounding Parliament.
- At 8.40am, after three Police officers are injured, approval is given to one PSU team to deploy with hard body armour, including long batons. Use of large canisters of pepper spray is also approved.
- Aitken Street is cleared of vehicles at 8.50am.
- Police and protester lines remain stationary, but there are intermittent clashes between them. Some protesters pulled an officer out and away from the Police line, where he was seriously assaulted.



9.40-2.40
AM PM

- Police and protesters remain in the same position on Molesworth Street. Other Police officers remove protesters' property and vehicles from the cleared areas. Property is left in piles and, as there is no plan for handling items of property, there is confusion as to who is responsible for securing it.
- By 12.15pm, 38 arrests have been made.

1.30
PM

- Police operation commanders meet on the St Paul's Cathedral lawn to discuss next steps.

2.00
PM

- The National and Local Controller meet with members of the Police Executive and other senior officers to discuss options for progressing the operation. A decision is made to continue clearing Parliament grounds.

2.35
PM

- Frontline staff are authorised to continue clearing Parliament grounds, Molesworth Street, and the Victoria University Law Faculty.

2.40-3.10
PM

- One Police team begins clearing Parliament grounds using skirmish lines and pepper spray. Officers reach the main Parliament gate on Molesworth Street, where there are further clashes with protesters. Officers spray fire extinguishers at protesters situated behind and on top of the gate. Police clear the immediate area inside the gate by 3.04pm.
- A second Police team slowly advance down Molesworth Street, meeting with heavy resistance from protesters, some of whom throw objects and spray petrol at officers. Police clear the area outside the main gate on Molesworth Street by 3.07pm.
- An LRAD is moved to the Parliament forecourt to continue issuing warning messages.

3.15-3.30
PM

- Police clash with protesters south of the main Parliament gate on Molesworth Street but manage to advance. At the same time, officers in hard body armour advance on the main camp area on the Parliament lawn and begin clearing tents and protesters' property.



3.35-4.10
PM

- Protesters light the first fire at 3.39pm and throw objects at officers to prevent them from accessing the fire zone. Protesters throw objects on the fire, including tents. Police unsuccessfully attempt to extinguish the fire, which continues to grow. Protesters continue to stoke the fire by throwing objects onto it, including petrol cannisters and a gas cylinder.
- At about 3.40pm Police use both LRADs to broadcast the aversion tone for a short period of time, directing the sound towards the group of protesters throwing items onto the fire, until FENZ officers arrive to extinguish the fire.
- By 3.47pm, FENZ officers are using two hoses on the fire. Most protesters are pushed off the lawn by 3.49pm.
- Police start moving onto the playground area, clearing protester property and holding the line at the Seddon Memorial statue as the fire continues to grow. Protesters stoke a second fire lit under the playground slide by throwing objects onto it. By 3.51pm the slide and playground are fully alight.
- Police staff stationed on the forecourt who have no shields or helmets, are instructed to advance down in front of the Beehive entrance and brick wall lining the Beehive to bolster Police numbers. They are met by protesters throwing heavy objects, including pieces of wood, chairs, bottles and tent poles. After retreating and being stuck against the brick wall, officers in hard body armour arrive to support this team.
- Fires in the playground area are extinguished by 4.07pm.



4.20-5.00
PM

- The Police line on Molesworth Street advances past Kate Sheppard Place, reaches the High Court and then continues to push down towards Lambton Quay.
- Police in the Parliament grounds push protesters down to the Lambton Quay gate. Police attempt to shut the gate, while protesters poke metal rods through it. Protesters throw paving bricks, plywood, shelving units, and glass at Police through and over the gates, hitting them at close range. All officers at this front line are carrying shields with a third of them also wearing hard body armour. Two officers on the front line do not have helmets. Protesters push over some Portaloo's.
- Protesters start another fire at the base of a tree outside the Lambton Quay gate and throw items such as chairs, palettes, and rubbish bins on it to fuel it. At 4.27pm a team leader requests the deployment of the urgent action team after a protester is seen with a lit Molotov cocktail.

- At 4.29pm FENZ officers arrive by the Lambton Quay gate with a fire hose but refuse Police's request to use the hose on protesters. At 4.30pm more structures are set alight at the gate and the Cenotaph. At 4.45pm Police use the fire hose, firstly, on the protester carrying the Molotov cocktail to prevent it being thrown and, then, on other protesters as the least violent means to push them back. This has little effect on protester behaviour.
- Protesters work together to dig up paving stones to throw at Police. A protester loads a trolley with paving bricks and uses it to supply bricks to protesters to throw at police.
- At about 4.40pm protesters attempt to set fire to the Old Government Buildings opposite Parliament, but security staff extinguish it.
- At 4.51pm the Lambton Quay gate is shut and secured, and protesters are pushed back. Some protesters manage to re-enter and push over some more Portaloo's. Officers withdraw to higher ground.

- Protesters attempt to light another fire by the Cenotaph, but it is extinguished by FENZ.
- At 5.24pm, a protester throws a tuna bomb (an explosive device used for fishing) towards Police. The explosion nearly hit officers without protective gear. These officers are replaced by others in hard body armour. More tuna bombs are thrown at Police.

- Protesters now shift their attention to the line of Police officers standing across the intersection of Lambton Quay and Bowen Street. These officers do not have shields, helmets or hard body armour, nor the numbers to push back the protesters. An organised group of protesters with a trolley of paving bricks rush down Lambton Quay and throw them at the Police line.
- Police move the LRAD to the edge of Parliament grounds, between the Cenotaph and Lambton Quay, and the aversion tone is used intermittently in the direction of the protesters throwing rocks. The LRADs are then taken off of their tripods and the aversion tone is used intermittently in the skirmish line to deter protesters throwing projectiles.
- At 5.42pm Police authorise the use of sponge rounds.
- At 5.47pm Police are forced to retreat, and a protester picks up a fire hose, using it on Police. As the Police line retreats, protesters run forward to retrieve the paving bricks they have thrown. Police officers sustain injuries.
- At 5.48pm, three officers throw paving bricks at protesters. An officer in hard body armour is lying on the ground injured. The first STG team arrive to deploy sponge rounds.

5.00-5.30
PM

5.30-5.50
PM



5.50-6.10
PM

- Protesters throw projectiles and a tuna bomb at Police lines, but Police's use of sponge rounds disperses protesters and the Police line quickly pushes up Lambton Quay towards the bus terminal.
- At about 6pm a driver reverses a vehicle towards the Police line. Officers smash the passenger window with batons and shields, but the driver continues to reverse picking up speed. Police fire sponge rounds into the rear windscreen and the vehicle is driven away.
- Meanwhile, Police officers advance down Molesworth Street, connecting with officers on Lambton Quay and creating a circular formation in an attempt to shepherd protesters into the bus terminal and Bunny Street. Police use a fire hose to force some protesters into Bunny Street. Protesters light a skip bin on fire on Bunny Street and smash the glass entranceway into a Victoria University building.
- Police use the aversion tone intermittently at the Lambton Quay and Bunny Street intersection.



6.10-6.30
PM

- Protesters throw more tuna bombs at Police. Police push protesters down Bunny Street and out towards Featherston Street near the Wellington Railway Station. About 200 protesters remain at the intersection of Bunny, Stout and Featherston Streets, some of whom slowly disperse over the next hour.



6.30-8.00
PM

- Police withdraw back down Bunny Street. Some protesters then re-enter Bunny Street and Police respond by firing sponge rounds.
- About 20 officers form a skirmish line and move down Bunny Street, re-securing the intersection of Bunny, Stout and Featherston Streets, before withdrawing back down Bunny Street again to hold the intersection of Lambton Quay and Molesworth Street.



8.15
PM

- Protesters continue to disperse.



9.00
PM

- About 40 protesters remain, verbally abusing Police holding the line.



About 10
PM

- 40 recruits and 40 CIB staff arrive, replacing officers that have worked all day, to hold the cordon overnight. Remaining protesters continue verbally abusing staff until they disperse in the early hours of the morning.



WAS POLICE'S PLAN TO END THE OCCUPATION ADEQUATE?

626. After their unsuccessful attempt to clear the lawn in front of Parliament House on 10 February, Police continued planning to end the occupation of Parliament grounds and the surrounding area. As discussed above,¹⁰⁷ this was initially the responsibility of the Wellington District planning team, supported later by national staff from Operation Oversight. It involved a number of approaches that were concurrently pursued. Following the 10 February operation, it was recognised that there would likely need to be a much larger single operation, with greater Police numbers and resources. Planning to this end took place over the following three weeks. At the same time,¹⁰⁸ Police continued trying to engage and negotiate with the protesters in order to contain the protest and persuade as many as possible to leave.

Were the right people involved in the planning for the operation, and did it cover all the aspects it needed to?

627. The Operation Convoy Tactical Commander led the Wellington District planning team and appointed a 'Deliberate Action' Commander with planning skills related to and resulting from his Special Tactics Group (STG) experience. They were joined by some members of the National Support Command Team.¹⁰⁹

628. Following a workshop arranged by the National Operation oversight team held on 21-22 February, a plan was finalised by the planning team, which set out a number of different tactical options. This was presented to members of the Police Executive on 24 February.

629. Some officers told us they thought the planning for the operation to clear the area around Parliament (the 2 March operation) was too heavily influenced by the AOS and STG, rather than public order policing. Other officers also told us that the support they received from the Major Operations Centre (MOC) came too late and support provided by the National Support Command Team was of limited value.¹¹⁰

630. Nevertheless, we are satisfied that overall the staff involved in the tactical planning for the deliberate action had sufficient expertise to undertake the task and that officers with Police Support Unit (PSU) experience also played a significant role. However, as we discussed above,¹¹¹ they were too thinly spread and found it difficult to prioritise the competing demands of planning for the final operation and managing planning for the day-to-day containment of the protest in the meantime.

631. The more significant limitation of the planning phase was its focus on tactical planning rather than strategic planning. A NZDF planning expert who attended the two-day planning workshop explained the issue in the following way:

¹⁰⁷ See paragraph 403 onwards.

¹⁰⁸ As we describe in more detail in paragraphs 445-501 above.

¹⁰⁹ See paragraph 425 for discussion of the National Support Command Team.

¹¹⁰ See discussion of the Major Operations Centre and National Support Command Team from paragraph 416.

¹¹¹ See paragraph 403 onwards.

“There seemed to be very little understanding of how to plan a complex activity of this nature. The Police planning team used a tactical orders delivery format as a planning tool. This led to a number of issues during the workshop, it also led to the development of a plan that I remember seemed very superficial and lacked significant detail.... A lot of the focus was on what individual tasks had to be achieved and the order they had to be completed. There didn’t seem to be much thought given to the protesters’ reactions to Police action, it was very one dimensional.”

632. After the presentation on 24 February, the Police Executive approved a plan, but said only about half the number of officers the planning team had wanted for the operation would be available. The following day, the Local Controller asked the planning team whether the operation could be redesigned and spread across several days, so that it could be carried out by fewer officers. The rationale for the Local Controller’s instruction was to spread risk due to COVID-19 impacts and mitigate difficulties in mobilising such a large contingent of staff from across the country without drawing protester attention to Police’s intentions.

633. The Wellington District planning team then developed a tactical plan, the ‘Operation Convoy Deliberate Action Plan’, setting out how the operation would be implemented. The Mission was “to maintain law and order while restoring Parliament grounds and environs to a safe state of peaceful lawful protest” and the Commander’s Intent was that “peaceful, lawful protest be allowed to continue at a district manageable level”. No further detail was provided about what allowing a peaceful lawful protest would entail. This was the same intent as for Police’s response on 9-10 February. We have earlier questioned whether this was appropriate once the protest turned into an occupation.¹¹² It was even more out of place as the basis for the operation planned for 2 March, because the protesters had been trespassed from Parliament grounds, which had been closed, and the intent was to bring the occupation to an end. The mission should have been revised. The fact that it was not resulted in a contradiction between the stated purpose of the operation and the details of its implementation.

634. The plan itself included:

- A phased approach to clearing five ‘areas of operation’ in sequence, using teams of officers given specific taskings, including a vehicle extraction team and a custody team. The order in which the ‘areas of operation’ were to be cleared was as follows:
 - a) Hill Street and the intersection of Hill, Molesworth and Aitken Streets.
 - b) The area in front of the Parliament Library, and potentially the lawn in front of the library subject to an assessment as to achievability on the day.
 - c) Aitken Street.
 - d) Molesworth Street as far as Kate Sheppard Place.
 - e) Kate Sheppard Place itself.

¹¹² See paragraphs 234-242.

- Air support capability from the Police helicopter 'Eagle'.

635. The plan had five obvious deficiencies:

- 1) It did not cover how Police would hold the ground they had cleared overnight if the phased operation was not completed in one day, even though they anticipated that the operation would take more than one day.
- 2) It did not contain a strategy for the clearance of a large part of the Parliament grounds, the Cathedral and the Victoria University Law Faculty;
- 3) It did not sufficiently analyse the risks to officers' safety and how they should be addressed or minimised.
- 4) Although the planning team was tasked to do it, they did not articulate in the plan how protesters' property (other than vehicles) would be dealt with once the grounds had been cleared.
- 5) While there was some attempt to address the deficiencies in the 10 February operation in identifying offenders and maintaining a chain of evidence, a number of problems arose in subsequent prosecutions, as discussed in more detail below,¹¹³ that might have been avoided with better planning.

636. Additionally, the plan contained no consideration of post-operation requirements such as when tactical options reports should be completed concerning the force used during the operation or what information would need to be preserved for any necessary post-operation review, such as CCTV recordings.¹¹⁴ There was no contingency in the plan in the event the opportunity arose (as happened) to clear any other area within Parliament grounds, including the lawn area in front of Parliament House, the grounds leading down to the gates on Lambton Quay, the University Law Faculty or the Cathedral. The Deliberate Action Commander told us he thought: *"If we got to the gates on Molesworth Street [meaning the top gate just below Aitken Street], that would be a good day."*

637. The MOC was tasked with coordinating the selection and travel of additional Police officers to Wellington to help with the 2 March operation. This operation could only be executed with approval from the National Controller and only when *"the Local Controller and the National Controller are satisfied that the appropriate arrangements are in place, and that it can be completed with an acceptable level of risk to Police staff, the unlawful occupiers, the community and property."*

What risks did Police consider and identify?

638. In an operation such as this, occurring in a volatile environment with many unknown contingencies, it is vital that a comprehensive assessment of known risks be undertaken. This should identify and assess all those risks, present a plan for mitigating them, and consider and discuss other possible

¹¹³ See paragraphs 861-867.

¹¹⁴ See paragraphs 733-734 for further information about Tactical Options Reports.

future risks (on the basis that in an operation of this sort it is rare that everything ever goes quite according to plan).

639. The planning for the Deliberate Action did include some assessment of the risks involved in the operation, noting that there were weapons, dogs and vehicles at the site, and that some protesters would potentially be affected by drugs, alcohol, and/or mental health issues as well as anti-Police ideology. Police anticipated that obstruction and violence towards officers and tow truck drivers, and even rioting might occur.
640. However, as we discuss below, we think that assessment lacked sufficient rigour. Detailed consideration of other risks and, more importantly, what might be done to mitigate them, was also largely absent, and we consider the Deliberate Action plan to be deficient in this respect.

Did Police consider the health and safety of officers in their planning?

641. Police policy on public order policing also requires a ‘Safety Officer’ to be appointed, who is responsible for monitoring all aspects of an ongoing operation and identifying safety risks that must be addressed so that Police fulfil their duties under health and safety legislation. The Safety Officer must prepare a formal risk assessment on safety issues to form part of the operation plan and orders. Police appointed an inspector to be a Health and Safety Officer early in the occupation (8 or 9 February).
642. The Police’s ‘Safer People’ group’s response for Operation Convoy included a District Health and Safety Advisor (focused on physical safety and health) and a Wellness team (focused on psychological wellbeing)¹¹⁵. Another experienced health and safety advisor was also deployed to the protest as part of the NSCT to support Wellington District command.¹¹⁶
643. We were told that Health and Safety staff did not work closely together during the operation, nor did they work in conjunction with the Wellness team. There was a lack of clarity regarding their roles and areas of responsibility, and this caused difficulties with information sharing and lost opportunities to work collaboratively.
644. Initially, on 9 February, the District Health and Safety Advisor and the Operation Health and Safety Officer, along with the Operation Commander and the Wellington District Deployment Manager and others, had completed a Risk Assessment Form for Operation Convoy. This document considered the safety of staff and recorded that to mitigate risk (which was assessed as high even when officers’ training, weapons, body armour and their own risk assessment skills were taken into consideration), the operation should include “*pre-operational planning – contingency plans to allow for various eventualities.*”
645. The Health and Safety Officer and the Wellington District Health and Safety Advisor told us that although they developed a Risk Assessment document, much of their roles involved managing the risk of COVID-19, ensuring that officers were completing Rapid Antigen Tests (RATs) and isolating

¹¹⁵ Police’s ‘Safer People’ is a workgroup within Police National Headquarters that facilitates services and support for employees relating to wellness, health and safety, return to work initiatives, and physical health and education.

¹¹⁶ See paragraph 425 for discussion of the NSCT.

when needed. Neither were involved in discussions about protective equipment for officers (such as hard body armour), as there was a specific team responsible for this and other logistics planning, but did assist with arranging protective eye equipment. Instead, they were working to ensure there were enough face masks and hand sanitiser available for officers working on the operation.

646. While the Operation Health and Safety Officer had controlled operations before, he had no previous experience in health and safety. The Wellington District Health and Safety Advisor says she told the Health and Safety Officer on 11 February that a specific Safety Officer should be appointed for Parliament grounds. She described the role as:

“... someone who is trained and/or experienced in the role and concentrates solely on the safety of the staff.... It is a separate role from the [Health and Safety] Lead.”

647. However, no separate Safety Officer was appointed.
648. The Operation Health and Safety Officer, the Wellington District Health and Safety Advisor, the NSCT Health and Safety Advisor, and the Welfare lead (who was part of the Incident Management Team) did not attend the workshop on 21 and 22 February, and told us they were not involved in any other operational planning for 2 March. Except for the NSCT Health and Safety Advisor, who had returned to his home district, all expressed frustration at being excluded from operational decision-making which would impact on staff safety.
649. The Wellington District Health and Safety Advisor said that upon hearing about the 2 March operation, she emailed the Tactical Commander to advise him that a Safety Officer should be appointed to evaluate safety concerns onsite. Again, no separate Safety Officer was appointed.
650. It seems there was no single person responsible for looking after the health and safety of officers on 2 March, who had the ability to provide real-time feedback to commanders on issues of staff safety in an operational context. Although Police were alerted to the need for an experienced and dedicated safety officer at Parliament grounds, this request was overlooked or ignored.
651. Notwithstanding that earlier intent, Police did not have a specific health and safety plan document for the 2 March operation. Police have submitted to us that *“the entire operation was planned around health and safety, and mitigations/contingencies in the plan were designed to address potential health and safety risks.”* While we accept that health and safety may have been discussed as part of pre-operation planning by Tactical Commanders and Controllers, there is no documented evidence of this, nor of any health and safety perspective or input from Police’s assigned subject matter experts into the planning or the final operation order. The largest risk in attempting to end the occupation was always the safety of both Police staff and protesters. Some officers suggested to us that senior Police staff overlooked or overruled health and safety issues due to their concerns that options such as riot shields and other protective equipment would be perceived by protesters and the public as unduly confrontational and even militaristic.¹¹⁷

¹¹⁷ See discussion from paragraph 694.

652. While we acknowledge the validity of concerns about protester and public perception and agree that they need to be weighed against the need to mitigate the risk to staff, we have not been able to find any document that systematically analyses the competing considerations or records any contingencies for 2 March. Nor are we aware that such an analysis was done but not documented.

Did Police have sufficient staff to conduct the operation?

653. The tactical plan recommended to the Police Executive had outlined the need for an additional 600 staff to clear Parliament grounds, Molesworth Street, the Victoria University Law Faculty buildings and the bus station in one day. The Tactical Commander wanted to display strength in numbers, which he hoped would discourage the protesters from resisting and mean that Police would only have to use a low level of force to complete the operation. This approach is considered best practice public order policing.

654. However, COVID-19 was having an impact on the availability of Police staff nationally, which meant there would not be 600 additional officers available to execute the plan. As noted above, the Local Controller responded by requesting that the plan be redesigned so that it could be executed over two days. The resulting plan was approved, and requests were made to other districts for available staff.

655. Over the weekend of 26 and 27 February, Police developed a two-day public order policing training package. They also asked for available staff from across the country to be sent to Wellington to help with the operation, with the Commanders requesting public order experts and their safety equipment. The initial plan was for staff to arrive by Monday 28 February, followed by the training programme and ground familiarisation, then the execution of the plan on Thursday 3 March.

656. At 8am on Tuesday 1 March sergeants and senior sergeants were briefed, given designated teams, and tasked with assessing the capability of their team members. It was established at this point that the number of available staff with public order policing expertise was lower than hoped for, with many of the PSU-trained staff not being deployed to Wellington. Police told us there was both a lack of clear communication, and a desire from some districts to retain their PSU-trained staff and equipment because they were having to deal with protests in their own districts and there was a higher risk that their staff would get COVID-19 in Wellington.

657. On the morning of 1 March, staff were also told that the training time would be reduced to one day to enable the operation to be brought forward to begin on Wednesday 2 March. We discuss these decisions below.¹¹⁸

Were officers appropriately experienced for their assigned roles?

658. A number of officers commented that particular team leaders on the front line during the operation were effective and directed their teams well:

¹¹⁸ See paragraphs 668-678.

“It felt like the sergeants and senior sergeants on the ground were the ones we wanted to trust. They had clear instruction and direction and were checking in on what we were doing.”

“I was very impressed with the decision making by individuals and [sergeants] on the ground.”

659. However, a large proportion of the officers we spoke to felt that some of the Police staff leading the operation lacked the appropriate experience for their assigned roles. Those officers identified that some of the designated leaders had not worked on the front line for a significant period, and some who were involved in the planning and execution of the operation did not have any recent or significant command experience.

660. Lack of command and control experience and public order policing experience was a particular concern to some officers on the ground:

“Selection of staff didn’t appear to be based on skill sets.”

“Some supervisors had no idea what they were doing as to public order policing.”

“I thought that some of these people did not have the necessary street skills or credibility to make operational calls and manage staff.”

661. Given Police had not confronted a protest of this magnitude and complexity for a long time, it was inevitable that staff would express concerns about the experience of both supervisors and staff. But we ourselves are satisfied that, overall, team leaders had sufficient command and public order policing experience to perform their roles.

Did Police provide officers with enough public order policing training for the particular operation?

662. Only Auckland, Wellington and Christchurch have designated full-time PSUs for public order policing. Other districts have part-time PSUs which can be called upon for public order events. We note that there is currently no master list or record keeping of the PSU capability across New Zealand. This work is currently being undertaken, with a new position created (and filled) at Police National Headquarters.

663. About half the officers we spoke to had recent and substantial public order policing training and experience before the 2 March operation. A quarter (including people who were not normally on the front line, such as detectives and youth aid officers) said they had not received any recent public order policing training, or could not recall when they last received training. As discussed further below, recruits and newly graduated staff also did not get much training before being placed on the cordons at Parliament.

664. The training day for the 2 March operation was held in Porirua on Tuesday 1 March. Officers were split into groups based on their public order policing experience (core role/some/none).

665. The initial plan was to train officers on the use of public order policing batons (long and side-handled batons). However, as discussed further below,¹¹⁹ the Wellington District Leadership Team decided that morning not to allow officers to carry these batons from the start of the operation. We were told that there was an expectation that officers would be trained on the use of the batons, because it might become necessary to use them later in the operation. But, due to a miscommunication, the trainers understood that officers were not allowed to use batons at all during the operation, so baton training was stopped. This meant that staff who had no previous training on the use of the batons could not use them on 2 March.
666. The afternoon of 1 March was spent practising basic public order manoeuvres, followed by a briefing that evening to all staff and the auxiliary units. The officers we spoke to who had been at the 1 March training had mixed views; some officers said the training was sufficient, while those with less front-facing roles in their usual job, such as Criminal Investigation Branch (CIB) and Youth Aid officers, were less positive about the adequacy of the training. Many officers said they believed that the training had prepared them well until they were actually faced with events as they unfolded on 2 March. No criticism was levelled at the trainers who, it was felt, did the best they could in the circumstances.
667. While it would have been desirable for more officers to be trained in the use of public order policing batons (had more time been available),¹²⁰ our assessment of the footage of the Police's actions on 2 March is that the control and movement of all the groups throughout the day was highly coordinated and was generally managed well.



Photograph courtesy of New Zealand Police

¹¹⁹ See paragraph 694.

¹²⁰ The use of batons on 2 March is discussed further below at paragraphs 797-801.

Was the timing of the operation appropriate?

Was the decision to move the operation forward by one day justified?

668. The initial plan was for the operation to begin on Thursday 3 March, before protest numbers swelled over the weekend. However, on 1 March the National and Local Controllers decided to bring the operation forward to Wednesday 2 March. Officers told us they were not provided with the reasons for this at the time.
669. Police told us they brought the operation forward by one day due to a number of concerns including staffing levels. They were losing a lot of officers to COVID-19, and other officers were due to return to their own districts. Due to an overlap of incoming and outgoing officers, Police had more officers available on 2 March than they would have had on 3 March. Police were also concerned that with the influx of many staff, the protesters might become aware of their plan to end the occupation. Police also wanted to ensure that if the operation took a few days to complete, it was finished before the crowd could increase its numbers, particularly over the weekend.
670. This decision meant the public order policing training for officers had to be cut down from the scheduled two days to one. The National and Local Controllers decided it was worth it to ensure the security of the operation, while there was a higher number of staff available and to *“get ahead of whatever else was happening”*.
671. The Tactical Commander told us he had tasked someone to find out how much tactical equipment had remained in the districts with a view to making a second request for more equipment. He said the decision to begin the operation a day early meant that *“our ability to source additional tactical and protective equipment was reduced and effectively we always knew we were going to be short on equipment because we just couldn’t get it to us in time.”* The MOC Manager told us that all equipment that had previously been requested and had agreed to be provided had arrived by the morning of 2 March. In any event, as discussed below,¹²¹ Police did not have enough equipment available for all staff on 2 March and that situation was unlikely to be improved by waiting one more day to begin the operation.
672. Overall, we think the decision to bring the operation forward by one day was reasonable, given the staffing concerns.

¹²¹ See paragraphs 681-711.



Photograph courtesy of New Zealand Police

Was the decision on 2 March to proceed with clearing the Parliament grounds (reducing it to a one-day operation) reasonable?

673. It appears that, when the operation began on the morning of 2 March, Police still had in mind that it would be conducted over at least two days. However, as noted above there was no plan for how they would secure the cleared and recovered ground and streets overnight, and no contingency plan for what would happen if they were able to complete the operation more quickly than expected.
674. Police have submitted that they had *“arranged to have an appropriately resourced late shift and night shift operating to keep the grounds secure”*. This is at odds with the fact Police made an emergency request around midday on 2 March for 80 staff needed to secure the Parliament grounds.
675. On the afternoon of 2 March, after Police had secured Hill Street and its intersection with Molesworth and Aitken Streets, they decided to proceed with clearing the Parliament grounds and the rest of Molesworth Street down to Lambton Quay. This was a collective decision made at the time with input from the National Controller, the Local Controller, the Forward and Deliberate Action Commanders and the MOC Manager.



Photograph courtesy of local resident Matthew Lawrence

676. While frontline officers we spoke to generally agreed in principle with the decision to proceed, they did not consider that they were sufficiently equipped to do so. One sergeant told us:

“We weren’t equipped to, at the time, proceed like that. We needed more time to make sure we had the right equipment, meaning [hard body armour], helmets and shields.”

677. The decision to proceed also meant that newly graduated officers had to be called in to help bolster skirmish lines.¹²²

678. However, we think it was the correct decision for Police to proceed and complete the operation in one day because:

- Staffing and equipment levels were not going to be improved by delaying (in fact, they were likely to get worse).
- Pausing would have given the protesters more time to strategise and bolster their resistance.
- Police had not made plans for how they would hold the ground they had reclaimed overnight. That task would have been even more difficult if they had not yet cleared Parliament grounds, as they would have had to guard against a large crowd of protesters continuing to camp nearby.

¹²² Discussed further below at paragraphs 714-723.

FINDINGS

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?

679. The Health and Safety at Work Act 2015 imposes on Police a duty to provide a safe working environment for their employees and to minimise work-related risk. Employers are required to have regard to the health and safety of their staff, identify hazards and, importantly, minimise risks to health and safety, including by providing and ensuring the use of *"suitable personal protective equipment"*.¹²³

680. In addition, Police policies set out the responsibility for ensuring staff safety and welfare, including in the context of public order policing. Policy notes that *"staff safety is paramount"* in these situations, but also cautions against unnecessarily provoking crowds attending protests and demonstrations by using personal protective equipment: *"Personnel in protective equipment should not be used merely as a display of force, or without good reason."*

¹²³ Health and Safety at Work (General Risk and Workplace Management) Regulations 2016, ss 6 and 15.

Did Police provide officers with enough equipment?

681. For public order policing, Police may use hard body armour together with helmets and shields (referred to as personal protective equipment, or PPE). Only PSU staff have their own personal hard body armour kit, including a helmet and long baton.



Photographs of public order protective equipment, long baton and shields courtesy of New Zealand Police

682. Police policy describes using officers wearing PPE as *“a significant show of force”* which requires sufficient justification. The use of PPE is not acceptable for peaceful demonstrations, but is justified in cases of riot and serious disorder where the equipment is needed to protect officers from injury.

683. Police policy says that when the hard body armour is used:

- it must be worn together as a set, including protectors for hands, feet, shins/knees, thighs, forearms/elbows, shoulders and groins;
- ballistic or stab-resistant body armour must be worn with it; and
- where available, helmets must be worn at all times.

684. An Inspector or someone of higher rank must authorise the use of PPE. Police policy suggests that using PPE should be a last resort and, relevantly, only when *“a riot or incident of serious disorder exists or a real and serious threat that a riot or incident of serious disorder is likely to occur”*.

685. When deciding whether to authorise the use of protective equipment, the Local Controller must carry out a risk assessment. Policy says:

“The overriding consideration should be whether staff are likely to incur serious harm if protective equipment is not used in situations of actual or anticipated riot or serious disorder.

The effect that staff putting on protective equipment will have on the situation must also be considered.

Examples of escalation points that might trigger the level of protection required are:

- *staff being actively attacked by groups of persons (assaultive), particularly when objects are being thrown at Police.*
- *situations of rioting or serious disorder at large public events*
- *situations where shields and helmets would otherwise be deployed....”*

686. Almost all the officers we spoke to commented that they lacked the necessary equipment on 2 March. About a third said they had to share, borrow or use another officer’s equipment on the day (for example, using another officer’s pepper spray or their helmet and shield when replacing them on the front line). About a quarter were either “subbed out” from the front line due to their lack of equipment, or “subbed in” to replace an ill-equipped officer.

687. The two main frontline Police groups were given some helmets and shields, but a distraction team (including the new graduates), which was designed to draw protesters’ attention away from the teams tasked with clearing the protesters, vehicles and structures from Hill and Molesworth Streets, were only given protective goggles and gloves described by officers as “gardening gloves”. There were not enough for everybody. Many did not have any protective equipment, and Police did not have plans in place to provide it to them. There was a significant amount of consternation among those on the frontline.



Photograph courtesy of Stuff News

688. One officer told us:

“I guess the rhetoric from the Executive was that this was going to go quite smoothly, hence there was no need for us to be equipped, was how I – is how I felt and so when the senior stood there [at the briefing for the operation] and he said: ‘Look unfortunately team we don’t have helmets, we don’t have [pepper] spray, we don’t have Tasers for you’, he said, ‘but’, I wrote this down, he said: ‘Safety, safety of our staff is a priority’, and there was laughter in this underground building as we all stood there and went how is safety our priority?”

689. Another said:

“Just because we are Police, it doesn’t mean that we always feel safe. And I know that our job is to make other people feel safe, but we do need the right tools and resources around us as well.”

690. As described above in the timeline of events, on 2 March officers did face violence from protesters who resisted the Police line and threw objects at them, and some of them lacked sufficient equipment to protect them from those injuries. They told us:

“The guys in Parliament grounds were 100% not equipped to deal with what they were dealing with.”

“I think that we took a lot of risks that day that we shouldn’t have. As an NCO, I would never have let anyone be in that situation with no protection.”

“We’re lucky someone didn’t get killed. Staff were not adequately equipped to respond to the threat posed by protesters. This was foreseeable and avoidable.”

“The equipment side of it was absolutely shambolic, to put it politely.”



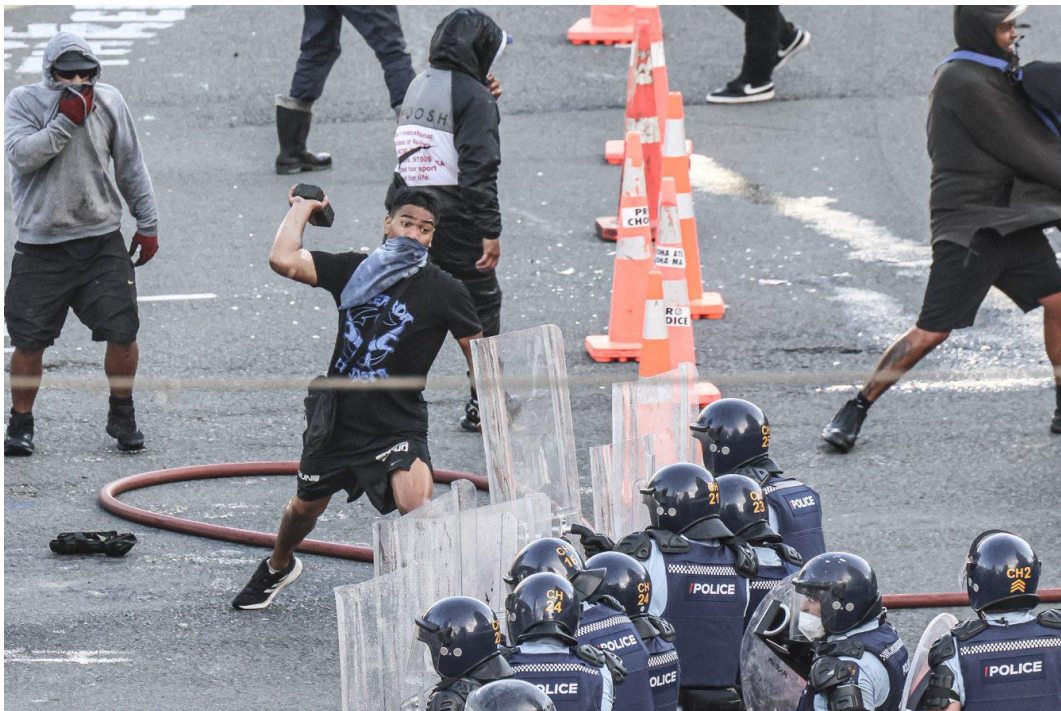
Photograph of injured officer on the ground courtesy of Verb Noun Productions

691. As the day progressed, the clearance of Parliament grounds and surrounding areas became increasingly violent and ultimately turned into a riot. Most of the officers we spoke to said they seriously feared for their safety at some point on 2 March. They told us:

“People were so determined to throw bricks at you...it kind of felt like I was at war, to be honest.”

“[When protesters started throwing paving bricks] I thought to myself: ‘We’re dead’.”

“So, I started to be quite scared with the fires, so that’s when I probably felt the most terrified. Just because of the noises and the fact that there was massive fires in front of me.”



Photograph courtesy of Verb Noun Productions

692. Ambulance staff ended up treating 82 Police officers for injuries they suffered during the 2 March operation.¹²⁴ Most of the injuries were not severe, and the officers were able to stay on the scene and continue their duties after treatment. However, six officers were taken to the Wellington Hospital Accident and Emergency Department and treated for serious injuries including a suspected leg fracture, fractured ribs, head and chest injuries, and a suspected spinal injury. None were admitted to hospital.

693. It is clear that a number of the injuries that officers suffered would have been avoided if they had had the advantage of sufficient and appropriate protective equipment. There were two reasons why the equipment was not being worn.

¹²⁴ Ambulance staff also treated 3 protesters and one member of the public.



Photographs courtesy of NZ Herald

694. First, though Police planning for the 2 March operation included officers deploying in helmets and shields, they were told on 1 March that they could not wear the hard body armour or carry long batons (which are routinely used for public order policing) at the start of the operation, although this decision was subject to change if circumstances required.¹²⁵
695. Secondly, when they did get to the point in the operation when decisions were being made that protective equipment was required, Police did not have enough helmets, shields and hard body armour, to equip all frontline staff. Each District has a supply of public order policing helmets, shields and hard body armour. Some had arrived in time for the operation, but much equipment was left in districts. That was partly because Districts wanted to retain some in case it was required for an operation there, and partly because a number of officers travelling to Wellington who were supposed to bring the equipment with them failed to do so through a breakdown in communication.¹²⁶ Even if all available equipment had arrived, Police have told us that there would still not have been enough in the country for every officer involved in the operation.
696. There was, of course, nothing that the Police on the front line could have done to address the shortage of equipment. It might be argued with the benefit of hindsight that the operation should have been postponed until additional equipment had arrived from elsewhere in the country, but we do not think that, given the information available to them and the ongoing disruption to the Wellington community, Police can be criticised for making the decision to proceed.
697. The primary question is whether the decision that officers should not wear protective equipment from the outset was justified, and if it was whether that decision was changed early enough in the operation.
698. The Tactical Commander told us he disagreed with the decision that officers could not carry or wear protective equipment, because it meant that the hard body armour and long batons brought by PSU teams had to be left in the Parliament basement. Staff had not had the opportunity to be familiarised with Parliament grounds and the basement, or lay their gear out so they would know

¹²⁵ As discussed above at paragraph 665, the direction for officers not to carry long batons led to officers not being trained in their use on 1 March.

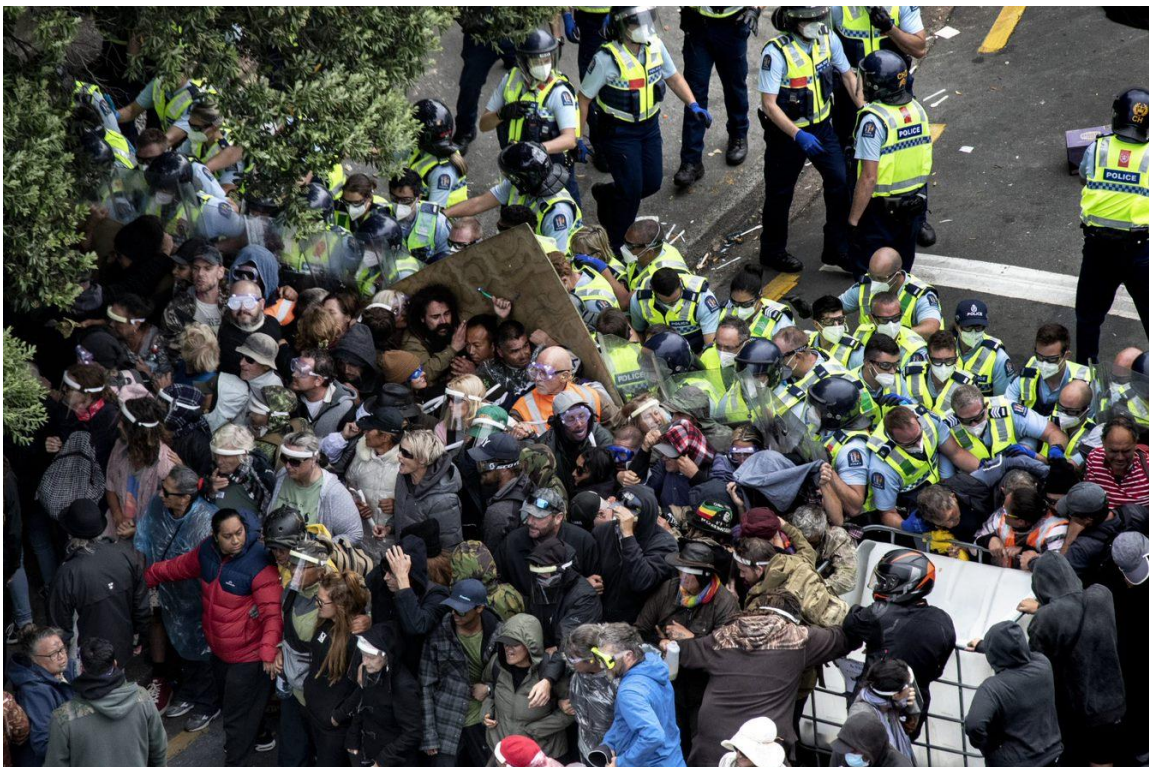
¹²⁶ There is no database or record of how much equipment was available in each Police district.

where to find it. When protesters became violent as the line of officers began trying to clear them, the unprotected officers then either needed to hold the line and risk injury, or leave to fetch the body armour and be replaced by other insufficiently protected officers. We agree that this was an impractical and unsafe approach.

699. The Tactical Commander also disagreed with the view that wearing the hard body armour from the start of the day would have inflamed the protesters:

“High show of force, would it have provided an intimidation factor that meant people were reluctant to engage in a skirmish line, I would have hoped it would’ve. I don’t know. We should have been wearing [the hard body armour], in my view.”

700. The Tactical Commander pointed out that the lack of leg protection for officers meant they were vulnerable to the bricks and other projectiles aimed towards their lower legs. We were also told that the lack of long batons meant that officers were unable to keep protesters a safe distance away from the skirmish lines.



Photograph courtesy of Stuff News

701. The Tactical Commander and several PSU leaders wanted reconsideration to be given to the decision not to allow officers to wear the hard body armour or carry long batons, and a contingency plan involving a reserve team of officers in hard body armour in case they were required was also suggested. However, having considered the issues the National and Local Controllers maintained that no staff were to deploy with hard body armour or carrying long batons.
702. At 8.30am the Tactical Commander did approve a reserve PSU squad to change into hard body armour and, about an hour later, approval was given for them to carry long batons. But when the situation deteriorated in the afternoon, other PSU teams had to leave the front lines to retrieve

their hard body armour from the Parliament basement and put it on. Some team leaders did not wait for approval to do this; they made their own risk assessment of the situation and extracted their staff back to Parliament to change. It took at least 15 minutes for the PSU staff to return to the front lines. In the meantime, they were replaced by officers who had very little or no protection.

703. Officers told us they felt that the decision to deny them hard body armour and long batons was wrongly driven by the “optics” of the situation, compromised their personal safety, and negatively affected their mindset and confidence in the situation. One said that by refusing to allow Police to carry long batons: *“Management sacrificed staff trust and confidence.”*

704. We were told that the decision not to allow officers to wear hard body armour or carry long batons was driven by a concern that it would negatively affect public perception of how Police were dealing with the protesters and escalate their resistance. The National Controller, the Local Controller, and the Operation Commander told the Tactical Commander that wearing the full public order policing gear was not the style or image of policing they wanted to portray. Rather than having people think that Police were using a high level of force and were ready to fight with protesters, they wanted to start at a low level and only escalate the Police response as needed. One officer told us:

“I think it would've started us off in a completely different mindset or image if we had all rolled in with batons. I think you only have to cast your mind back to the Springboks of how that was, what that image is and what it looks like and what it feels like for people.... I think you'll get both comments from people. I've heard people saying they were glad they didn't have batons and then you'll hear people who are saying 'I should've had my baton.’”

705. The Commissioner also told us that Police experience is that the appearance of hard body armour can be seen as confrontational and thus increase the risk of aggression and violence by protesters. A low key approach at the outset had a greater chance of encouraging protesters who were not looking for a physical confrontation to leave.

706. We understand that, as a matter of practice, it is important for Police to avoid inflaming peaceful protests unnecessarily (and losing public support) by wearing full armour and confronting protesters. While we think the Tactical Commander’s arguments have significant force, we understand the opposing views of the Commissioner and the Local Controller, and are conscious that the weighing of the respective risks is a judgement call that we are mindful should be assessed in hindsight with caution.

707. In making our own assessment of the decisions that were taken, we are mindful that this was not the usual one-off protest situation – it was an illegal occupation of Parliament that had been going on for weeks. In light of the knowledge that there were weapons at the site and that there was a potential for rioting and violence towards officers, a rigorous assessment of the risks to staff was required. We have also been hampered by the absence of a written record of the decision-making process and therefore do not know exactly what considerations were taken into account by the decision-makers or how they were weighed up. In our view, given the obligations of Police as employers under the Health and Safety at Work Act, it is not enough just to say that risk-weighting and officer-safety considerations are inherent in all Police decision-making, with officer safety being

paramount. In significant public order policing operations, there needs to be clear articulation of both process and decisions.

708. We recognise that officers were allowed to wear helmets and carry shields from the outset, and there may have been only a small increase in the perception of a confrontational stance by Police if they had been provided with the extra protection offered by hard body armour. We also note that Police policy (outlined above) suggests that hard body armour should be worn in “*situations where shields and helmets would otherwise be deployed*”. We therefore think a decision to allow hard body armour from the outset would have been justified. However, ultimately the decision was a judgement call weighing up respective risks and benefits, and on the basis of the information available to us, we think the decision not to allow officers to wear hard body armour at the outset of the 2 March operation was reasonably open to the Local Controller.
709. However, there are two significant issues with the decision-making that provide lessons for the future.
710. First, front-line supervisors and staff were not told when and how the initial decision that hard body armour was not to be worn could be varied. In other words, the trigger points in terms of risk that might require reconsideration of the initial decision were not identified and communicated. Nor was it made clear whether authority to vary the decision rested with front-line supervisors, the Tactical Commander or the Local Controller. Both of these should be specified in plans for major operations such as this.
711. Secondly, and perhaps as a consequence of the failure to communicate the trigger points, we think the decision to allow the wearing of body armour was made too late in the day. Arguably all staff should have been authorised to wear what hard body armour was available at 8.30am when the Tactical Commander approved a reserve PSU squad doing so. Certainly the escalation in the level of resistance and violence, and particularly the use of objects as weapons, should have led to that decision at some stage during the morning. 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 unprotected staff to the risk of injury when the situation deteriorated in the afternoon.¹²⁷

¹²⁷ See, for example, paragraph 702.



Photo courtesy of Verb Noun Productions

712. Physical injuries were not the only consequences faced by frontline officers. While some officers told us they had received a generic email following up on their wellbeing, several (including some who were physically injured) said Police Welfare had contacted them to offer support after 2 March. In some cases, the Authority’s investigator was the first person they had formally spoken to about their experience that day. Some officers told us that the operation had negatively affected their wellbeing and mental health, and a significant number became visibly distressed during their interviews six months or more after the riot.
713. Police have submitted that officers have access to a range of welfare support, which can be accessed at their request, and that there was not an increase in referrals indicating additional proactive action was required above what was done or routinely available. We do not consider that the ‘business as usual’ approach adopted by Police following 2 March was sufficient. Given the unprecedented nature of the occupation and the unexpected level of violence experienced by officers on 2 March, Police should have considered a more rigorous health and wellness response.

Was the decision to use newly graduated Police staff and recruits appropriate?

714. Due to a lack of available staff, some recruits who were close to graduating had been assigned cordon roles at Parliament in late February 2022 to prevent protesters from breaching the Police lines and entering Parliament buildings. The Local Controller told us that in making this decision he was conscious of the attack on the United States’ Capitol on 6 January 2021, and understandably said he did not want the Beehive to be breached on “his watch”. Recruits told us they had quite enjoyed their cordon duties, and engaged positively with members of the public during that time. We think the decision to use the recruits to help cordon the occupation at Parliament in February 2022 was reasonable in the circumstances given the nature of their assigned tasks and their level of training.

715. To boost the number of officers available for the 2 March operation to end the occupation, Police decided to graduate some recruits early. These recruits were due to be sworn in on Thursday 3 March, but this was moved forward to Monday 28 February. Again, we think this was reasonable given their training was completed.

716. Some of the newly graduated officers had already carried out cordon duties at Parliament and received training for that. On 27 or 28 February they all received one further hour of training on commands, movements and belt grips. One of these officers told us:

“I think, going into it, I felt like it was enough and that we had the training that we needed but being in the middle of it and then looking back, it definitely needed more. But it was a learning for everyone.”

717. On 1 March, the 28 February graduates went to the cordon at Parliament for their first day on duty as sworn Police officers, wearing full Police uniform and carrying handcuffs, batons and pepper spray. Some who had already experienced the cordon noticed that the attitude of the protesters had changed for the worse:

“[1 March] was horrible. From the minute we walked out just getting booed, all sorts of stuff being, like, hurled abuse at you. They were angry, it was feral. Yeah, it wasn’t nice at all, it was very hostile.”

718. Although other officers who would take part in the 2 March operation were given a full day’s training on 1 March, the newly graduated officers were not included in this. Several commented that they were unaware of the plan for 2 March and expected to have been told.

719. On 2 March, the newly graduated officers were supposed to remain on the cordon, away from the skirmish lines and be supervised by sergeants from the Police College. Many were also part of a distraction team during the operation. The graduates were apparently not intended to have direct contact with the protesters, although cordon duty is itself a frontline role and the distraction team were also tasked with supporting the team who were extracting vehicles from the streets around Parliament. Police should have expected that these officers would be directly engaged with protesters and that, on the intelligence available to Police, resistance was a likely outcome.

720. Many of the new graduates did in fact end up on the front line of the clash with the protesters on the afternoon of 2 March. As the dynamics between Police and the protesters changed, the graduates were redeployed from cordons to help other officers at several locations, including Molesworth Street, Parliament grounds, the Parliament forecourt, Lambton Quay and Bunny Street.

721. Some of the new graduates were used to bolster skirmish lines when other officers left to put on hard body armour, while other graduates joined arrest teams or followed behind the front line and removed tents and other debris from the area. Some ended up using shields, but had not received any training on how to use them optimally, for example, how to interlock or double-stack them for greatest defensive effect.

722. The Police College sergeants who were supposed to provide support and oversight of the new graduates also ended up losing control of them in the immediate chaos of the skirmish line, as many

were separated from their original groups and did not know those around them. This was a situation encountered across all teams allocated roles on the day. Other officers could only identify the newly graduated officers through conversation, and the graduates had to rely heavily on more senior constables and sergeants for guidance and safety. One of them told us:

"I could not identify who was in charge of me. If I wanted to ask someone senior, I would just ask anybody who I didn't recognise from College, figuring that they were more superior to me."

723. Police did not adequately prepare or support the newly graduated officers for the roles they ended up performing on 2 March. Although they were now sworn constables with all the consequent powers, they lacked practical experience. Police should have considered the possibility that the new graduates would be needed on the front line, and should have equipped and trained them accordingly to mitigate the risk this would pose to them.

724. Recruits who had not yet graduated from the Police College were also required to attend Parliament on 2 March towards the conclusion of the operation.

725. At about 6.30pm, 40 recruits who had just completed a day of training at the Police College were told to rest and then report to the College gym at 8pm. About 40 CIB officers joined them and they were all given one hour's training on public order policing. One recruit told us:

"...it was definitely a very uncomfortable situation to be in, but they just said like, you know, 'This is kind of like what you signed up for, this is an emergency, you guys just have to deal with it.'"

726. This late decision had downstream consequences. For example, one recruit who had been up since 6.30am was told to drive a van of 12 other recruits to Parliament. The recruit worked all night on cordon duty with other recruits and officers, and faced protesters who were throwing objects at them. Recruits told us they were clearly identifiable by the insignia on their epaulettes, as they were targeted for abuse by protesters for that reason.

727. The recruit, who had been either training or on cordon duty for more than 24 hours, was then asked to drive the recruits back to the Police college at about 8am the next morning. The recruit tried to refuse due to tiredness, but was told no one else could do it. While driving out of Parliament grounds, the recruit had a minor collision with a cyclist.

728. The Deputy National Controller told us that, in hindsight, the situation with the recruits could have been managed better but *"we actually needed those people."*

729. As we identified earlier, Police had failed to plan ahead for what would happen overnight on 2 March. They should have foreseen that they would need officers to secure the ground they had reclaimed, and should have organised experienced staff for this role.

FINDINGS

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.

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?

730. We received over 250 complaints about the Police's use of force when dealing with the protesters on 2 March. The vast majority of these were from people who witnessed incidents on television or social media. We received 22 complaints from individuals alleging Police had used unjustified or unreasonable force on them personally.
731. We are independently investigating seven of these complaints, and will report directly to the complainants and publish a summary of our findings on our website when they have been completed.
732. Our comments in this section cover the overall degree of force and the tactics Police used on 2 March and whether they were appropriate. Our assessment of the force Police used is based on reviewing over 270 hours of footage of the 2 March operation, complaints, officers' Tactical Options Reports, and our interviews with officers and protesters who were involved.

Did Police properly record their uses of force on 2 March?

733. Police officers who have used force must complete a Tactical Options Report (TOR) which explains their decision making and their justification for using the force. The TOR must be submitted within 72 hours of the incident and is reviewed and signed off by both a supervisor and inspector.
734. TORs help to make Police accountable for their use of force, and the data from these reports help Police and the Authority to analyse and better understand incidents involving the use of force.
735. The Tactical Commander for the 2 March operation told officers that, due to the scale of the Police operation and the number of officers involved, he would prepare a single “global” TOR which was intended to cover all uses of force. Officers were not required to complete their own TORs. Despite this, some officers completed Formal Witness Statements anyway as they wished to ensure that there was a formal written record of particular incidents they were involved in.
736. Three months later, on 1 June 2022, Police instructed officers to complete individual TORs for specific incidents in which force was used on 2 March. Wellington District’s Operations Support Manager advised senior staff that this was to support the Authority’s inquiry into how Police dealt with the occupation at Parliament “*and was an important part of keeping Police accountable and transparent*”.
737. Not only did this approach mean that officers submitted TORs for the 2 March operation well outside the standard timeframe required by Police policy, but it carried with it the risk that many had either forgotten the full extent of their use of force and did not report it, or simply failed to write a report at all. As noted below, after reviewing the footage from 2 March we believe the Police under-reported their use of force and the information required to be captured was incomplete.
738. We accept that it is unrealistic and impractical to expect officers policing a mass disorder event to individually report on every single use of force. However, we think the initial decision to not require officers to complete any TORs at all for 2 March was inappropriate, and decreased the amount and quality of information available about what force was used and why. Police have told us they agree that, in hindsight, it was the wrong decision.
739. Police should update their ‘Use of force’ policy to specify the threshold for officers being required to report a use of force during mass disorder events like 2 March. We think that threshold should at least include any use of firearms, sponge rounds or Tasers, and any use of force resulting in serious bodily harm or death.

What are the possible legal justifications for the Police’s use of force on 2 March?

740. As already discussed,¹²⁸ the Crimes Act provides legal justification for using force in certain circumstances. The most cited are:

¹²⁸ In Part 5, see paragraph 334.

- Section 39 – Police may use “*such force as may be necessary*” to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process.¹²⁹
- Section 40 – Police may use “*such force as may be necessary*” to prevent the escape of someone who takes to flight to avoid arrest.¹³⁰
- Section 48 – Any person is justified in using “*reasonable*” force in defence of themselves or another.¹³¹

741. The Crimes Act also includes provisions about the use of force to suppress a riot. A ‘riot’ is defined as: “...a group of 6 or more persons who, acting together, are using violence against persons or property to the alarm of persons in the neighbourhood of that group.”¹³² Section 43 of the Act says:¹³³

“Every one is justified in using such force as is necessary to suppress a riot, if the force used is not disproportionate to the danger to be apprehended from the continuance of the riot.”

742. Under section 44, a Police officer is justified in using:¹³⁴

“...such force as he or she believes, in good faith and on reasonable and probable grounds, to be necessary to suppress the riot, not being disproportionate to the danger which he or she believes, on reasonable and probable grounds, is to be apprehended from the continuance of the riot.”

743. The officers we interviewed told us they were unaware of, or did not consider, the riot provisions. Most instead cited section 48 (self-defence and/or defence of others) as the justification for their use of force. Regardless, we believe sections 43 and 44 provided legal justification for some uses of force during the Police operation to end the occupation, particularly after protesters set fire to tents on Parliament grounds and started throwing bricks. This is discussed further below.

744. Police policy on the use of force mirrors the legal provisions outlined above, in that any force used must be necessary, proportionate and reasonable. Police officers must continually assess the threat a person poses (on a scale from ‘Cooperative’ to ‘Passive resistance’ to ‘Active resistance’ to ‘Assaultive’ to ‘Grievous bodily harm/Death’) and then use the least amount of force needed to counter that threat.

¹²⁹ [Crimes Act 1961, s39.](#)

¹³⁰ [Crimes Act 1961, s40.](#)

¹³¹ [Crimes Act 1961, s48.](#)

¹³² [Crimes Act 1961, s87.](#) Every member of a riot is liable to imprisonment for a term not exceeding 2 years.

¹³³ [Crimes Act 1961, s43.](#)

¹³⁴ [Crimes Act 1961, s44.](#)



Photograph courtesy of Stuff News



Photograph courtesy of NZ Herald

745. In order of increasing force and potential harm, the tactical options available to Police include:

- Police presence and “*tactical communication*”;
- mechanical restraints (handcuffing);

- “empty hand” techniques (physically restraining and/or striking someone);
- pepper spray;
- batons, Tasers, Police dogs or “weapons of opportunity”;
- sponge rounds; and
- firearms and other “force with serious implications”.

746. We will now discuss how Police used these tactics on 2 March (apart from Police dogs, which were not used).

Were the tactics and force Police used to clear the occupation justified?

Communication and Long Range Acoustic Devices

747. Police policy identifies “tactical communication” as the preferred option for resolving incidents requiring a Police response, because the goal is to de-escalate the situation and remove the need to use any force.

748. Police attempts to end the occupation through negotiation with the protesters had been unsuccessful. However, communication remained a key tactic for the 2 March operation, in the form of providing the crowd with clear warnings and direct instructions.

749. The operation’s main tactic was the use of skirmish lines to move protesters out of the areas Police wanted to clear.¹³⁵ When a skirmish line was advancing, officers would chant: “Move, move, move!” to communicate that the protesters needed to leave the area before the Police line pushed them back.

750. Police also used two Long Range Acoustic Devices (LRADs) to communicate safety messaging and issue directives to the crowd.¹³⁶ LRADs are handheld devices that use a focused, directional sound wave for targeted communication. They are operated by trained Police Negotiation Team (PNT) staff. LRAD broadcasts can penetrate buildings and vehicles to ensure that the message is heard. They produce a maximum sound level of 137 dB in a 30-degree beam, with a maximum range of 600 metres in ideal conditions. Police contemplated their use from 10 February and used two of them on 2 March. We were told this was the first time LRADs were used for a large-scale event in New Zealand.

751. One LRAD was used in Aitken Street, and the other was placed on the top of Parliament House.

¹³⁵ See paragraphs 294-295 for an explanation of skirmish lines.

¹³⁶ Police use the LRAD model 100X.



Photograph showing LRAD courtesy of Stuff News

752. The message relayed at Aitken Street was:

“This is the New Zealand Police, Aitken Street is closed under the Policing Act, you are required to leave immediately.”

“Failure to comply or obstruction of Police staff acting in execution of their duty, may result in your arrest.”

753. The message relayed from the top of Parliament House was:

“This is New Zealand Police, Parliament grounds are closed, please leave. If you do not leave you are trespassing. Any obstruction of Police, while executing their duty may result in arrest.”

754. This messaging was heard very clearly throughout Parliament grounds and surrounding streets. It was repeated every few minutes throughout the morning.

755. At about 3.15pm, as Police began to remove structures on Parliament grounds, the message broadcast on the LRAD changed to:

“Move away from the Police line, move away now.”

“Move away from the Police line, if you obstruct Police in their execution of their duty you may be arrested.”

756. Police repeated this along with the previous message that Parliament grounds were closed and all must leave.

757. The LRAD was an effective device to deliver clear and concise messages. Some Police officers at Parliament commented that they felt reassured by the LRAD and the messages, as it enabled more of their focus to be on what was happening in front of them. They said they would have had to yell to be heard due to wearing masks, having shields in front of them and the noise from the protesters yelling. The messages from the LRAD meant they did not always have to do this, and they felt

supported. An LRAD operator told us LRAD messaging was heard by protesters as their leaders were noted as galvanising a response:

“...I knew they were hearing because every time I said it, I’d hear ‘Don’t move back, hold the line’. So it’s like, well they can clearly hear the messaging ‘cos they’re responding to it.”

Use of the LRAD aversion tone

758. LRADs can produce an ‘aversion tone’, which is a short and intense sound that may be used to distract or deter people in crowds from remaining in the area. We received 12 complaints about Police’s use of the LRAD in this way, with a number of those relating to possible damage to their hearing.
759. Some overseas policing jurisdictions and researchers have been reported as raising concerns about Police use of the LRAD aversion tone to break up crowds.¹³⁷ LRADs can cause pain and permanent hearing damage if used improperly. Before the 2 March operation, Police determined that the LRAD aversion tone was not to be used unless there was a threat of grievous bodily harm.
760. At about 3.30pm, the LRAD operators on top of Parliament House saw protesters setting one of the tents in the centre of the Parliament grounds on fire and throwing gas canisters onto it. They identified this as a risk of death or grievous bodily harm to Police and other protesters, and obtained the Tactical Commander’s permission to use the aversion tone. The officers believed the danger came not only from the fire, but from the group of protesters who had rallied together, encouraged by each other.
761. The LRAD in Aitken Street was moved into Parliament grounds and set up together with the one on top of Parliament to create “an acoustic perimeter” between the fire and the protesters. The volume was initially set to 30%, before being increased to 80%. The aversion tone sounded intermittently on a continual basis for several minutes.
762. The aversion tone had limited success. While it did cause some protesters to block their ears and move outside of the LRAD sound arc, the more determined protesters did not seem to be affected by it.
763. The LRADs were repositioned when the devices and the operators became a target for projectiles thrown by the crowd.
764. The LRADs were moved near the bottom gates and the Cenotaph, when protesters began throwing paving bricks at officers. Police believe they were effective in limiting the behaviour of some protesters although, as earlier, some appeared to be unaffected by the aversion tone.
765. The third use of the aversion tone was at the intersection of Bunny Street and Molesworth Street, where Police had formed a skirmish line and there was a group of aggressive protesters who were

¹³⁷ <https://www.1news.co.nz/2022/06/29/police-used-violent-sound-cannon-on-parliament-protesters/>.

not leaving the area. The aversion tone was used intermittently at 70% volume in an attempt to keep protesters away from Police.

766. Once the crowd had been split and the skirmish lines pushed past the intersections on both Lambton Quay and Bunny Street, the LRAD aversion tone was no longer used.

767. Some frontline officers commented negatively about the LRAD's aversion tone function. One told us:

"There had been all of that chaos, with you know like the [Police helicopter] and the PNT guys talking and then [the LRAD]. That was annoying... cos that was a topic of conversation on the radios too. The Comms, the Police were saying: 'Turn that thing off cos we can't hear what we are trying to do'."

768. We find the Police's use of the LRAD's aversion tone was justified under section 48 of the Crimes Act (self-defence) to counter the threat of serious harm posed by protesters who were setting fires and throwing items at officers.

Skirmish lines and shields

769. On 2 March, Police formed skirmish lines for the purpose of moving protesters and dismantling structures to clear and ultimately retake the area. They began by clearing Hill Street in the morning, and in the afternoon when the decision was made to clear Parliament grounds completely, they formed a line of officers at the top of Parliament grounds and across Molesworth Street, which progressively pushed down towards the bottom gates. As the line moved forwards, the officers directed protesters to move towards the bottom gates and out of the grounds. During this manoeuvre, Police encountered strong resistance from the protest group and some protesters started fires among the tents.



Photograph courtesy of NZ Herald



Photograph courtesy of New Zealand Police

770. Protesters were continually pushing back against the lines and throwing objects at Police. Officers told us:

“While on the line my team endured constant pressure on our shields and line, were subject to projectiles from protesters, bottles of an unknown grey liquid was splashed and thrown at our staff. This liquid was in milk bottles and appeared to be primer paint and water mix that covered our helmet visors. Several other solid objects were also used by protesters as projectiles.”

“Police were also exposed as objects hit shields and deflected into other officers, the large majority of which had no protection. My response was to use my shield to protect myself and those behind me.”

“Arriving at the intersection a forward line was established. My team used both long and short shields to establish that line. My team was quickly met with verbal aggression from most protesters and a percentage of protesters physically pushed my teams shields and attempted to take these from my teams.”

771. Police had a limited number of shields for the officers on the front line. Shields were primarily used as a defensive measure, but there is also evidence that shields were used against protesters. A common theme from frontline officers and team leaders we spoke to was that, in the absence of options such as long batons and hard body armour, officers felt they were forced to use the only options they had available to them at the time. This may be why officers resorted to using shields in a more forceful manner. It is also more difficult for officers to use other tactical options when they are holding a long shield.
772. Some officers used their shields to push protesters away from them or in a particular direction. Others reported using their shield to strike protesters to defend themselves or other officers, or prevent further violent behaviour. We received 27 complaints from protesters who were standing close to the skirmish lines about Police using shields against them. We are independently investigating one of these matters.



Photograph Courtesy of Stuff News

773. We received nine TORs from officers who referenced using or seeing shields being used against protesters while on a skirmish line during 2 March. The justification provided for each of these uses of force with a shield was section 48 of the Crimes Act, to defend themselves or another. Examples included:

“The male continued to advance towards me, and I pushed him with the shield as I believed he was going to assault me. He stumbled backwards momentarily, before again advancing towards me aggressively. I continued to instruct him to move on and pushed him with the shield again. His head knocked against the shield, and he stumbled backwards.”

“The male grabbed my shield and yanked it with both hands causing me to lose grip on it with one hand. Whilst still holding my shield, the male started kicking at my legs and groin region... I used my weight and forced the shield downwards striking the male in the torso. He did not let go and ignored a further warning. I carried out several more strikes, one of which struck the male in the face.”

“As the shield push began protest members from the rear ranks began throwing missiles at me and my colleagues. Similarly, the front protest ranks began grabbing at our shields in order to pull them down and assault the officers holding them. In between spraying across the front line to reduce the crushing injuries I forced my shield repeatedly into the protesters and their line to affect the same result. My [assessment] was that if I didn’t actively utilise the shield to bump protesters off they would have greater access to assault our officers....”

“As I was attempting to get to my feet I was grabbed at and pushed over by a group of the protesters. I finally got to my feet and joined the line of Police but not before having to shield bunt a couple of the protesters attempting to take my shield.”

774. Based on our review of all available footage, we are, overall, satisfied officers used their shields defensively to support the integrity of the skirmish lines and, where necessary, to defend themselves and/or fellow officers and their use of force in this respect was reasonable.



Photograph courtesy of local resident Matthew Lawrence

“Empty hand” techniques

775. “Empty hand” techniques involve an officer applying physical force with their body rather than a weapon. They include strikes (open or closed hand), punches, kicks, knee strikes, and forcing a person to the ground. Officers may use these techniques to distract or physically control the person they are dealing with, or to defend themselves or others from that person.
776. Empty hand techniques are often used at the point when an officer is arresting someone and the person tries to resist or assault the officer. The officer’s proximity to the person increases the risk that the person will assault the officer and/or be able to access any weapons the officer is carrying (such as pepper spray, batons or Tasers). As with all uses of force, officers must assess the risks and consider their own physical abilities against the size and strength of the person they are dealing with.
777. We received hundreds of complaints about officers using empty hand tactics on protesters on 2 March. Most of these were from complainants watching events unfold on television and social media. We are investigating four specific incidents involving officers’ use of empty hand tactics on complainants.
778. Officers who use an empty hand technique against someone must report their actions in a TOR, for anything other than touching, guiding, escorting, lifting or pushing where a person is not physically

forced to the ground. As discussed above,¹³⁸ we believe that the Police's use of force on 2 March was under-reported and there were many more instances of officers using empty hand techniques occurred.

779. We received nine TORs recording the use of empty hand techniques from the 2 March operation, one of which related to a whole PSU team. These generally related to punches or strikes against protesters who had allegedly assaulted officers and were being arrested, including one who tried to bite an officer's shin. One report related to a protester who had damaged a Police vehicle and, after his arrest, was found to be carrying Molotov cocktails.
780. Having reviewed the complaints and footage of the 2 March operation, we have found that, overall, Police's use of empty hand techniques was justified under section 48 of the Crimes Act (self-defence).

Pepper spray

781. Pepper spray (also called oleoresin capsicum or OC spray) is a tactical option that officers may use against people who are actively resisting Police by pulling, pushing or running away. The spray usually disorients people by causing a burning sensation in their faces and eyes, and it can also restrict breathing. Officers should warn people and give them a reasonable opportunity to comply before using the spray, unless that is impractical.
782. Police approved the use of pepper spray for the 2 March operation, but we were given conflicting information about the officers' understanding of this. Some officers incorrectly took from the operation briefing that they were not allowed to carry their pepper spray. There was also a group of staff who did not receive any briefing as they were deployed immediately to the Parliament forecourt upon arrival. Some were told there was not enough pepper spray for them in any event. As mentioned above, officers travelling by plane to Wellington for the operation were unable to bring their own pepper spray.
783. Police's standard pepper spray canister (MK3) has a range of 1 – 3.5 metres. In the lead up to 2 March, Police considered using higher volume pepper sprays (MK9 and MK60), which have a longer range (7 – 9 metres and 9 – 10.5 metres respectively) and are more effective for use in crowds. Police had not previously approved the use of these larger sprays.
784. Police placed an urgent order for MK9 and MK60 pepper spray but it did not arrive in New Zealand until after the operation was complete. However, at 3.34pm on 1 March, Corrections confirmed that they could provide Police with 16 MK9 pepper spray canisters.
785. On 1 March, Police policy was updated to approve the use of MK9 canisters and amend the section about the use of pepper spray in crowds. Before 1 March 2022, the policy said:

“As a general rule, [pepper] spray should not be used in crowded situation. However, it can be used against more than one person at a time if circumstances justify this.”

¹³⁸ See paragraphs 733-738.

786. The policy now says:

“When the circumstances justify its deployment, [pepper] spray can be utilised against more than one person at a time. The use of [pepper] spray in crowded situations should consider the potential for cross contamination of both subjects and staff due to overspray.”

787. The new policy also changed the compulsory requirement that an officer minimise the spray’s effects by providing decontamination and aftercare, to require that an officer plan to provide it (or access to it) only *“if the circumstances allow”*.

788. Police said they approved the use of the MK9 canisters due to *“the changing risk profile for New Zealand Police, and the organisational need for an additional tactical option that uses the least amount of force to incapacitate actively resistant individuals”*. They consider this form of pepper spray to be less risky and harmful than other tactical options such as batons and sponge rounds, and more suitable for use against an unruly crowd.

789. Police gave the MK9 pepper spray to the PSU team leaders and briefed them about its use. Officers did not need specific training because the MK9 canisters operated at the same pressure as the standard MK3 ones. At 8.40am on 2 March, the Deliberate Action Commander confirmed that the MK9 canisters had been approved for the operation. All 16 MK9 canisters were used that day, and Police considered it highly effective.

790. We received 15 TORs from officers who used pepper spray. The reports describe officers using the spray against protesters who were:

- pushing against the Police line;
- trying to grab officers’ shields;
- throwing objects (including bottles and paving bricks) at officers;
- threatening officers who had become isolated from other Police; and
- assaulting and using weapons against Police.

791. The reports also provide examples of how the pepper spray helped officers to escape dangerous situations. One officer used pepper spray on protesters after he was struck in the head by a solid steel pole, which split his helmet and caused a head wound. The pepper spray forced the offenders back and he was able to get first aid.

792. We received 22 complaints about Police using pepper spray, and are independently investigating the circumstances of one of these, which alleges Police sprayed pepper spray directly into the eyes of a protester while he was on the ground being arrested.

793. Having reviewed footage of the 2 March operation, we are satisfied that the vast majority of protesters who were sprayed were actively resisting and at times assaulting Police by throwing projectiles and liquids or spraying them with fire extinguishers, and that Police’s use of the spray was reasonable in those circumstances and justified under section 48 of the Crimes Act (self-

defence). We acknowledge that some protesters may also have been affected by spray that Police directed at another person.

- 794. The situation on 2 March was such that it was mostly impossible for officers to ensure that people who were sprayed received decontamination and aftercare, as the officers had to stay in their lines and the protesters typically retreated back into the crowd of protesters. In making this decision to use MK9 cannisters and change the aftercare policy, Police had factored into their planning that other agencies onsite could provide treatment capability.
- 795. Footage from 2 March showed protesters administering their own treatment by pouring water and milk on their faces. The Wellington Free Ambulance were available onsite, and FENZ also had a decontamination tent. Only one protester was recorded as having been offered treatment for pepper spray by the Wellington Free Ambulance, and they refused it.
- 796. We find that an appropriate level of aftercare treatment was available to protesters. However, in the circumstances, it was not feasible for Police to ensure that everyone who was sprayed received treatment.



Photograph courtesy of 1News

Batons

- 797. As well as the standard extendable ASP batons that uniformed officers routinely carry, Police have two other types of batons that are primarily used by PSUs for public order policing – the side-handled baton and the long baton. Officers must be trained in their use and have approval to carry them.
- 798. Training for the side-handled and long batons had been planned for all officers taking part in the 2 March operation. While officers were still permitted to carry their ASP batons, the National Controller and Local Controller decided before the 2 March operation that they did not want

officers carrying long batons.¹³⁹ A last minute decision was also made not to authorise the use of side-handled batons. These decisions reduced the tactical options available to the Tactical Commander and, as we were repeatedly told, impacted on officers' sense of safety.

799. At 9.39am on 2 March, the Tactical Commander approved the use of long batons for a reserve PSU squad (who were already trained in their use).
800. We received two complaints involving baton use, and we received a small number of reports of baton use from officers. One said that, in response to protesters kicking, shoving and throwing things at Police, he drew his baton and held it up on his shoulder as a deterrent: *"It worked because I never had to use it and no one came near me."* Another PSU officer described in a TOR striking a protester who had verbally threatened another officer and rushed towards them with his fists clenched, on the arm. Other TORs described officers using ASP batons to strike the hands of protesters grabbing and pulling down shields.
801. In respect of both specific complaints and generally, we are satisfied that the use of batons in these circumstances was reasonable and justified under section 48 of the Crimes Act (self-defence).

Tasers

802. A Taser is a weapon that fires wired barbs, designed to temporarily stun and incapacitate people by delivering an electric shock. It is most effective when the target is between 2–4.5 metres away.
803. Police policy explains that Tasers are best suited for use against individuals rather than crowds. In a public order policing context, commanders must take into account the risk that protesters could take Tasers off officers in a skirmish line or *"close quarter"* situation when deciding whether to authorise their use.
804. While officers were authorised to carry Tasers by the Operation Convoy Operation Order (last updated on 27 February 2022), some were confused about whether they were still allowed to carry them. Some officers recalled that they were told not to carry Tasers in case they fell into the hands of protesters.
805. Only one Taser use from 2 March was reported. It involved a PSU sergeant who had borrowed two Tasers to share between his three squads (18-20 officers in total). The sergeant suffered a broken clavicle on Molesworth Street, and later in the Parliament grounds he encountered protesters throwing tent poles as spears. He fired a Taser at one of these protesters but thought it had likely missed due to the distance he fired it from. As no complaint eventuated from this incident we have not investigated the sergeant's actions.

Weapons of opportunity – fire extinguishers, water hoses, paving bricks

806. On 2 March, some officers used objects immediately at hand, which are not part of Police tactical options, as weapons of opportunity. Police policy describes a weapon of opportunity as:

¹³⁹ As discussed above, see paragraph 694.

“...an object, or substance taken from the immediate environment, for use in self-defence or defence of another, where no other appropriate and approved tactical option is accessible or available.”

807. A weapon of opportunity should only be used as a last resort, and officers must report any use in a Tactical Options Report.

Use of fire extinguishers

808. Police told us they had identified the risk of fire among the crowd of tents on Parliament grounds early in the occupation and provided the protesters with fire extinguishers to mitigate that risk. The Speaker told us this was his idea, one he now regrets given that protesters ended up using them against Police. Six officers reported protesters spraying them with fire extinguishers on 2 March. The effect of this ranged from having to have their helmet visor cleaned to having difficulty breathing or needing to have their eyes rinsed.¹⁴⁰ Some also reported protesters throwing fire extinguishers at Police.

809. Several Police officers also used fire extinguishers against protesters. We have seen footage of officers spraying a fire extinguisher at protesters through the bars of the main gate to Parliament on Molesworth Street. At this time the Police skirmish line inside the Parliament grounds had advanced past the gate, but the Police line on Molesworth Street was further back. Protesters on the street were throwing items over the gate and hitting the backs of Police in the skirmish line inside Parliament grounds.



Photograph courtesy Stuff News

810. We find the use of the fire extinguisher to push back protesters throwing items at the back of the Police line was justified as a means of defence.

¹⁴⁰ FENZ advised us that CO² extinguishers do not normally cause breathing problems, but dry powder extinguishers contain monoammonium phosphate and sodium bicarbonate which can cause mild irritation to the nose, throat, and lungs, and result in symptoms like shortness of breath and coughing. Dizziness and headache are also possible. These symptoms usually resolve quickly with fresh air.

811. The footage also shows officers spraying fire extinguishers (one after the other) at protesters standing up on the wall beside the gate. We received a complaint about this use of force, which is the subject of a separate investigation and report to the complainant.

Use of FENZ water hoses

812. FENZ were on the Parliament grounds putting out fires when the situation was becoming increasingly violent between Police and a group of protesters at the bottom gates.

813. Once the fires had been extinguished, Police commanders on the scene asked FENZ staff to direct their hoses at protesters but the FENZ staff refused as they were not authorised to use the hoses against people.

814. One officer said he decided *“against the direction of a senior Fire member”* to use a hose against protesters who were dismantling the paving of the courtyard and throwing the bricks at the Police line. He said he needed to do this because:

“Police staff were unable to retreat at that time, they were being attacked from directly out front of the Lambton gates and from the left side of the gate over the fence which effectively had them cornered.”

815. At about 4.40pm, officers reported seeing a protester preparing to throw a Molotov cocktail at Police:

“I saw an individual protester pick up a Molotov cocktail, hold it at his groin level and ready to light or somehow deal with it. At that point, there would have been at the gate 30, 40, possibly more Police holding a line, but in such a confined area, that a Molotov cocktail lobbed into there would have caused unimaginable threat and harm to those officers.”

816. Approval to use the hoses against protesters was being sought through the Police chain of command, who liaised with FENZ Management. Upon hearing over the radio that someone had a Molotov cocktail, FENZ said Police could seize the hoses and use them to defend themselves. Police commandeered the hoses and began using them on protesters at the bottom gates.

817. The Molotov cocktail was extinguished when the person holding it was hit by water from the fire hose.

818. We received eight TORs from officers who used the hoses. The main reason given was to defend themselves and other officers. Several officers told us they felt they were at serious risk of being injured or killed, and commented that they thought Police would have been justified in using firearms in those circumstances.

819. Most officers told us the hoses were very effective as a ‘low level’ use of force to distract and discourage the protesters from throwing paving bricks and other items at Police, and to create distance so that anything the protesters threw at them had less force behind it or failed to reach them.

820. Many officers told us they did not have any other suitable tactical options to use at that time. The protesters who were throwing items at Police could stand back and quickly retreat into the crowd, which made options like empty hand tactics, batons, pepper spray and Tasers ineffective. The use of sponge rounds had not yet been authorised. We were told:

“The fire hoses saved us that day because there was nothing else there. It was only the fire hoses that moved the protesters.”

“The use of fire hoses by Police was the first life saver as it kept the protesters back a safe distance.”

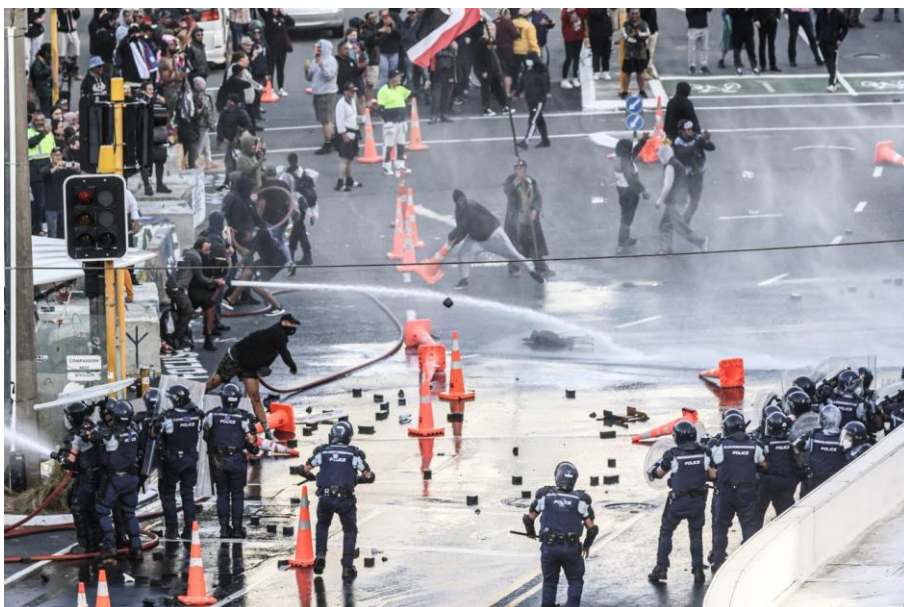
“I thought that it was a good way to be able to target the individual protesters who were throwing bricks at Police.”

“If [sponge rounds] and fire hoses were not used it would have got very bad but those were the two things that saved us.”

821. During this time several protesters picked up a fire hose at the intersection of Lambton Quay and Bowen Street and began spraying officers with it. This only stopped when Police began firing sponge round.¹⁴¹

822. We did not receive any complaints of injuries to protesters due to the Police using fire hoses on 2 March. However, we received four complaints from the public about the Police’s use of the fire hoses, in which the general sentiment was that firefighting equipment should not be used in Police operations.

823. We find that Police were justified in using the fire hoses to defend themselves from protesters throwing paving bricks and other items.



Photograph courtesy of Verb Noun Productions

¹⁴¹ See paragraphs 835-855.

Throwing paving bricks at protesters

824. Two officers reported that they threw paving bricks at protesters at the intersection of Lambton Quay and Bowen Street. These incidents were captured on video footage reviewed by us.

825. One officer said his team had formed a shield wall, and protesters were pelting them with bricks:

"I saw [the protesters] push a shopping trolley full of paving stones right up to within 5 metres to our front, then just stand there and throw them at us with force, we had no tactical options to respond with."

826. He wanted the protesters to back off, so he picked up several of the paving stones and threw them back at protesters, striking some as they came close. The officer told us:

"With a brick, it just gave them something to think about... as a deterrent and I believe I was justified in using that weapon of opportunity under section 48 of the Crimes Act to defend myself, to defend others."

827. Another officer at that location also threw two bricks back at a protester. This officer said:

"It was my belief that any officer not wearing a helmet could be killed by a brick, and all officers could sustain broken bones as I had seen previously that day."

828. Both officers believe that the lack of other tactical options led to them throwing the paving bricks. They both felt it was the only option available to them at that time, and that they and their fellow officers were at risk of death or grievous bodily harm.

829. We have not received any complaints of injuries received by protesters that were caused by Police throwing paving bricks.

830. On the information available to us, we find that the officers were justified in using the paving bricks to defend themselves.

Deflating tyres

831. At about 6pm on 2 March, a driver reversed a vehicle towards the Police skirmish line as it was progressing down Lambton Quay towards Bunny Street.

832. A nearby AOS officer then used a 'Hooligan tool' (a tool used by emergency services to force entry into buildings and vehicles) to deflate all the tyres of another vehicle parked in the middle of the road on Lambton Quay, aiming to prevent anyone from driving at speed into the Police lines.

833. Police also intentionally deflated the tyres of at least two other vehicles to prevent anyone from using them as weapons against Police.

834. Given the previous experience of the use of a vehicle, we find that Police were justified in deflating the tyres of vehicles that they believed might be used as weapons against them on the afternoon of 2 March.

Sponge rounds

835. Police use 40mm ‘sponge rounds’ as a “less lethal” tactical option.¹⁴² Only qualified AOS and STG officers may fire sponge rounds, and the range for this weapon is up to 25-30 metres. Firing beyond 25 metres decreases the effectiveness of the round and increases the risk of inaccuracy. Police policy says:

“The sponge round is intended to incapacitate an assaultive, non-compliant person and will commonly cause bruising rather than significant or long-lasting injury. There are no known long-term after-effects to exposure.”

836. Policy says that officers must ask a person to surrender before using sponge rounds against them, unless that is impractical and unsafe. Sponge rounds are generally meant to be used against individuals, and officers must consider the potential to inflame the situation before using sponge rounds in a crowd.

837. Unlike firearms, where officers are instructed to aim for the centre mass of a person, the preferred target zone for sponge rounds is the legs (specifically the large muscle groups of the buttocks, thighs and calves). If that zone cannot be targeted, the next preferred target zone is the abdominal muscles, shoulders and arms. As stated in Police policy, the least preferred target zone includes the head, neck and chest, as these areas carry the greatest potential for serious or fatal injury.

838. Whenever a sponge round hits a person, officers must ensure that the person receives first aid (if needed) and that the person is monitored until they can be examined by a medical professional.

839. On 2 March, the AOS and STG were inside Parliament buildings and at observation points around the grounds in case they were needed to provide support or to respond to any serious incidents. The potential use of sponge rounds for this operation was identified as one of the contingency plans, and Police did stock up on sponge rounds so they would be available as a tactical option.

840. However, none of the AOS or STG staff on site had used sponge rounds before, other than in training, and when and how they might be used on the day was never discussed. We note, too, that Police do very little training on firing at moving targets or at people in a crowd, although the AOS or STG officers we spoke to were confident in their skills and were not concerned about this limitation in their training.

841. As the situation worsened on the afternoon of 2 March, senior officers at Parliament grounds and at the Incident Management Team base repeatedly sought authorisation from the Local Controller to allow sponge rounds to be used against protesters. The AOS/STG log records an initial request for sponge rounds was made at 3.35pm, about the time protesters started lighting fires among the tents on Parliament grounds. Subsequent requests were made at 4.08pm and 5.04pm, on the basis that officers were sustaining significant injuries. Some officers expressed frustration at the delay in the use of sponge rounds, and thought that injuries to officers could have been avoided if they were used earlier:

¹⁴² Sponge rounds are fired by a 40mm launcher, the eXact iMpact XM1006.

“I believed I was going to watch a cop get killed that day, that was my viewpoint. I vividly recall thinking that... I asked through the radio... for approval to deploy the 40mm sponge round with words to the effect ‘we are losing this battle, we need to change the momentum, turn the tide.’ I recall requesting that on 3, possibly 4 occasions.”

“There were a lot of heated conversations on the radio about the use of sponge rounds and that went on for a long time. It was too long and Police were put at risk because of that.”

“Staff were getting knocked out, Police were screaming over the radio: ‘give us [sponge rounds], give us gas, give us something’.”

“The violence was just horrendous and why didn’t they use [sponge rounds] at that stage? We were just standing around with a shield and trying to [pepper] spray people.”

842. The Local Controller denied these early requests, having made a tactical decision that authorisation should not be given. Police told us they did not want to start using sponge rounds too early, because they had a limited number and did not want to run out. The only other available tactical options would then be withdrawing staff (which was not appropriate) or escalating the response by authorising the carriage and use of firearms.
843. By 5.44pm, the Local Controller and Tactical Commander feared they were losing control of the situation and there was a risk that rioters might advance down Lambton Quay towards the shops. The Local Controller authorised the use of sponge rounds, a decision communicated by the Tactical Commander along with the direction that AOS and STG officers were not to carry firearms.
844. Although they could communicate with the crowd using LRADs (as discussed above), Police did not warn the protesters that they would begin using sponge rounds. However, Police had been asking the protesters to leave throughout that day, and many of the ones who remained at this point were assaultive and determined to resist. The situation was urgent, and any further delay would have prolonged the risk to officers.
845. Eight teams of AOS and STG officers, each with sponge round operators, spotters (who would identify people to target) and shield-bearers, went to different locations on the Police skirmish lines and fired sponge rounds at protesters who were throwing items at officers. Police told us they used about 104 sponge rounds that day.
846. Although the spotters identified potential targets, it was up to the sponge round operators to decide whether to fire. The sponge round operators told us they only fired at people who were picking up items to throw at Police (including paving bricks, fireworks, poles, bottles and a knife), and who posed a threat of serious injury or death.
847. At about 6pm, when the car was reversed into the Police line on Lambton Quay,¹⁴³ one of the sponge round operators fired two or three sponge rounds into the rear window of the car, and

¹⁴³ See paragraph 831.

another one fired a sponge round at the driver's head (but was unsure whether it hit). Both officers thought the driver was trying to kill Police at this point.

848. The crowd then retreated into Bunny Street and the bus station. Footage shows that the crowd in Bunny Street dwindled into a thin group who were still throwing items at Police, and AOS and STG officers fired some more sponge rounds in this location.



Photograph courtesy of NZ Herald

849. Many officers commented that they thought the use of sponge rounds was effective, helped to prevent injuries, and helped them regain control of the situation:

“The decision was made by someone to deploy sponge rounds and I thought, ‘That’s probably the single best decision made of the day’. It turned the tide and gave Police momentum and enhanced their safety.”

“That 20, 30 minute period [when Police began using sponge rounds] effectively stopped the whole thing in its tracks, because they’d pushed [the protesters] out of that throwing range and if they tried to come forward and continue then again they were engaged.”

“It changes [the protesters’] whole psyche in and around ‘oh I can’t just throw this willy-nilly without there being any consequence’. Up until then, they could throw as many bricks as they liked and there was no consequence other than a bit of water or getting wet.”

“The sponge rounds were very effective, there were specific protesters that were throwing heavy items like full cans of baked beans at Police, we were able to identify this individual to STG and next time he threw a can at Police, STG were able to drop him with a sponge round. The guy got up, was holding his chest and walked away. It was a good message to others around him too.”

“The sponge rounds changed the tone and Police were able to make a lot more ground quicker. Protesters kept their distance.”

850. We received three complaints from people who were struck with a sponge round on 2 March. We also spoke with three others who wished only to provide their accounts to inform our Review, two of whom were treated at Wellington Hospital for injuries sustained from being hit by a sponge round.¹⁴⁴
851. Our footage review identified that some people struck with sponge rounds (including those we spoke to) were not being aggressive or throwing items at Police but were standing in close proximity to those who were. We have concluded that most, if not all, of these people were hit unintentionally by Police officers firing the sponge rounds, which missed their intended target or ricocheted off the target or another surface.
852. None of the officers we spoke to said they saw any “*innocent bystanders*” being struck by the sponge rounds (although they expressed a common view that no one remaining in the crowds where protesters were throwing paving bricks at officers was “*innocent*”). In any event, the officers believed the risk of hitting unintended targets was justified due to the danger posed by the rioting crowd.
853. Most of the officers who fired sponge rounds thought they hit all their targets, but our review of the protest footage showed there were many misses. This was possibly caused by officers aiming at people beyond the 25 metre range, at which point the sponge round starts dropping out of its trajectory. Some officers reported that they were surprised when their shots did not incapacitate and “*drop*” people to the ground, which also may have been due to the distance at which the officers fired the shots. When we reviewed the footage, we noted that Police hit one protester with sponge rounds several times with no apparent effect.
854. Although some people in the crowd were unintentionally hit by ricochets or shots that missed their target, we are satisfied that:
- Police were dealing with a riot and urgently needed to overwhelm the protesters and prevent them from reclaiming the Parliament grounds and/or spreading into the Lambton Quay shopping area.
 - Police directed their use of sponge rounds against protesters who were assaultive and genuinely posed a risk of harming officers.
 - Less forceful tactical options had proven to be impractical or ineffective due to the distance maintained between Police and the protesters.
 - Police generally aimed at the preferred target zones of a person’s legs or lower centre mass. Only one officer aimed at a person’s head – that was a driver whom he believed intended to kill Police.

¹⁴⁴ Wellington Hospital records identify that their staff treated four people struck by sponge rounds: one having sustained a serious head injury, one with severe bruising to their back, one with a bone-deep shin wound and another with a complex elbow wound.

855. We therefore find that the Police's use of the sponge rounds was justified under sections 43 and 44 (suppression of a riot) and section 48 (self-defence) of the Crimes Act. We have also formed the view that Police would have been justified in using the sponge rounds from when the first request was made.

Firearms – Armed Offenders Squad and Special Tactics Group

856. No firearms were used on 2 March.

857. The AOS and STG teams had firearms with them, but were not allowed to take them when they were sent to use sponge rounds against the protesters at 5.44pm. The Tactical Commander told us he did not want to potentially further escalate some of the protesters' behaviour by authorising a fully armed AOS/STG deployment at that point.

858. AOS and STG officers told us they disagreed with this decision because they believed some of the protesters posed a threat of death and/or serious harm, and they had also earlier received intelligence that protesters had stashed firearms at Parliament and/or the Victoria University buildings (which, in fact, turned out to have been pipes stashed in a hedge). These officers would have preferred to have the option of using a firearm if needed.

859. After a car reversed into the Police line on Lambton Quay at about 6pm (as discussed above), two STG teams were permitted to arm themselves with Glock pistols. One AOS sergeant also decided to arm himself with a pistol and instructed another officer to do the same. One officer told us the driver was "lucky that we didn't have firearms" because Police probably would have shot them due to the threat posed by using the car as a weapon. However, the threat had passed by the time armed officers arrived at the car.

860. We find Police were justified in arming themselves with pistols due to the threat posed by the rioting protesters.

FINDINGS

Use of force reporting

The Police initial decision to not require officers to complete any TORs at all for 2 March was inappropriate, and decreased the amount and quality of information available about what force was used and why.

Use of LRADs

The use of LRADs 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.

Use of skirmish lines and shield

Police were justified in using skirmish lines to clear the occupation. The officers' use of shields to protect themselves and others was also justified.

Use of empty hand tactics

Police were justified in using empty hand techniques against protesters.

Use of pepper spray

Police were justified in using pepper spray against protesters.

Use of batons

When batons were used against protesters, their use was justified.

Use of weapons of opportunity

Officers were justified in using fire extinguishers, fire hoses and paving bricks to defend themselves from protesters throwing items at Police.

Tyre deflation

Police were justified in deflating the tyres of vehicles when they feared protesters would use them as weapons against them.

Use of sponge rounds

Police were justified in firing sponge rounds, and would have been justified in doing so earlier.

Carriage of firearms

Police were justified in carrying firearms.

WERE POLICE JUSTIFIED IN ARRESTING AND CHARGING PROTESTERS?

Were the arrests and charges lawful and justified?

861. As discussed in Part 5,¹⁴⁵ issues with the arrest and prosecution process after 10 February resulted in most charges being withdrawn due to insufficient evidence. Police took steps to strengthen these processes ahead of the operation on 2 March, including:

- establishing investigation teams to ensure the collation of evidence required for subsequent prosecution;
- providing guidance for supervisors outlining the minimum requirements for arrests;
- emphasising in instructions the importance of clarity of the purpose of the arrest and the evidence required; and
- modifying the Field Charge Sheets from those used on 10 February.

¹⁴⁵ See paragraphs 322-333.

862. We were told:

“On 2nd March [it] worked better by use of evidential officers. They followed or observed and made sure the arrested persons got from A to B and took photos and took own notes around ID and trespass warning and Bill of Rights etc. The big thing was, if you arrest person then you must stick with your arrest and not hand them over.”

863. Police made 95 arrests on 2 March, with charges predominantly for trespass and obstruction.

864. Despite some aspects of the arrest procedure working better on 2 March, there were still difficulties that resulted in charges being withdrawn. The main reasons for withdrawal included the inability to identify the arresting officer and link the arresting officer to the arrested person; insufficient documentation provided by the arresting officer as to what the arrested person had done; and insufficient evidence to prove the charges. It is also apparent that there was a lack of clarity before the operation on what charges would be laid:

“Even on the 1st of March, it was still really unclear what people were going to be charged with. Someone was saying obstruction, someone was saying trespass, so in the end, on the 2nd of March, all 95 people were charged with both, which created its own set of problems.”

“Quite early on, we were withdrawing the obstruction because they hadn't obstructed the officer in the execution of the duty or still again, they were obstructing the Police line, but they were passed back to someone else who they hadn't obstructed. At least we were able to identify who had arrested who, because these evidential officers followed and made sure people got from A to B, but there was still problems with the line. 'I'm in the line, you're obstructing me. I'm telling you. I've pulled you through and I just throw you back to someone else.’”

865. In the months following 2 March Police investigated more serious offences committed during the protest, gathering evidence from CCTV footage, Police photographs and other sources. These offences include arson, endangering by reckless disregard, riotous damage, assault with and possession of offensive weapons. Of this group, Police initially identified 200 people who should be charged (in addition to the initial arrests) but this figure was reduced to about 54 people after considering Police resources, court constraints and a wish to avoid a perception of 'payback'. Cases are ongoing before the courts.

866. In the light of the challenges of operations such as this, our investigation has identified the importance of ensuring in a mass arrest situation that there is clarity at the outset on the most appropriate charges, and that officers are well-trained in the arrest process and evidence-gathering required to support prosecution. If these processes are not robust, there is little point in making arrests and a high cost to Police and the judicial system.

867. While ensuring that staff are well-trained in these critical processes is an issue that Police should address, we think the broader issue is the legal framework governing the policing of a mass disorder situation. The current law of arrest assumes the arrest process is a one-on-one interaction, and is not fit-for-purpose for the mass public disorder situation that confronted Police on 2 March.

FINDING

The current law governing arrest is not fit-for-purpose for the mass public disorder situation that confronted Police on 2 March.

DID POLICE APPROPRIATELY MANAGE PEOPLE TAKEN INTO CUSTODY ON 2 MARCH?

What steps were taken to improve custodial management between 10 February and 2 March?

868. The key lessons Police learned from the problems they had on 10 February were that they needed to:

- involve those responsible for custodial management in the planning of any major operation likely to result in mass arrests;
- provide more detailed national guidance on custodial management in a mass arrest situation, including practical guidance on how custody suites should handle mass arrests and what documentation required in this situation; and
- consider training more staff in custodial management, including mass arrest procedures.

869. After 10 February, and in anticipation of future enforcement action to clear the protesters, the officer in charge of the District Custody Unit (DCU) immediately began work on a mass arrest custody plan. Operations managers and several staff from Police National Headquarters also became involved. The group developed a mass arrest plan and procedures, including the roles and responsibilities of the Parliament custody hub. Senior staff reviewed and approved this plan.

870. Custody staff were involved in the broader planning and operational briefings for the enforcement action taken on 2 March. They were advised exactly what time the frontline teams were going to move and, therefore, when to expect arrests to start coming in:

“I think it was about a week, so we had plenty of notice. I was able to re-roster my staff so we had a decent amount of staff. I had two experienced sergeants who worked in the DCU.”

871. Staff who were designated to work in a custody role had specific roles assigned, and appropriate equipment was in place. For the Parliament custody hub, a more comprehensive custody processing set-up was established. This included a tent, generator, and mobile caravan. Police used buses from Corrections for transporting larger numbers of arrested persons.

872. Additional holding cells were prepared in the carpark at the Wellington Central Police Station to serve as overflow if further space was required. However, these cells did not need to be used on 2 March.

873. Mass arrest kits were prepared in advance, including the purchase of polaroid cameras to assist in identifying the arrested person. This addressed the difficulty faced on 10 February with protesters who refused to give their names when arrested, which became an issue if Police had not recorded a clear written description of the person. On 2 March, custody staff at the Parliament custody hub took a polaroid photo of the arrested person along with their charge sheet and details of the arresting officer. These were stapled to each individual's property bag so the custody staff knew exactly whose property it was. This made the process easier and more efficient.

What happened on 2 March?

874. Although not necessarily planned this way, the 95 arrests made on 2 March occurred more evenly throughout the day, in contrast to 10 February when larger numbers of arrests were made in a short period of time. The more measured flow of people arriving in custody allowed for a smoother process, with staff better able to process and release protesters at a (mostly) manageable rate.

875. Despite the preparation, the DCU still experienced challenges with having enough experienced staff to deal with the numbers arrested:

"We had our platform staff of DCU members and basically that was a good number.... I think we maybe had two sergeants and maybe nine other members. But it got to the stage where we... started to get overwhelmed again and I was asking for resources. They said that basically that all the resources were deployed to the Parliament grounds but they could be siphoned off to support us if we need it and when they arrest numbers, which I was happy with at the time. But then when trying to get those members back, like it was an absolute nightmare and we ended up waiting for a couple of hours and then they turned up, we'd done the bulk of the work by then and then the ones that they sent us had no custody knowledge, they weren't any use to us anyway...And probably that's one of the biggest lessons learnt for me is if we know something is going to happen like this, we have the staff with us and deployable right from the start rather than having them deployed elsewhere and expecting them to then leave that job and come to us."

FINDING

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?

Did Police plan for the removal of property?

876. Once the protest turned into an occupation of Parliament grounds and the Victoria University Pipitea campus on the afternoon of 8 February, and subsequently the grounds of the Cathedral, protesters brought all manner of paraphernalia with them. Daily life of the inhabitants required them to have at least the basic necessities. As well as tents and other camping equipment, there

were showers, toilets and even an industrial kitchen. The protesters also brought with them personal effects including personal electronic devices, clothes, shoes, prosthetic devices, glasses, sunglasses, and bags. Children even brought their teddy bears.

877. Initial attempts by Parliamentary Security Services to prevent tents being erected on 8 February were unsuccessful because of aggressive behaviour from protesters. After the 10 February action to remove protesters was unsuccessful, more protesters arrived with their personal belongings to join the protest. Over the 23 days, as the occupation began to resemble a village, more substantial items were also brought in, such as refrigerators and generators. The number of individual structures erected in and around the occupation site reached an estimated high of about 700.
878. When the occupation ended on 2 March, approximately 10 truckloads of goods of various descriptions gathered from the Parliamentary precinct and the surrounding area were taken to a site in Porirua and left there. Some property was also taken directly to the landfill. Many of the items had no features which enabled their owner to be readily identified, and the ownership of the vast majority of these goods was accordingly unknown to Police. Those inquiring of their property were told they could attend the site to retrieve their goods. Some tried but were refused entry. Ultimately, this material was condemned by health officials as unsanitary and a health risk, and dumped.
879. Excluding complaints about vehicles, we received nine personal property complaints from directly affected people about property seizures on 2 March. We have not specifically investigated these complaints individually, on the basis that this review addresses the issues generally.
880. As set out more fully in Part 5,¹⁴⁶ the Speaker's Rules governing Parliament grounds prohibit the erection of tents and other structures. However, the Rules have no legal force. Moreover, while the Speaker as occupier has the right to control and administer Parliament grounds and to trespass people from them, the Trespass Act is silent as to how to deal with the personal property of a trespasser.
881. While Police from as early as 9 February recognised the need to clear protesters' property and the infrastructure they had built to service the occupation, briefing documents on 11 February make no mention of the legal justification for removing it nor an operational plan to deal with it once it was removed.
882. In relation to Victoria University and the Cathedral, it appears the initial Police view was that any protesters' property on their land was their responsibility and that Police would not take responsibility for it. While section 165 of the Local Government Act 2002 allows enforcement officers to apply to an issuing officer to issue a warrant authorising them to enter private land of premises and seize and impound property that is being used in the commission of an offence, Police are not designated as enforcement officers under that section.
883. In relation to the roads, the position is different. Section 164 of the Local Government Act 2002 allows an "enforcement officer" to seize and impound property "not on private land" and involved

¹⁴⁶ See paragraph 264.

in the commission of an offence. Offences that could trigger seizure of property under section 164 are not just trespass; they might include obstruction of a road, breach of the Freedom Camping Act 2011 and bylaws, breach of parking bylaws, breach of the Local Government Act for improper waterworks connections, and several others.

884. Under the Local Government Act 1974, WCC owns and occupies the roads¹⁴⁷ and footpaths, the Cenotaph¹⁴⁸ and the plaza outside Parliament gates next to the Cenotaph. These are all considered public land. Except in limited circumstances¹⁴⁹, people are free to use these areas for the purpose of moving from place to place, or in the case of the Cenotaph, and the seated areas around the plaza, enjoying the space.
885. As a result, section 164 provided the necessary power for a person designated by WCC as an enforcement officer to seize and impound property both on the roads and around Parliament, but only after the protesters had committed an offence of criminal trespass for refusing to leave after being warned or some other offence such as obstruction of a road.
886. That was recognised and agreed between Police and WCC on 14 February.
887. On 16 February, WCC appointed 171 Police officers as enforcement officers. Further appointments were subsequently made and by 2 March 530 Police officers had been designated as enforcement officers.
888. It may be debatable whether this extended to Parliament grounds. Section 164 is drafted broadly to cover any non-private place, and as discussed above,¹⁵⁰ Parliament grounds are regarded as quasi-public. However, they are under the control of the Speaker as occupier, and it seems odd that enforcement officers designated by WCC should have authority over it. The issue is in any event moot, because the Speaker's delegation issued to Police on 10 February carried with it the implication that the removal of trespassers who did not comply with the trespass notice to leave Parliament grounds extended to their property.¹⁵¹
889. By at least 25 February Police understood that they needed to operationalise the aftermath of seizure of property and three days later this was formalised in the Operation Instructions developed for Operation Oversight, which tasked Wellington Police District with responsibility for establishing a property plan to pass the tents and structures and placards to the custody of Parliamentary Security for property on their grounds and to the custody of WCC for property seized on surrounding public areas.
890. However, as discussed above,¹⁵² there is some confusion as to who was responsible for what, and despite the intention to have a plan, none was formulated by WCC, Police, nor as far as we are aware anyone else. The Parliament Security Operations Manager and Parliamentary Security

¹⁴⁷ Local Government Act 1974, ss 316 and 331.

¹⁴⁸ Reserves Act 1977, s26.

¹⁴⁹ Such as road closures under section 342 of the Local Government Act 1974 or section 35 of the Policing Act.

¹⁵⁰ See paragraph 260 onwards.

¹⁵¹ See paragraph 307 onwards.

¹⁵² See paragraph 421.

Officers who were on Parliament grounds throughout 2 March told us that it was their view the operation was being run by Police and their role was to support and facilitate the operation under the direction of Police, including the disposal or repatriation of property. They were not advised by Police of any plan for the property, other than it needed to be removed quickly for safety reasons, and there was confusion on the day about what was going to happen with items removed from the grounds.

891. After the operation had started, Police asked a WCC staff member situated at the Incident Management Team base to organise some trucks to assist with the removal of property.
892. Parliament Security staff worked with the Council-contracted truck drivers to facilitate their entry onto Parliament grounds and the loading of the trucks. During the day security officers were asked by an unknown Police officer to tell the truck drivers not to deliver any more goods to the Police evidence store at Prosser Street and to ask the drivers to take the property straight to the landfill.
893. Apart from the towing of a few vehicles discussed above in Part 6, and a small amount of property such as a few tents removed on 10 February and the showers on Stout Street seized on 28 February, no further property seizures occurred before 2 March.

What happened on 2 March?

894. At the Police briefing on 1 March, it was intended that the structures on Hill and Molesworth Streets be cleared as the Police moved people and vehicles on, so as to prevent people coming in behind them from re-occupying the space. Senior officers told us the intention was always to repatriate seized property, but accepted there was still no plan for anything other than vehicles. The next day four constables were warranted under section 167 of the Local Government Act 2002 to enable the return of vehicles seized as part of a discrete plan to manage and repatriate them which we refer to later.¹⁵³
895. At the operations briefing held at Wellington Central Police Station early on 2 March, officers were reminded of their powers under section 164, but not given any details on where or how to store personal property. Nor were they given any guidance on the role they should play in removing property from the University and the Cathedral grounds.
896. Within a short time of the clearance beginning, the amount of material was proving problematic for Police. Those on the ground had not anticipated the tactical change to completely clear the entire area.¹⁵⁴ At an operations meeting at 12.45pm it was advised it was *“beyond our capability to clear all the tents from Parliament grounds – [we] had only planned to clear top corner. Two or three hours were needed to clear 60 to 70 tents on the church ground.”*
897. In the event, the absence of a plan to deal with personal property meant that ad hoc decisions were made on the day.

¹⁵³ See paragraph 916 onwards.

¹⁵⁴ See paragraphs 673-678.



Photograph courtesy of local resident Matthew Lawrence

898. Additionally, despite an earlier indication of a lack of legal authority to clear property from private property such as the Cathedral, Police did. They later said it became necessary to seize that property *“to suppress the riot and for safety purposes”*. The intention of the Diocese was to have Police clear *“the Cathedral front lawns and Molesworth Street area and...remove that property to the site...in Porirua for individuals to re-claim their belongings should they wish. The Cathedral will clear the tents on our back lawn and find a location outside of the Cathedral where people can come to reclaim their belongings.”* Whether there was specific authority given by the Diocese prior to the removal is unclear, but certainly that was the intention, as the Diocese had taken legal advice to allow Police to do the clearance.
899. VUW was initially told by Police they would need to arrange storage for property, as Police would not touch property abandoned on their site. The University arranged bins and a shipping container. Staff also helped people to pack up and take their belongings. However, later in the day, the Victoria University Law Faculty Security gave Police permission to oversee the removal of any abandoned property from the Law Faculty grounds and Police accordingly removed the few tents left there. Police were not heavy-handed in this endeavour and helped at least one protester to remove their tent and left two cars belonging to protesters on the Law Faculty grounds which were later collected by their owners.
900. The general confusion about how seized property was to be dealt with was in evidence later in the morning of 2 March, when, acting on a request from Police, WCC personnel called Fulton Hogan asking them to provide what equipment they could to start clearing out *“the rubbish”*. What remained was not just items of camping and related equipment. A subsequent report to a National Strategic Response Plan Workshop (the ODESC subgroup) noted: *“We have...hundreds of tonnes of food and supporting equipment. Repatriation of that type of equipment would be described as almost impossible”*.
901. Fulton Hogan provided several trucks, a loader and a bobcat with a scoop. They were not given access to the site until Police had cleared the cars and Portaloos structures on Molesworth Street and Police had moved protesters to a safe distance.

902. One Fulton Hogan driver told us that, despite being escorted from Tinakori Road to Molesworth Street at about 11am, it was a further two hours before he commenced loading. He and Police officers initially loaded by hand, as it was still too crowded to use the loader safely. Since it was impracticable to sort or stack the 80 tonnes of material left on Parliament grounds, Hill Street, Molesworth Street and the Cathedral, it was all placed on the truck and ultimately taken to the Porirua site. Notwithstanding assistance from individual officers, the driver said he was receiving instructions from Parliamentary Security rather than Police both while on the grounds and on the street. He was clear *“Parliament staff just want[ed] it all gone really”*.
903. Parliament Security Officers confirmed that while they were assisting a Police operation to remove property, their focus was on restoring the Parliament grounds.
904. As to property seized under section 164, the Local Government Act 2002 requires certain notices to be given to those deemed to be offenders. Furthermore, Police had to follow the post-seizure process, including giving identifiable property owners a warning and a reasonable opportunity to comply. The property seized under that power must also be returned to the owner or person identified as having a right to possession of it. None of these requirements were met. Additionally, we have no way of determining whether those Police officers dealing with the property as protesters were cleared were those actually designated under section 164.
905. Police say they were not relying on section 164. They took the view that the property left behind had been abandoned by the owners and therefore liable to seizure and destruction. It may be arguable whether all of the property could properly be regarded as abandoned, but we accept that Police had no other option. The property could not remain where it was, particularly in light of the risks it posed, and it was not possible for the property owners to be identified and the property returned to them.
906. Photographs and video footage tend to show the piles of property were unsupervised; no one was in control of them. Photographs confirm Police observations that protesters retrieved items from these piles at will.



Photograph courtesy of New Zealand Police

907. Meanwhile, at about noon on 2 March all Police hotline 105 communicators were advised tents/signs/belongings were being seized under the Local Government Act 2002 and stored in the same place as towed vehicles. The object was to enable the hotline personnel to advise inquirers where they could retrieve property.

The clean-up process

908. Following the riotous behaviour, all the public areas, particularly Parliament grounds, were treated as a crime scene on the evening of 2 March. Although Police requested and received the assistance of 25 Defence Force staff to clear the Parliament grounds to avoid the ongoing fire risk overnight, WCC personnel were not given access to start the clean-up until early the next day.

909. During this period Police seized a small number of items (27 exhibits are recorded) as potential evidence for any future prosecutions.

910. Police requested the assistance of WCC to provide trucks to take the property and waste to a facility in Porirua. This was done and WCC paid the contractor.

911. Contractors with a front-end loader were instructed by Parliament Security to push everything remaining on Parliament grounds over to a digger which would continue loading onto the trucks. Some property was contaminated by human waste when it was mixed with other hay and dirt when scooped up with the front-end loader. Additionally, there was a substantial amount of rotting food in the mix and the worry of the transmission of the COVID-19 virus.



Photograph courtesy of New Zealand Police

912. It was not practicable to separate contaminated from non-contaminated property. To compound matters, property removed from Parliament grounds (including contaminated property) was mixed with the piles of property made by Police clearing Molesworth Street. A member of NSCT told us that moving the property in trucks was *“not ideal”*.

913. By midday on 3 March 2022 between 8-10 truckloads of items collected from the occupation site had been taken to the Porirua storage site.

What happened to the property removed by Police?

914. About this time, Police requested the General Manager of Regional Public Health to “*strongly consider some sort of health order to enable destruction, which we could carry out*”. Regional Public Health did so and determined the items might constitute a nuisance under section 29 of the Health Act 1956. This required an inspection by an Environment Health Officer employed by the relevant Council. Neither Regional Public Health nor Porirua City Council had received prior notice about the possible need for this proposed course of action from Police.

915. Ultimately an Environment Health Officer and a Health Officer met with Police at the facility to inspect the pile of items. Police informed the Environment Health Officer of their concerns the property was contaminated with rubbish and waste including rotten hay contaminated with human waste, and backed this up with photographs. Concerns were also raised about COVID-19. The Environment Health Officer inspected the property and determined it was sufficiently contaminated to be considered unsafe for people to pick through and retrieve their belongings and issued an abatement notice, giving Police until 5pm on 7 March to remove the property. On that basis, the property was ultimately dumped at the landfill.

Clearance of vehicles

916. As discussed above,¹⁵⁵ until 2 March few vehicles were towed, and several attempts to do so were abandoned. The attempts were resource-intensive, with many Police staff needed for crowd control purposes. Police have said one of the lessons learned is that, when vehicles are being moved in a protest environment, the risk to people increases significantly with the time taken to carry out the tow. Police had contracted standard vehicle removal trucks, which might take up to 30-40 minutes to load vehicles, needed a lot of clear space and could move only cars. This increased the risk to both operators and Police. Those vehicles that were towed were left on public roads well away from Parliament. No cars were impounded.

917. From as early as 16 February, therefore, Police recognised that, until they mounted a major operation to end the occupation, they could not clear most of the vehicles safely. The planning for the extract of vehicles as part of the 2 March operation therefore took a different approach to engagement, planning and the towing method. A multi-disciplinary team, led by an officer from the planning team, comprising Police officers, Defence Force planners and civilian operators, developed what became known as the ‘Vehicle Extraction Plan’. A draft was completed by 21 February and confirmed on 27 February. It involved the use of a wide range of civilian equipment capable of moving the array of different vehicles, not just tow trucks. This included forklifts, flatbed trucks and low loaders, a Franna crane and HIAB trucks.¹⁵⁶

¹⁵⁵ See paragraph 585 onwards.

¹⁵⁶ A HIAB truck is a truck mounted crane that allows a lorry or truck to self-load and unload.

918. During the weekend before the final operation, the plan was supplemented by the finalisation of a Vehicle Repatriation Plan, which addressed the process of impoundment and return of vehicles to their owners. The delegations individual officers had received from WCC under section 164 of the Local Government Act 2002 extended to vehicles and therefore allowed for impoundment.
919. Police seized and impounded 37 vehicles on that day and towed a further 11 cars away from the area. All the civilian operators who worked as part of the team unreservedly praised Police for the way they engaged with them, the way the operation was carried out and how they and their staff were supported both on the day and afterwards. We believe this shows the benefit of the combination of strong leadership, appropriate planning and good communication.
920. Police did not release impounded vehicles to owners immediately on 3 March, as they assessed there was a risk protesters might return to the protest area while there was still a risk of rioting. The costs of removing and impounding vehicles were met by Police. All vehicles bar one were retrieved by 8 March.
921. Police acknowledge there was initially little or no planning in relation to how personal property brought to the area by protesters might be dealt with. Police policy on property is directed towards the handling of discrete (and usually identifiable) property items seized during criminal investigations and in the course of specific operations (for example, under the Search and Surveillance Act) or unclaimed property under the Policing Act. There is no policy or general instructions directly related to the scenario they were presented with here. Nor did Police appear to clearly understand what their legal powers were at the beginning of the protest. It was only after significant legal consideration that Police were designated enforcement officers so they could act under section 164 of the Local Government Act 2002.¹⁵⁷
922. Police should perform their functions in a way that allows lawful protest. But by erecting structures which unreasonably impeded the use of public space by the lawful owners/occupiers, the occupiers committed various offences, including wilful damage, and breached numerous bylaws. Accordingly, Police were entitled to seize and impound any property including personal property from public space under section 164 of the Local Government Act 2002 once they were appointed as enforcement officers by WCC. The delay before that happened on 16 February allowed more structures to be erected and made it more difficult for Police to bring the protest back to a lawful state. Earlier realisation these powers were available may have assisted in Police strategic decision making to prevent the growth of the protesters' footprint.
923. The legal basis for the decision to seize property was never clearly articulated before the operation. The rationale that it was a nuisance under the Health Act was developed after the event. However, on the assumption that the power under section 164 of the Local Government Act 2002 was being exercised, it is clear that the property was generally being used to facilitate the commission of an offence (for example trespass, obstruction and so on) and its seizure was therefore lawful. Police have also said that at a later point on the day they decided to remove all structures for safety

¹⁵⁷ See paragraph 887.

reasons. Property remaining presented a risk to Police safety as many protesters had used items such as tent poles as weapons of opportunity against Police. There was also a risk of fire.

924. Whatever the basis for it, we think the actions Police took in respect of property in the aftermath of the riot were reasonable. Protesters had been given adequate time to leave the public spaces and take their belongings with them. Some did. Those that did not must have realised the escalating situation put their belongings at peril, yet they abandoned them. The potential use of property as either weapons or fuel for the arson activity was a real and identifiable risk. Moreover, to have left the property where it was would have presented an incentive for protesters to return to take up occupation again or to retrieve their property.
925. The initial decision to remove property to a secure storage point in Porirua for later retrieval by owners was sensible, as was the use of the Police 105 hotline phone number.
926. The number and volume of items left behind and the mess created within the Parliament precinct was considerable and the logistics and cost of creating, administering, and dismantling a suitably detailed inventory, providing an appropriate storage facility and establishing a return process was clearly neither feasible nor reasonable in the circumstances.
927. Some property was damaged by fire and water during the operation and some property was contaminated by waste when it was scooped up with a front-end loader, which also collected contaminated hay and dirt from the ground. This cross-contamination was in some ways inevitable given the clearance imperative of safety determined by Police. To have methodically separated and categorised property of unknown provenance was both unrealistic and an unreasonable expectation.
928. There was a blurring of responsibility between the players and no clear corporate record of delegations and decision-making responsibility other than the appointments of specific enforcement officers under section 164 by WCC. For example, Police properly understood property on private land was the responsibility of the owners of the land and essentially a civil matter and that Police had no powers to enter and seize a protester's personal property from private land without a warrant or a removal order under section 216 of the Local Government Act 2002. Yet property was removed by Police from private property without warrant or order. Authority to act on behalf of a private landowner may have been implied by discussions but ideally should have been clearly delineated. Better planning would have solved that problem.
929. The Police decision to use the Health Act as a justification for the disposal of the property appears to have been done hastily and almost as an afterthought. Again, proper forethought and planning would have made the removal and disposal operation easier.
930. While the lawful justifications for Police to seize and damage property might sometimes have been tenuous, we do not consider any prosecution against Police for wilful damage for the destruction of protesters' personal belongings would succeed. Section 11(2) of the Summary Offences Act 1981 expressly allows someone to raise an excuse against any charge of wilful damage. Police have raised a number of excuses: they were acting in accordance with a lawful duty to clear trespassers from the area; they needed to remove property to prevent re-occupation; they needed to remove

property which was obstructing the operation; the property was proving to be a health and safety risk; and the property could potentially have been a weapon or a fire hazard.

931. Nor do we think that Police bear any responsibility for their inability to repatriate the seized property. The ownership of most of the property was unable to be determined, and in any event when it was determined to present a health hazard, it was out of Police hands.
932. In this unique set of circumstances, given the nuisance and damage to property caused to the public and legal occupiers of the land, we think it is unlikely any claim for compensation against Police would succeed.
933. We note, however, that the legal powers which exist to seize property are not fit for the purpose of dealing with an occupation of this nature, especially given (a) the use of force required to clear the occupation area and restore the protest to a lawful state, and (b) the fact section 164 does not cover privately owned/occupied land. Again, we think that consideration should be given to the development of a more specific and comprehensive legislative framework for these types of public order events.
934. We note in this respect that a member's Bill¹⁵⁸ was proposed in 2017 to give Police more powers to act to remove protesters and their property from an occupation site. The purpose of the Bill was to give local councils powers to ensure occupy-style protests do not limit the public's access to Council land. It primarily did this by widening the scope in which an enforcement officer may remove property. The Bill also created powers for warrantless arrest for non-compliance when a person is required to give identifying details, and for obstruction of an enforcement officer or agent of a local authority. The Bill failed at the first reading.

FINDING

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

¹⁵⁸ The Local Government (Freedom of Access) Amendment Bill.

Conclusions and Recommendations

WHAT IS OUR OVERALL ASSESSMENT OF POLICE'S RESPONSE TO THE PROTEST AND OCCUPATION?

935. The occupation of the Parliament grounds by protesters from 8 February to 2 March 2022 was an event presenting new and significant challenges for New Zealand. Its length and intensity, the diverse nature of its constituency and the extent of the disruption it caused, posed significant challenges for Police which they had arguably not confronted since the Springbok Tour in 1981. It also came at a time when Police confronted staffing shortages due to the COVID-19 wave that was sweeping the country. Decisions often had to be made quickly in response to a volatile and constantly evolving situation.
936. The rights of protest and freedom of expression are fundamental to our democracy, and Police had the challenging task of balancing those rights against the need to maintain the law and access to the courts, protect other members of the community going about their lawful business and retain overall community support.
937. We have pointed throughout this report to several areas where decision-making fell short of the ideal and Police might have done things differently and achieved better results. But in view of the significance of the event, its location and the demands it placed upon Police individually and as an organisation, it is also important that we set out our overall assessment of the Police response and whether it served the community well.
938. In this respect, we have concluded that Police generally did a good job in managing the protest and bringing it to an end, especially in the light of the challenges they faced in dealing both with the impact of COVID-19 on their staff resource and with other protests happening around the country at the same time. Police leadership acted independently and without any undue political intervention. They set clear expectations about the need for officers to exercise professionalism and restraint. Almost all officers, with remarkably few exceptions, met or exceeded those expectations. That was particularly evident on 2 March, when they had to endure extreme provocation and violent behaviour from some militant protesters, and sometimes lacked equipment and needed to respond to last-minute changes of plan.
939. We received 1,905 complaints, but most of these were from people who were not at the protest. Although this was a three-week event involving protesters estimated at times to be in the thousands, we received only 84 complaints from individuals who were physically present at the protest. After close assessment, we independently investigated 19 of these complaints, and our preliminary findings are that Police actions were unjustified in eight cases. That is a remarkable outcome, especially given the violence that degenerated into what was effectively a riot on the final day.

WHAT LESSONS ARE TO BE LEARNED FROM THE POLICE RESPONSE?

940. Despite this overall view, there are always lessons to be learned from complex operations of this sort. Police themselves have reviewed their response and identified areas for improvement (referred to below as ‘Police’s Protest Review’). In this report we have also focused on some areas where we think Police might have done things differently and achieved better results. We turn to summarise where those areas for improvement lie.

Public order policing

941. In Part 3 we drew attention to the fact that in the last 15 years or so there has been a shift in the strategic approach to public order policing towards a model that emphasises engagement, persuasion and negotiation, and minimises the need for confrontation and use of force. We endorse that development, but have found that it has been inadequately articulated in policy and unevenly understood and applied.

942. In recognition of this, Police’s Protest Review has proposed that an end-to-end public order policing operating model for New Zealand Police be developed. We recommend that this be undertaken as a matter of some priority and that:

- 1) It explicitly bases the strategic approach and standard operating procedures of Police on the “4E graduated response model”.¹⁵⁹
- 2) It sets out detailed criteria governing decisions about whether officers should be equipped with protective equipment, and authorised to carry long batons, pepper spray or other tactical options, supplemented by a range of scenarios.
- 3) It addresses the extent to which, and the way in which, Tactical Options Reports from officers who have used force in major operations should be submitted.
- 4) It prescribes processes for mobilising required staff and equipment to deal with large scale events, including fully addressing health and safety requirements.
- 5) It addresses the extent to which each available type of tactical option in the use of force should be deployed in a public order context.
- 6) It considers the way in which Police should effectively engage with protest groups, partner agencies and other interested parties. This should include respective roles and responsibilities within Police, and address how engagement should adapt to a social media environment where groups can more readily coalesce around a range of agendas without unified leadership.

¹⁵⁹ See paragraph 213 – fourth bullet point.

- 7) It is complemented by enhanced workforce management practices, including monitoring certifications and maintaining a register of the deployable skills of staff and making this accessible to the organisation as a whole.
- 8) It sets out requirements for ensuring that there is adequate training for the deployable skills that officers are certified and registered (taking into account Police cannot fully prepare and train sufficient numbers of staff for events such as this that have occurred, at least until now, very infrequently).

Policing the Parliamentary Precincts

943. As again discussed in Part 3, Police policy governing the policing of the Parliamentary precincts is inadequate. There is no real mention in policy or other operational documents of the extent to which the policing of protests in or around the precincts of Parliament involves special considerations and risks that should be taken into account in planning and operational strategy. These special considerations arise from the fact that:

- Parliament is symbolically important.
- For obvious reasons it is often the focal point of protests.
- Those protests have a much greater impact on the running of the country than protests elsewhere.

944. That is because, as well as being the centre of government, it is proximate to other vital government activities and the major institutions of the judicial system (including the High Court, Court of Appeal and Supreme Court). To date the failure by Police to articulate how the Parliamentary precincts should be policed has not caused any manifest difficulties. Nevertheless, the range of factors that need to be taken into account in responding to protests in that environment should not be left to understandings and conventions that exist in the minds and memories of senior officers. They should be specified in detail, and be widely understood, not only by Police but also by parliamentary and court security personnel.

945. Part of the reason for the sparse nature of Police policy in this area may be that, as we accept, Wellington District Police are accustomed to protests at Parliament, which are a regular occurrence, and have generally handled them well. But we have noted that this may have led to a degree of complacency. The range of causes that motivate protests has expanded in recent times, and the potential for these to escalate has been exacerbated by the rise of social media. The management of protests has therefore become more challenging and the risks that they will degenerate into unlawful activity that pose a threat to the democratic and social fabric have increased.

946. Police have the difficult task of managing those risks at the same time as preserving the fundamental right to protest and bring grievances to Parliament as the seat of our democracy. That points to the need to develop a framework for the management of those risks in the particular context of Parliament.

947. We appreciate that policy cannot cover every conceivable scenario and that operational decisions need to be circumstance-specific. But this does not preclude the development of a clear framework for decision-making, including an articulation of the risks that will justify particular types of intervention under various scenarios. That framework has been largely lacking, so that planning and decision-making at least in the early stages of the protest did not adequately appreciate and respond to the broader risks that the protest posed.

948. We therefore recommend that, as part of the revised and broader public order policing policy recommended above, Police should develop standard operating procedures for the Parliamentary precincts. This should include scenario planning in conjunction with partner agencies, including the Parliamentary Service and the Courts, to avoid ad hoc decision-making for events such as these.

Planning

949. As discussed in Parts 6 and 7, the Wellington District planning team was initially responsible for all planning related to the Police operation. This included planning for day-to-day Police activities as well as planning for the operation to bring the occupation to an end. From 15 February, they were supported by the Major Operations Centre (MOC) established at Police National Headquarters.

950. We have identified three types of problems with planning at various points throughout the protest:

- Having decided that a Police operation was required to deal with the risks the protest posed, Police should have ensured there were fully articulated written plans for what they would do (to the extent that was practicable within the time available). We accept that the absence of such plans in the early stages probably did not make a difference in this case, but it did create confusion at times. Planning should not just be in people's minds, and decisions need to be clearly documented (including the reasons those decisions were made).
- It is clear from interviews conducted with senior officers and external observers that while Police were experienced and skilled at planning a tactical response to an incident, there was less capability within Police to undertake longer term strategic planning.¹⁶⁰ That affected, in particular, the speed with which planning for the 2 March operation was undertaken and the comprehensiveness of the plan that was developed for it. Even when the MOC was established at Police National Headquarters to provide support, it was only the two-day workshop on 21-22 February that provided real impetus for the development of a detailed framework for the operation, and even then this focused more on tactics than broader strategic objectives.
- This was exacerbated by the fact that because the District team was under-resourced, planning for the day-to-day response often took priority and resource away from the long term strategic planning requirements. As we have discussed,¹⁶¹ the arrangements between

¹⁶⁰ See paragraphs 426-428.

¹⁶¹ See paragraphs 415-444.

District and Police National Headquarters were insufficiently flexible to provide the right support to District at the right time.

951. These problems led to a number of obvious deficiencies in the plan for the final day, which we have outlined above.¹⁶² While we have concluded that these deficiencies did not have a substantial impact on the operation, which was generally undertaken professionally and successfully, they are issues to be avoided in future operations.

952. We therefore recommend that:

- Police work with partner agencies (such as the NZDF) to review their strategic planning capability and provide additional training as required.
- Associated policies and guidance be reviewed to ensure best practice strategic planning and operational planning during major operations, including logistics management. These should include the processes required to enable adequate interfaces with regulatory agencies and other key partner agencies.

Command and control

Responsibility for actions in response to intelligence

953. Despite there being good intelligence ahead of the protest, and good analysis and communication of that intelligence, we have found that Police did not properly consider the risk that the protesters would occupy Parliament grounds for an extended period. This meant Police did not consider, and consult with WCC, about whether a traffic management plan ought to be put in place.

954. Police's Protest Review has pointed to the need for Police to improve the quality of their intelligence products and distribution practices. In this case, we found the intelligence product was good and appropriately distributed, but there was still some degree of subsequent confusion about who had primary responsibility for acting on it (with the result that effectively nobody did so).

955. We think that, as Police's Protest Review proposed, intelligence products should best support decision-makers and priority setting, and should also clearly assign responsibility for decision-making. We recommend that policy be revised accordingly.

Role of the Executive

956. In particular, the role of the Deputy Commissioner: Strategy and Service as the 'Senior Responsible Officer' for the National Operation was not clearly communicated to or understood by Police staff within either the MOC or the District command structure, and there was confusion about where decision-making lay.

957. We recommend that the purpose and responsibilities of an Executive Lead (that is, a Senior Responsible Officer) be clearly spelt out, both in general terms in policy and more specifically on a

¹⁶² See findings after paragraph 678.

case-by-case basis when the role is created, so that there is a clear understanding of the role and how it interacts within the command and control structure of an operation.

Staff with the right experience and skills

958. Both this report and Police's Protest Review have identified the need to ensure that, within the command and control structure of an operation, there is sufficient capacity and capability to undertake the required tasks.

959. We have described above that, when it was set up, the MOC did not have the staff with the skills to make an optimal contribution.¹⁶³ We have also discussed the fact that the District did not have support from Police National Headquarters early enough, and the support they did get was not always what was needed. Police are developing a three-tier command system (local command/local command with national support/national command) which will enable them to be more agile in their use of resources.

960. We recommend that:

- Police review the training requirements for the command and control of major events at both national and district levels to ensure that staff with the right skills are available when required.
- The new three tier structure be included in policy and contain clear definitions of the command and control structure and the roles/responsibilities of those within it under various scenarios.

Health and safety

961. As set out above in Part 7, we have found that:

- Police appointed a Health and Safety Officer with no previous experience in that area.
- There was a lack of health and safety input in Police's planning for the 2 March operation.
- Police lacked enough safety equipment for all frontline staff.
- Police did not adequately prepare or equip the new graduates and recruits they used to bolster their numbers for the operation.

962. Although Police took some actions to assess and mitigate identified 'front-line' operational risks, they decided not to allow officers to wear hard body armour as part of their public order policing protective equipment from the beginning of the operation on 2 March. Instead, the hard body armour was stored in the Parliament buildings for officers to access once it was deemed necessary. We found that, while this decision was reasonably open to the Local Controller, the trigger points that might require reconsideration of that decision were not identified and communicated to front-

¹⁶³ See paragraphs 415-444.

line supervisors. Nor was it made clear where authority to vary the decision lay. As a result, the decision to equip staff with all available protective equipment was made too late, and some unprotected staff were exposed to a significant risk of injury as a result.

963. In accordance with the proposals in Police's Protest Review, we recommend that Police:

- urgently acquire extra public order policing equipment;
- review what equipment is internationally available to enhance the range of suitable options;
- work with partners to improve the national transport of equipment and personnel in emergency situations;
- develop policy and process guidelines for using recruits during major or high-risk operations; and
- enhance their health and safety practices and ensure input into decision-making.

964. We also recommend that there be written health and safety plans for all major public order operations that pose a significant risk of injury to officers. These plans should address whether personal protective equipment is to be worn and long batons carried, and if not the trigger points that might require reconsideration of that decision and where authority to vary the decision lies.

Legal Framework

965. At various points throughout this report, we have highlighted inadequacies in the legal framework under which Police were operating. The relevant law governing a public order event such as this is spread across multiple statutes, the provisions of which were often formulated with a rather different context in mind. Police spent a great deal of time from the outset of the protest getting legal advice in order to determine the nature and limitations of their powers, but even then did not always get it right.

966. By way of example, we have identified a number of areas where the current law does not appear fit for purpose:

- The somewhat arcane law on trespass, with its requirements for two separate warnings and its distinction between a section 3 warning and a section 4 warning,¹⁶⁴ is clearly oriented towards single individuals or small groups and is ill-suited as a means of managing a large-scale event in a public or quasi-public place.
- There are significant evidential difficulties in proving that there has been a lawful arrest in a volatile mass arrest situation where individual arresting officers may be handing arrested persons over to others while they continue to manage the resisting crowd on the front line.

¹⁶⁴ See paragraph 271.

- While Police and local authorities have adequate powers to close roads, the powers to seize vehicles are more limited and are inadequate to deal with a blockade situation.
- Similarly, the offence of obstructing a public way under section 22 of the Summary Offences Act is too limited. Police have the power to move an obstructing vehicle to a safe place, but there is nothing to prevent the owner from retrieving the vehicle and returning it to the same location.
- It is not an offence for any person to place or leave any personal property on a place they are trespassed from (whether they have been charged with trespass or not). Nor is there any specific provision dictating what enforcement officers (or indeed private citizens) should do with property that a protester brings or leaves on a property. This is a lacuna in the law that gives rise to uncertainty and potential civil liability by those dealing with it.
- The power under section 164 of the Local Government Act 2002 to remove property from roads and other public places from which persons have been trespassed is also limited to specified individuals designated by the local authority; a long list of officers had to be designated for this purpose in advance of the 2 March operation, a cumbersome and unnecessary process.

967. It is beyond our terms of reference to determine what specific legislative amendments should be enacted to address these difficulties. Nor have we considered whether there are other areas of legislative deficit beyond those that have arisen from our review of Police actions. We recommend that the Commissioner of Police propose to Government that there be a multi-agency review of the law to this end.

FINAL WORD

968. As a concluding comment, we reiterate that this report should not be interpreted as finding that Police failed in their policing of the protest and occupation. We have written it not only to review what Police did but to make a constructive contribution to ongoing work within Police to improve public order policing. We have therefore necessarily focused on areas where we think practice fell short of the ideal and lessons can be learned for the future. But despite the range of recommendations for change we have made, we believe that, in dealing with this difficult and complex set of events, Police served the public of New Zealand well.



Judge Colin Doherty

Chair
Independent Police Conduct Authority

20 April 2023



Mana Whanonga Pirihimana Motuhake

PO Box 25221, Wellington 6140

Freephone 0800 503 728

www.ipca.govt.nz
