

Inspector breached COVID-19 Health Order

1. On 30 September 2021, Police notified the Authority of an alleged breach of the COVID-19 Health Order by an Inspector from Tāmaki Makaurau, Officer A. Police were alerted to this allegation through a media enquiry made to them on 28 September 2021.¹ The media enquiry asked for details of a border crossing conducted by Officer A to attend a tangihanga in Waikato with a van load of people from Tāmaki Makaurau.² At the time of the alleged crossing, Tāmaki Makaurau was in Alert Level Four and Waikato was in Alert Level Three of the Government’s COVID-19 Response Plan.
2. On 3 October 2021, the Authority also received an anonymous complaint from a member of the public wanting to make a criminal complaint about Officer A based on allegations reported in the New Zealand Herald article dated 29 September 2021 entitled: *‘Covid 19 Delta outbreak: Auckland police inspector under investigation for breaching border was driving Iwi contacts to funeral as ‘favour’*.
3. Over the course of the Police investigation, it was found that there were five separate allegations against Officer A for breaching the COVID-19 Health Order, as follows:
 - 1) On 5 September 2021, Officer A drove members of the public (Group V) across the Tāmaki Makaurau border to attend a tangihanga.
 - 2) On 9 September 2021, Officer A facilitated members of the public (Group W) to cross the Tāmaki Makaurau border and view the body of their deceased mother.
 - 3) On 10 September 2021, Officer A facilitated three members of the public (Group X) to cross the Tāmaki Makaurau border to care for a terminally ill whānau member in Huntly.
 - 4) On 20 and 21 September 2021, Officer A tried to facilitate two members of the public (Group Y) crossing the Tāmaki Makaurau border to attend a tangihanga.

¹ From our investigation, we are satisfied the media had been given information by someone within Police, who had close knowledge of the situation. However, we were unable to ascertain exactly who contacted the media and found it had no bearing on our investigation.

² Tangihanga, also referred to as tangi, is a traditional Māori funeral.

- 5) On 23 September 2021, Officer A helped to facilitate the movement of a whānau (Group Z) out of Tāmaki Makaurau after the death of multiple whānau members.
4. The Authority conducted an independent investigation into all five allegations.
5. This matter involved considerations around Tikanga Māori with respect to tangihanga and obligations under te Tiriti o Waitangi (the Treaty of Waitangi). To ensure that we have given the appropriate weight to these aspects as part of our analysis, the Authority sought expert cultural advice pursuant to section 23(3) of the Independent Police Conduct Authority Act 1988.

Issues the Authority has identified and resolved

Issue 1: Did Officer A facilitate people crossing the border in contravention of the COVID-19 Health Orders?

Officer A personally breached the COVID-19 Health Order by crossing the border and also facilitated members of Group V to cross the border in contravention of the COVID-19 Health Order.

Officer A attempted to facilitate the movement of Group W across the border in contravention of the COVID-19 Health Orders.

Officer A did not facilitate, or attempt to facilitate, the movements of Group X, Group Y or Group Z across the border in contravention of the COVID-19 Health Orders.

The National Controller Police COVID Response followed the correct procedure in obtaining advice from the Ministry of Health.

Issue 2: Did the District Commander, Officer C, manage the allegations about Officer A's conduct appropriately?

The District Commander, Officer C, should have ensured Police fully considered and investigated Officer A's actions when she was first informed of them on 5 September 2021.

Officer C should have provided clearer advice to Officer A of the extent of his role and discretion in such circumstances.

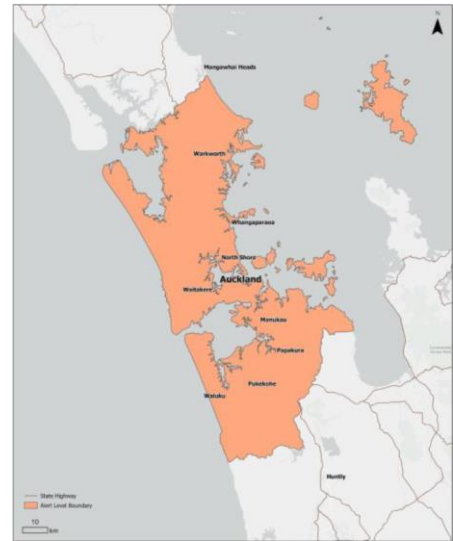
Issue 3: Did the actions of Officer A impinge on public trust and confidence?

Though Officer A attempted to uphold Police values, by failing to ensure his actions and authorisations were lawful, Officer A has breached the Police Code of Conduct and impinged on public trust and confidence in the New Zealand Police.

Officer A's actions were not justified under Police's Te Huringa o Te Tai – the Police Crime Prevention Strategy.

Background

6. In September 2021, New Zealand was in two separate Alert Levels as per the Government’s protocol to stop the spread of COVID-19. The regions in differing Alert Levels were separated by borders, as shown on this map.
7. Tāmaki Makaurau (depicted in orange) was in Alert Level Four due to community transmission of the Delta variant. Alert Level Four was the ‘lockdown’ phase which had been put in place to contain Delta since 17 August 2021. No travel (except for essential movement such as getting groceries) or group gatherings were permitted.
8. The rest of the country (depicted in grey) was in Alert Level Three, which was the ‘restrict’ phase. Personal movement was limited to within other Alert Level Three areas, people were encouraged to stay home, and gatherings (including tangihanga) were limited to ten people.
9. To control the movement of people between Alert Levels, the Government requested Police set up checkpoints on the borders. The Police operation was termed ‘Operation Romeo’, where Police were responsible for the setup, staffing, and operation of the border checkpoints. This was the fourth iteration of Operation Romeo due to previous COVID-19 outbreaks.
10. Passengers in their cars would come to the border checkpoints and could only pass through if they had approved travel documentation from the Ministry of Health,³ the Ministry of Business, Innovation and Employment,⁴ or fell within one of the exemptions provided in the Health Order.
11. Although deemed to be necessary in the circumstances, these restrictions on travel and gatherings had a significant impact for Māori (as well as others) on the facilitation of customary cultural practices and protocols around tangihanga.
12. At the time of the alleged Health Order breaches, Officer A was the Police Māori Responsiveness Manager for the Māori, Pacific and Ethnic Services (MPES) team in Counties Manukau.⁵



³ Personal travel was approved under a strict set of circumstances based on different needs, such as work, childcare, or health care.

⁴ For approved business travel.

⁵ Officer A has since resigned from Police.

ISSUE 1: DID OFFICER A FACILITATE PEOPLE CROSSING THE BORDER IN CONTRAVENTION OF THE COVID-19 HEALTH ORDERS?

Did Officer A help Group V cross the border on 5 September 2021?

13. On 2 September 2021, a member of Group V contacted the MPES team in Counties Manukau about a whānau member who was terminally ill.
14. It was Group V's intention, when the whānau member passed away, to hold a tangihanga for their loved one in the Waikato region. However, the immediate whānau were split, some living in Waikato and others in Tāmaki Makaurau. This meant some would need to cross the border from an Alert Level Four area, into an Alert Level Three area, to attend. They contacted MPES to seek advice and guidance on their options under the COVID-19 protocols in place.
15. Later that same day, the whānau member passed away.
16. Group V had the following contact with the MPES team about the loss of their whānau member and the tangihanga preparations:
 - an initial email exchange to inform MPES their whānau member was unwell;
 - an email exchange when their whānau member passed away;
 - two virtual whānau meetings (on 2 and 3 September 2021) which an MPES Sergeant, Officer B, attended;
 - an email exchange about how to apply for travel exemptions; and
 - an email exchange from Officer B informing the whānau of the most recent COVID-19 restrictions around funeral and tangihanga.
17. Officer B emailed a variety of Police teams, such as the COVID-19 Support Team based at Police National Headquarters in Wellington, to retrieve the most recent information. The final email exchange between Officer B and Group V occurred on 3 September 2021, when Officer B sent the whānau links to the COVID-19 Government website with the most recent guidelines for tangihanga in Alert Level Three and Four. The links indicated that the whānau would not be permitted to travel from Tāmaki Makaurau to Waikato unless they could obtain exemptions from the Ministry of Health.
18. Officer A was copied into the final email exchange on 3 September 2021 between Officer B and Group V. Officer B also sent Officer A an email to confirm the links were the correct information, stating to him: *"Having read through the literature it looks to be that any exemption applied for on their grounds to accompany their loved one will likely be declined"*.
19. Officer B told us that after this correspondence, she had no further involvement with the matter and believed the issue had been resolved.

20. The Group V member communicating with the MPES team knew Officer A through a joint Iwi/Police COVID-19 working group (“the working group”). There was no other personal connection between Officer A and Group V.
21. Officer A had the following contact with the whānau after Officer B had completed her correspondence:
- On 3 September 2021, Officer A received a call from the member of the whānau he knew through the working group and discussed the whānau applying for exemptions. He told them that all whānau intending to cross the border would need to apply for an exemption from the Ministry of Health.
 - On the same day, that member of the whānau connected Officer A with an immediate relative of the tūpāpaku (deceased) for further correspondence.
 - That evening, Officer A attended a meeting of the working group.
22. During the meeting with the working group there was a discussion about the tangihanga for Group V. Officer A told us he was “asked to formulate a plan that would enable the whānau pani (family of the deceased) to accompany the tūpāpaku” to the tangihanga.⁶ It was decided that if the personal exemptions were declined, Officer A would facilitate travel for the whānau pani for the following reasons:
- The tūpāpaku had a lifelong commitment to returning to a specific burial site under the watch of her whānau pani (specifically her children);
 - the current COVID-19 travel restrictions would deny some of the whānau pani from participating in the burial of their loved one, which would have a significant effect on their cultural obligations and wellbeing;
 - Officer A saw his role as an MPES Māori Responsiveness Manager: “...to operate between the Crown and Māori for the betterment of Māori. This requires on occasion courageous leadership premised on making decisions that honour rangatiratanga and mana motuhake”;
 - Officer A “was aware of similar decisions in which Police exercised discretion to allow persons through regional borders without exemptions”; and
 - to not do so would be a “significant departure” from Tikanga Māori values.
23. On 4 September 2021, Officer A was informed that Group V’s travel exemptions had been declined. He told us that this was not a surprise to him, as in his work he knew how strict the exemption criteria were. He then called the tūpāpaku’s immediate relative to discuss the logistical plan for the tangihanga the following day.

⁶ When writing Māori, Officer A uses a double 'a' and not a macron.

24. Officer A did not discuss the matter and his proposed actions with his immediate team, other Māori Responsiveness Managers or his manager, the District Commander for Counties Manukau, Officer C. Instead, he made the decision to personally assist Group V to escort the tūpāpaku to the burial.
25. Officer A ensured that he had the approval of the marae to receive Group V and the tūpāpaku onto the marae and urupā.⁷ At the time, the area they would be travelling into had no existing COVID-19 cases and a low vaccination rate and was therefore vulnerable. Officer A says that he would never have undertaken the travel without the approval of the marae.
26. On 5 September 2021, Officer A went to work and carried out his regular duties. He was in Police uniform and signed out an unmarked Police van for use. At 9.30am, he met the Tāmaki Makaurau-based members of Group V at Manukau Police Station. The funeral director also met them at the station and followed the van in the hearse, as they drove to Waikato. They stopped once on the Tāmaki Makaurau side of the border to let two carloads of people pay respect to the tūpāpaku from the roadside.
27. When the van reached the checkpoint at the border, Officer A spoke with Police staff. He said that he advised them of the situation and *“confirmed that on review of the circumstances in totality I had provided authority for the movement, that it was being carried out within my oversight”*. The staff on the checkpoint did not see any issue with this because Officer A was in Police uniform and appeared to be on-duty. Under the Health Order in place at the time, Police officers undertaking their duties were exempt from travel restrictions.
28. Staff on the checkpoint asked the funeral director for paperwork for the border crossing, which was supplied and checked. However, after the van drove past, the checkpoint staff considered how many people were in the van and that no documentation had been shown from Officer A for those people, so decided to inform their manager, Officer D.
29. Officer D asked one of his team to send Officer A a text message requesting the documentation. Officer A took several hours to respond, but Officer D took it on good faith that Officer A would have the appropriate exemptions.
30. When Officer A responded, he said that he had authorised the travel. He said the funeral director would be able to provide the appropriate documentation, although this would be sent through at a later point, as the tangihanga was in progress and he did not want to disturb the whānau pani. He then sent a second text message to say that he would be sending an email later regarding the process on the checkpoint.
31. Officer D then decided to tell Officer E what had happened. Officer E was one of three officers (known as Forward Commanders) who were responsible for managing the southern border. Officer E called Officer A, who justified the travel based on compassionate grounds. Officer E was nearing the end of shift so briefed Officer F (another of the Forward Commanders) about what had taken place.

⁷ An urupā is a Māori burial site or cemetery.

32. When Officer A and Group V arrived at the tangihanga location, Officer A drove them to the marae (where more people paid respect to the tūpāpaku from a distance) and then to the urupā. Only one member of the whānau from Waikato was present to call the tūpāpaku onto the urupā to be laid to rest. While this occurred, Group V exited the van and Officer A stayed inside.
33. Officer A and Group V followed a safety protocol Officer A had designed and put in place to ensure COVID-19 was not spread to the Waikato-based community. All Tāmaki Makaurau-based travellers wore masks, gloves, and did not go within five metres of anyone from the Waikato region. When asked if he was concerned that the group could spread the Delta variant of COVID-19 to the Waikato community, Officer A said he was confident that his safety measures were effective.
34. Following the tangihanga, all the Tāmaki Makaurau-based members of Group V made the return trip with Officer A where they were dropped off at Manukau Police Station at 12.30pm.
35. After Officer E told Officer F what had occurred, Officer E determined that it was possible that Officer A's actions were a breach of the COVID-19 Health Order. Because of this, Officer E decided to forward the information on to Officer A's manager, Officer C. Officer E called Officer C and left a message but did not get a response.
36. The following evening, on 6 September 2021, Officer F emailed Officer C to follow up about the concerns. Officer C responded that she was fully aware of the matter. She said she was conscious that MPES were working in a demanding situation but told Officer F she would pass on the concerns.

Were Officer A's actions in helping Group V cross the border justified?

37. As the Māori Responsiveness Manager for Counties Manukau, Officer A considers it a key part of his policing role to uphold what he sees as Crown obligations to the Māori community under te Tiriti o Waitangi in conjunction with the Police cultural value of bringing humanity to every interaction.
38. Officer A takes these obligations seriously and personally. We note he did not gain any personal benefit from his actions. Rather, he sees his actions throughout these allegations as positive attempts to *“assist in the deployment of Tikanga Maaori as practically as possible, at the same time as maintaining the health and wellbeing of communities”*.
39. Officer A viewed the fact the Health Order did not allow Māori to travel for tangihanga as *“a significant departure from Tikanga Maaori”*.
40. Tikanga Māori are customary cultural practices and protocols incorporating principles, values and spirituality.⁸ Tikanga holds great significance for Māori, particularly in relation to tangihanga. Tikanga around tangihanga includes:
 - A personal and spiritual conviction that the tūpāpaku must be returned to their ancestral land for burial.

⁸ Durie M. (1970) *Living by Māori Values*, Huia Publications.

- From the point of death until burial, the tūpāpaku must be accompanied at all times, including any journey back to their ancestral land.
 - Gathering to pay respect and farewell the tūpāpaku.
41. Officer A says it would have *“compromised my personal values set and thereby my integrity if I turned away and ignored the plight of the whānau pani to accompany the tuupaapaku”*. Officer A believes this would have been *“a substantial departure from the service our community expects of us [Police]”*.
42. However, in the process of assisting Group V, Officer A disregarded, or did not have sufficient regard for, the law and the following:
- all those in the Tāmaki Makaurau region who were subject to the restrictions and unable to attend funerals for their loved ones;
 - the fact that his considerations conflicted with the national Health Order ban on travel for tangihanga;
 - that exemptions for the whānau pani to travel had been declined; and
 - that transporting the whānau pani to the tangihanga would involve travelling into a small vulnerable community, thereby putting community members at risk.
43. Officer A states that he was entitled to make this decision based on two factors, which are further analysed below:
- an exemption under the Health Order; and
 - the discretion available to Police officers to determine a manner of law enforcement.

Was it appropriate for Officer A to rely on an exemption clause to justify his actions?

44. On 5 September 2021, the Health Order in force was the COVID-19 Public Health Response (Alert Level Requirements) Order (No 10) 2021. Officer A attempted to use an exemption under clause 43(g) of that Health Order to enable the travel across the border.
45. Clause 43(g) of that Health Order states that the Order does not apply:
- “to people being transported for the purposes of the Department of Corrections and New Zealand Police fulfilling their purposes and performing their functions and duties”*
46. For the border crossing with Group V to fall under clause 43(g), Officer A’s actions in transporting the whānau pani across the border would need to be actions he would undertake as part of performing his usual Police functions and duties. Although he was on duty, wearing his Police uniform and driving a Police vehicle, those factors are not sufficient to show that he was undertaking Police duties when transporting the whānau pani across the border.

47. Officer A told us that attending tangihanga was something he has done previously in his role and is part of his duties as Māori Responsiveness Manager. We accept that it is not unusual for MPES staff to attend tangihanga as part of their functions, particularly where it is for a respected member of the Māori community. However, it is not part of their normal role to transport whānau pani to and from tangihanga in Police vehicles, and definitely not when there are strict travel restrictions in place.
48. Several factors confirm this:
- When initially contacted by Group V when they were seeking assistance in crossing the border for tangihanga purposes, Officer A's response was that they should apply for an exemption from the Ministry of Health. Had the transportation of whānau pani to tangihanga been one of his regular duties as Māori Responsiveness Manager, the Inspector could have simply scheduled a date/time and vehicle to transport the whānau pani or authorised one of his staff to transport the whānau pani across the border.
 - An MPES staff member in Officer A's team spent many days at the border undertaking karakia and speaking with people attempting to cross the border. That officer was very clear that the role of MPES was about communicating with people about the rules around border crossings and why people could not do so. Had it been part of the MPES role to accompany or transport people across the border for tangihanga, the officer could have simply facilitated people to cross the border. However, the officer told the Authority, it was not part of their role: *"Our role down there really was for reassurance and karakia. There wasn't any type of brief, or anything given to us as a team around the supporting of any type of crossing. That wasn't our role"*.
 - When one of the Forward Commanders questioned Officer A's actions on the day of the tangihanga, Officer A did not point out that he was relying on an exemption under the Health Order. Instead, he explained that his role was to liaise with local iwi about the restrictions brought about by the COVID-19 outbreaks; that there were ongoing concerns by Māori about the restrictions around tangihanga, with a number of breaches of COVID-19 Health Orders in the past with large gatherings; and that he had been working hard with local iwi to avoid any further breaches. None of this explanation justified his transportation of Group V across the border.
49. Officer A was aware of the restrictions around travel for tangihanga purposes and the reasons for them. He was part of the regular leadership forums which discussed the COVID-19 restrictions, and it was well known among both leadership and other officers that he disagreed with those particular restrictions.
50. On 8th September 2021 Officer A emailed senior officers a proposal about alternative ways forward in which the COVID-19 protocols could be followed while still accommodating Māori cultural roles in accompanying relatives to their tangihanga. This further confirms Officer A's knowledge of the COVID-19 restrictions around tangihanga. He noted in his interview with the Authority that he had been working on the proposal for some time prior to sending it.
51. Had Officer A believed that facilitating border crossings for tangihanga purposes was part of his Police functions and duties, and therefore an exemption under clause 43(g) of the Health Order,

he would have continued to rely on that clause. However, the emailed proposal indicates that although he wished to uphold the Māori cultural roles of accompanying relatives to tangihanga, he was aware that:

- those roles were not included as considerations or exemptions to the Health Order;
- transporting the whānau pani was not part of his Police functions and duties; and
- his actions in personally transporting the whānau pani were in breach of the Health Order.

Were Officer A's actions justified given his right to use discretion as a member of Police?

52. In the event that the exemption under clause 43(g) was not applicable, Officer A additionally advises that he unilaterally made these decisions and gave these authorisations on the basis of the Police discretion available to him. He says: *"Never have I refused to enforce the law, but I do believe that I have a pretty wide discretion on how to do that"*.

53. In support of this belief, Officer A cites a 1993 opinion by the then Solicitor-General which states:

"... it is not open to the Commissioner to refuse to enforce the criminal law or any aspect but the Commissioner has a wide discretion on the chosen manner of enforcement in a particular case (see Hill v Chief Constable of West Yorkshire (1989) 1 AC 53)".

54. It is correct that Police discretion and the discretion alluded to in the Solicitor-General's opinion is a discretion around enforcement of laws. However, Officer A's actions were not an alternative way of enforcing the Health Order. The Health Order was specific in the ban on travel for tangihanga and specific in the methods for being granted an exemption to that ban. Officer A's actions were a refusal to accept and enforce the travel ban according to the Health Order and an attempt to assume a power to authorise travel as he saw fit.

55. It is the Authority's view that Officer A has misapplied both the Solicitor-General's opinion and the limits of Police discretion in his actions. The following factors support this view:

- New Zealand Police are not creators of laws. They are enforcers of laws already created by legislation and may also only use powers that they are permitted by law to use.
- At law, Police have a broad discretion to address factors such as:⁹
 - *"whether or not to investigate an offence;*
 - *what procedure to use to commence formal proceedings;*
 - *whether to divert an offender or use another procedure;*

⁹ Law Commission Preliminary Paper No 28 CRIMINAL PROSECUTION A discussion paper, March 1997.

- *whether the necessary evidence is available to justify formal prosecution; and*
- *what kind of proceedings are in the public interest”.*

56. What Police cannot do, however, is use their enforcement discretion to create a power that has not already been granted to them. The Director General of Health had specifically not delegated authority to Police to grant exemptions under the Health Order. Officer A cannot therefore use the Police enforcement discretion to create that authority. He also cannot use the Police enforcement discretion to enable unlawful actions, such as facilitating people to breach the restrictions of the Health Order.
57. Police briefings were clear that there was no discretion available under the Health Order for Police to authorise exemptions and this was understood by many of the officers we interviewed. One senior officer confirmed that: *“The approach was to staunchly apply the Health Order. Police had no discretion”*. An Assistant Commissioner also noted that although it was going to be difficult for staff: *“There is no discretion to interpret the rules”*. He went on to add that: *“...the rules are the rules”*, and that if needed, there was a mechanism to follow to clarify issues with the Ministry of Health.
58. In spite of the regular briefings, Officer A nonetheless says that he saw it as part of his role to help find a resolution to the situation facing Group V that would uphold the Health Order, respect Tikanga Māori, and promote public health and safety within the boundaries of the law and Police discretion. He was determined that the tūpāpaku would be accompanied to the tangihanga by whānau pani and that the tangihanga would be at the whānau’s urupā, which was a short distance across the border.
59. Although Officer A took this stand, other Police staff, including MPES staff, were very clear in their understanding of the requirement for travel restrictions because of the need to protect vulnerable communities outside of Tāmaki Makaurau. Many other whānau, including Māori whānau, were prevented from crossing the border to accompany their tūpāpaku or attend tangihanga. Those whānau were all restricted to saying a karakia at the border as their tūpāpaku were released to funeral directors to travel alone across the border.
60. In his disregard of other considerations and sole focus on finding a resolution for Group V, Officer A has overstepped his role and gone beyond his authority. His actions did not uphold the Health Order and they were also not within the boundaries of the law and Police discretion. He acted unlawfully and breached the Health Order, both personally and in facilitating Group V to cross the border.

Did Officer A help Group W cross the border on 9 September 2021?

61. In early September 2021, an elder member of Group W passed away in Tāmaki Makaurau. The immediate whānau lived in Wellington and wanted to travel to farewell their loved one and then stay in Tāmaki Makaurau until the Alert Level lowered so they could safely return home. Group W applied for exemptions to do so but were declined. Group W’s son, Officer G, is a sworn Police officer. They asked Officer G if there was any way he could help. Officer G did not think there was,

but thought he would check with his manager, Officer H, so he knew he had fully explored the option for his whānau.

62. Group W decided that they needed to try and attend the funeral. They were happy to drive to the border and be turned away, but felt it was a necessary step for them to take in their grieving. When Officer G asked Officer H if there was any way they could help his whānau, he let Officer H know that Group W were travelling to the border regardless. Officer H said he would speak to Officer A and see if a crossing would be granted on compassionate grounds but was clear that there were “no promises” any action could be taken.
63. On 9 September 2021, Group W travelled to the Tāmaki Makaurau border. Officer A determined that the travel and crossing was permissible for two reasons:
 - the risk to the community outside of Tāmaki Makaurau was non-existent as Group W were entering Tāmaki Makaurau from a lower Alert Level and not returning until the risk had lowered and the border reopened; and
 - because, in his view, Group W’s situation qualified on compassionate grounds.
64. Officer A emailed Officer I, who worked as part of the team on the southern border, to inform him of his decision.
65. Officer I worked with Officers E and F (his manager). When Officer I received the email from Officer A, he noted that this situation did not fall under any of the exemptions of the Health Order, and Officer I emailed Officer A explaining that the travel was not permissible.
66. Officer A thought Officer I’s decision was “inhumane” but accepted that Group W would not be allowed to cross the border. He called Officer H to tell him to let Group W know that they would not be able to cross the border into Tāmaki Makaurau. When he spoke to Officer H, Officer H told Officer A that Group W had already managed to pass through the border.
67. During our investigation, we discovered that checkpoint staff spoke on the phone to Officer G while Group W were at the border. Officer G advised checkpoint staff that he was waiting for confirmation from an Inspector as to whether Group W could travel on compassionate grounds. The checkpoint staff mistakenly let Group W through prior to receiving authorisation from any inspector.

Were Officer A’s actions in attempting to help Group W cross the border justified?

68. The Health Order in place at the time of this event was COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) 2021. Although the Health Order had been updated, the restrictions on travel to view a tūpāpaku or for tangihanga purposes under Alert Level 4 continued.
69. As outlined above, Police had no powers under the Health Order to grant exemptions. There was also no Police discretion available to officers to authorise border crossings on ‘compassionate grounds’ (as Officer A mentioned in his email to Officer I), which Police briefings had covered extensively. One Assistant Commissioner told us:

“The briefings to staff were always on the borders, it’s going to be really hard, you’re going to encounter the plethora of situations, some of them will be gut wrenching and heart wrenching and all that sort of stuff but the rules are the rules...there’s no discretion to interpret the rules”.

70. In his actions, Officer A again assumed an authority that was not his in reviewing circumstances and deeming what was and was not permissible travel under the Health Order.
71. He then attempted to interfere with the operation of the checkpoint by sending an email granting an exemption to Group W without any legal authority. In this instance, his attempted interference was thwarted by a Forward Commander on the checkpoint. However, because of confusion at the border as to whether the whānau had authorisation to travel, they were allowed to cross into Tāmaki Makaurau.
72. Officer A attempted to facilitate Group W to cross the border. However, his authority was rejected, and it was not, in the end, his authority which allowed Group W to pass into Tāmaki Makaurau.

Did Officer A help Group X cross the border on 10 September 2021?

73. On 9 September 2021, Officer A received a phone call from a health care provider in Waikato regarding a terminally ill patient (Ms X) whose partner, who was also her primary caregiver, had recently passed away.
74. Due to the circumstances, Ms X required a caregiver. Ms X’s mother and her mother’s partner were able to assist Ms X, but they needed to travel from Tāmaki Makaurau to do so. Neither of them had a driver’s licence and a friend agreed to drive them across the border.
75. Officer A requested that the health care provider send him documentation confirming the following circumstances:
 - in particular, that no other caring arrangements could be made in Waikato;
 - the health-status of the patient; and
 - the names of the three people travelling.
76. The health care provider sent through the required documentation that evening.
77. Early on 10 September 2021, prior to Officer A replying to the health care provider, one of the provider’s colleagues also emailed Officer A. In the email, this health care provider stated: *“You were contacted last night from [Ms X’s] Health carer for a letter regarding her Mum, Partner and driver to attend the Tangihanga today in Huntly”*. Officer A responded to this email to ask for the names of the travellers for the documentation for authorisation to travel.
78. The members of Group X were Māori, elderly and unsure about crossing the border. Officer A called one of his MPES team, Officer J, to ask if she was available to meet Group X at the border and assist with their crossing. Officer J was already at the southern border as part of her regular

duties. Officer A gave authorisation for Group X to cross and, after speaking on the phone with Officer J, Officer A emailed her the written authorisation he had compiled.

79. Officer J agreed to assist Group X on the basis of what Officer A had sent her and spoke with southern checkpoint staff about the situation. She did not show them any of the documentation, as she felt it was an ordinary request and they did not ask to see it. Officer J met Group X's car at the checkpoint and checked their identification before allowing them to drive out of Tāmaki Makaurau.

80. Officer A told us that he had asked Officer J to be on the checkpoint for Group X for the following reasons:

- Group X were under significant emotional stress and Officer A wanted them to be treated appropriately.
- The southern border had regular “*service delivery failures*” for the Māori community. Officer A felt there was disproportionate scrutiny placed on travel of Māori, and therefore the presence of Officer J would ensure this did not occur for Group X.

81. One of the checkpoint staff called Officer I to let him know that Officer J had assisted a car through the border. Officer I then let Officer F know about the matter. Officer F emailed both Officer A and Officer C (copied into the same email), stating that the travel was potentially in breach of the Health Order.

82. Officer A emailed Officer F the documentation he had compiled and noted that the travel was permissible. Officer F replied and raised the following concerns with Officer A and Officer C:

- the understanding was that only one person should be let through to care for a terminally ill person, rather than two (and a driver);
- contact had been made with the Ministry of Health who said an exemption would be declined for three persons on these grounds;
- the initial email said Group X would be attending a tangihanga; and
- staff did not believe the address Group X supplied was legitimate.

83. Officer F suggested Officer A contact Group X and either tell them to return or (at the least) ensure they were COVID-19 tested to protect the Waikato community. Neither Officer A nor Officer C replied to Officer F.

Were Officer A's actions justified?

84. The Health Order in place at the time was COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) 2021. Under that Order, travel across the border for tangihanga purposes remained forbidden. However, Schedule 5 item 6 of that Order grants an exemption for travel to:

“Provide urgent care for a child, or provide care or support to a person in a critical or terminal condition, if no other appropriate person is able to provide that care or support in the alert level area in which it is needed.”

85. The misunderstanding among officers in this allegation appears to arise from the fact that although Group X were travelling to the Waikato to care for a terminally ill person, part of that care would involve assisting her to attend the tangihanga of her partner who was previously her primary care giver.
86. We note also that Schedule 5 item 6 is ambiguous as to the permitted number of persons allowed to have the advantage of the exemption in any given situation. Based on the full explanation of Group X’s circumstances, which were backed by supporting documentation, and taking into consideration this ambiguity, this border crossing was permissible travel under the Schedule 5 item 6 exemption. As such there would be no need for a travel exemption to be authorised by the Ministry of Health and the supporting documentation should have been adequate for checkpoint officers to confirm Group X’s circumstances and allow Group X to cross the border.
87. We asked Officer A about the fact the health care provider had disclosed that Group X intended to travel to attend a tangihanga while in Waikato. He told us that it was his job only to determine whether travel was permissible on compassionate grounds, and not to dictate Group X’s activities once they had crossed the border. This is partially correct.
88. It is not Officer A’s job to determine whether travel is permissible on any grounds, compassionate or otherwise. However, provided people are travelling for permissible purposes, the Authority agrees that once they have crossed the border, it is not the role of Police to dictate their otherwise lawful activities.
89. Group X were travelling for a permissible purpose under the Health Order. Officer A’s actions in assisting Group X in this instance were within his role as a Māori Responsiveness Manager.

Did Officer A help Group Y cross the border on 20 and 21 September 2021?

90. On 20 September 2021, Group Y (a mother and her teenage son) attempted to cross from Tāmaki Makaurau to Waikato. At the border, Group Y were stopped by checkpoint staff to check their documentation. Group Y presented essential worker documentation (Documents A) from an iwi-based organisation.
91. When questioned, Group Y said that their Ministry of Health applications for an exemption had been declined as they were trying to attend a tangihanga in Waikato. On this basis, checkpoint staff told Group Y they could not cross the border. They determined that despite having the correct documentation, Group Y’s intended purpose to cross the border was not solely to conduct essential work.
92. On 21 September 2021, Mr U, who worked for the iwi-based organisation, sent Officer A two emails about Group Y. The first email outlined that Group Y were attempting to cross the border for a tangihanga. The second email (sent prior to Officer A replying to the first) said *“desperate times call for desperate measures”*. Mr U stated that he had found a way to utilise the skillset of Group Y in another iwi-based organisation, therefore he could issue them Essential Worker

documentation (he had attached Documents A to the email) which would allow them to cross the border.

93. Officer A's response did not directly address either of Mr U's emails. Instead, he forwarded an email outlining his proposed guidance for changes to the tangihanga restrictions. Mr U then replied stating that the plan for Group Y to cross with the Essential Worker documents would be going ahead (he attached Documents B, Essential Worker documents from a Waikato-based government agency that Mr U also works for).
94. When Group Y attempted to cross the border for the second time, they were carrying the second set of Essential Worker documentation (Documents B). The staff on the checkpoint recognised Group Y from their attempt to cross the border the day before and questioned the documentation. Group Y gave Officer A's name as a point of contact and checkpoint staff then called Officer A, who did not answer the call.
95. As the checkpoint staff could not contact Officer A, they assessed the circumstances themselves. In both instances, Documents A and B were enough to allow Group Y to travel into Waikato, but the checkpoint staff determined that the documentation was not being used for its legitimate purpose and turned them away from the border again.
96. Officer A later returned the call to checkpoint staff and told them that his understanding was that Group Y were crossing for essential work and that he was not aware of a tangihanga.
97. Group Y did not manage to cross the border.

Did Officer A act appropriately regarding Group Y's attempted border crossing?

98. The Health Order in place at the time of this event was COVID-19 Public Health Response (Alert Level Requirements) Order (No 11) 2021. Restrictions on travel for tangihanga remained in place.
99. Officer A says that as far as he was aware, Group Y's intention was to travel to the Waikato and provide an essential service to iwi there and they had the appropriate essential worker documentation for that purpose. In his view, that should have been sufficient to enable Group Y to cross the border.
100. We asked Officer A why he did not question Mr U when he knew that Group Y were going to attend a tangihanga. Officer A told us that if an organisation was willing to issue essential worker status, what the group then did in the Waikato was not in his remit. If they also attended a tangihanga once in the Waikato, that was none of his business.
101. As per paragraph 88 above, the Authority agrees that if people are travelling for a permissible purpose and have legitimate documentation, it is not the role of Police to dictate their lawful activities after they have crossed the border. However, as Officer A was aware of the tangihanga from the emails Mr U had sent to him, he should have told the checkpoint staff of this when he returned their call.
102. Officer A did not facilitate the movement of Group Y across the border in contravention of the COVID-19 Health Orders.

103. Officer A told us that the questioning of Group Y was an example of the extra scrutiny being applied to Māori. Group Y had legitimate documentation but were questioned a second time and turned away.
104. The additional scrutiny applied by checkpoint staff and subsequent refusal to allow them to cross the border was due to the fact that checkpoint staff recognised Group Y and their vehicle from being turned back the day before. Staff also believed that, despite the documentation, Group Y were actually travelling for tangihanga purposes.
105. During the course of our investigation, we were able to determine that Documents A had been forged and Police had been alerted to this by the iwi-based organisation as soon as they became aware. We were unable to determine whether Documents B were also forged, but believe it is likely as the person who purportedly signed Documents B has no recollection of signing them. Officer A told us that he was not aware that the documents were illegitimate. He told us that he knew that the organisation issuing the documentation had had issues with forgery but was not sure if he was aware about this before or after 21 September 2021.
106. The fact that the essential worker documentation later proved to be forged does not change our view as Officer A was unaware at the time that the documents were illegitimate.

Did Officer A help Group Z cross the border on 23 September 2021?

107. In late September 2021, Group Z, a large Tāmaki Makaurau-based whānau, experienced multiple deaths by suicide within their whānau and at their home, which had profound effects on their wellbeing. For welfare reasons, the whānau decided they needed to move away from their existing house and relocate to the Waikato.
108. The MPES Māori Responsiveness Manager from the northern border, Officer K, contacted Officer A for advice about facilitating Group Z to cross the southern border.
109. Officer A advised Officer K that, in the first instance, he should elevate the matter to his District Commander.
110. Officer A then raised the matter with his District Commander, Officer C, and Officer K approached the District Commander for Waitematā. Officer K told us that both District Commanders agreed to give discretionary authority for the whānau to cross the border on humanitarian grounds. However, when this discretionary authority was communicated to the Forward Commander at the checkpoint, it was rejected as not being applicable, and Officer C was informed that under the current restrictions the travel could not occur.
111. Officer C then reconsidered the situation and advised Officer K to draft a proposal and seek approval from management at Police National Headquarters and the head of Police COVID-19 response.
112. The proposal was drafted by Officer K and sent upwards for sign-off. The National Controller Police COVID Response then contacted the Response Manager at the Ministry of Health to seek advice on the matter, and in particular whether an application should be made to the Director General

of Health. The Response Manager advised that it appeared to be a situation that might be covered by the emergency provision in the Health Order.

113. The National Controller Police COVID Response then responded to Officer K by email, copying in Officer A and Officer C, outlining the Ministry of Health decision and instructing that, subject to all parties having a negative COVID-19 test, Group Z should be facilitated and supported to move across the border under the emergency exemption.
114. The whānau were then moved from Tāmaki Makaurau to Waikato with the assistance of Police.
115. Although Officer A initially discussed the matter with Officer K and raised the issue with Officer C on behalf of Officer K, there was no further involvement by Officer A, and he did not facilitate the border crossing by Group Z.
116. We note Officer A's advice to Officer K (see paragraph 109) distinctly contrasts with Officer A's own actions earlier in the month, where he did not elevate any of the matters discussed above to his District Commander for advice or support. This advice to Officer K also does not accord with Officer A's assertion that based on Crown obligations, Tikanga Māori and in his role as Māori Responsiveness Manager, he was entitled to personally transport whānau across the border.

Did Police respond appropriately when allowing Group Z to cross the border?

117. While Officer A did not have a direct role in this travel across the border, Police did. For completeness, we have assessed the full circumstances and lawfulness of this.
118. The Health Order in place at the time of this event was COVID-19 Public Health Response (Alert Level Requirements) Order (No 12) 2021 which came into effect at 11:59 pm on 21 September 2021. Under this Order Tāmaki Makaurau moved to Alert Level 3 and the rest of New Zealand to Alert Level 2, though the borders remained in place and travel was still restricted.
119. Although 'emergency' is not defined in the Health Order and therefore could be interpreted quite broadly, it is clarified somewhat by Schedule 5 item 15 where it states:

"Permitted travel into, out of, or through alert level areas:

Emergencies

15 If necessary, to preserve their own or any other person's life or safety".

120. Through the actions of the Forward Commander at the checkpoint denying the travel, the two District Commanders were reminded that they did not have discretionary authority to authorise an exemption on humanitarian or any other grounds. The District Commanders were also encouraged to follow the correct procedure in seeking advice from the Ministry of Health.
121. The correct procedure was then followed by the National Controller Police COVID Response who sought advice on the situation from the Ministry of Health. However, we consider the circumstances of the case were not an emergency. The dictionary definition of an emergency is "A sudden serious and dangerous event or situation that needs immediate action to deal with it". The situation facing Group Z, while terrible and traumatic, was not an emergency and we consider the advice received from the Response Manager at the Ministry of Health was incorrect.

122. It is entirely understandable that Group Z wished to move house in the circumstances, and we agree that they should have been supported to move both house and region. However, we do not believe it was an emergency situation requiring an immediate resolution. There was time to go through the process of a formal written application to the Ministry of Health for an exemption and that application could have been supported by Police.

FINDINGS ON ISSUE 1

Officer A personally breached the COVID-19 Health Order by crossing the border and also facilitated members of Group V to cross the border in breach of the COVID-19 Health Order.

Officer A attempted to facilitate the movement of Group W across the border in contravention of the COVID-19 Health Orders.

Officer A did not facilitate, or attempt to facilitate, the movements of Group X, Group Y or Group Z across the border in contravention of the COVID-19 Health Orders.

The National Controller Police COVID Response followed the correct procedure in obtaining advice from the Ministry of Health.

ISSUE 2: DID THE DISTRICT COMMANDER, OFFICER C, HANDLE THE ALLEGATIONS ABOUT OFFICER A'S CONDUCT APPROPRIATELY?

123. Officer C is the District Commander for Counties Manukau and Officer A, as Māori Responsiveness Manager for Counties Manukau, reports directly to her. Officer C is responsible for supervising Officer A and managing his performance and welfare.

124. Two factors have been analysed in regards to this issue:

- 1) the management of the allegations about Officer A's actions; and
- 2) the feedback provided to Officer A about his decision-making and actions.

Did Officer C appropriately manage allegations made about Officer A?

125. Although Officer C works in the same building as Officer A, she told us that she does not actively manage his work or consult with him on daily decision-making. This is due to both her management style, and the high trust model that many senior Police staff show to one another.

126. Because of this style of management, although Officer C was aware that Officer A was feeling conflicted about aspects of the Health Order, particularly in relation to the restrictions on travel for tangihanga, she was not aware that this conflict would lead to him taking the actions he did. She was not aware in advance of his intention to personally transport Group V to the tangihanga and she was also not made aware of these actions by Officer A after they had occurred.

127. We put it to Officer A that he should have discussed this matter with Officer C as part of a 'no surprises' policy. He said he did not do this because these were daily decisions and "*the right thing to be doing*". As a senior officer, he was aware of the content and effect of the Health Order and

should have realised that such action was sufficiently out of the ordinary that it was a potential risk for Police. At the very least, Officer A should have spoken to Officer C before taking such action and should definitely have advised her afterwards.

128. Instead, the situation was brought to light by Officer E who telephoned Officer C on 5 September 2021 to report Officer A transporting Group V across the border in breach of the Health Order.
129. On 9 September 2021, following further complaints received from other officers about the actions of Officer A, Officer C spoke with Officer A to discuss the Group V matter. She says he explained how he had ended up in the position he had, and the decision-making he had applied to his actions. Officer C told us she supports Officer A's decision-making and actions, although she feels he could possibly have handled the situation differently.
130. Officer C did not act promptly when she first received the information about Officer A's actions on 5 September. Consequently, by the time this discussion occurred, four days later, Officer A was already involved in the second alleged conflict situation, where he authorised and attempted to facilitate Group W's travel across the border in breach of the Health Order.
131. These types of situations were the very subject of the discussion between Officer C and Officer A. However, Officer A did not specifically bring the information about his involvement with Group W to her attention.
132. Despite later discovering that Officer A's disregard of the Health Order was ongoing in relation to Group W, Officer C did not censure Officer A or provide any direction on the need to uphold and enforce the Health Order. Officer C also did not insist that she be kept informed of these types of situations or advise Officer A to elevate similar situations to her for discussion.
133. Surprisingly, Officer C elected not to focus on the fact that Officer A's actions were a potentially serious breach of the Health Order and as such, potentially a breach of the Police Code of Conduct. She appeared to minimise his actions and disregard the complaints of other officers about his facilitation and, in one case, transportation of people across the border.
134. While Officer C was understandably and rightly concerned about Officer A's welfare and the impact on him of the criticisms being levelled against him, she did not ensure Police fully considered and investigated Officer A's actions which gave rise to the complaints in a timely manner.
135. It is appropriate for officers to raise concerns of this nature, and the officers raised them in the correct manner and in the expectation that their concerns would be taken seriously. In the event, those officers were not supported to the extent they should have been, and they felt their criticisms were downplayed and dismissed.
136. When the matter of Officer A's actions was first raised with her on 5 September 2021, Officer C, at the very least, should have taken immediate action to speak with Officer A, obtain details from him of his actions and consider what steps she and Police should take.

Did Officer A receive appropriate feedback?

137. Throughout the alleged events, Officer A has claimed a discretion to undertake the actions he did. Although, as noted earlier, there is no lawful discretion for Officer A, or any Police officer, to make these decisions or give these authorisations, the feedback he says he received from Officer C and an Assistant Commissioner on about 9 September 2021 appeared to approve of his actions. This feedback, combined with the distinct lack of censure by Officer C, has led Officer A to continue to assume authority that he did not have.
138. It is clear that there is a significant lack of understanding by some officers, including very senior officers, of the limits of Police discretion. It is not obvious why this is the case, since the officers who raised their concerns about Officer A with Officer C included at least three officers of the same rank as Officer A and they were evidently aware of those limits.
139. One Inspector noted his concern (when speaking about the first allegation) that:
- “...the decision and subsequent passage through the checkpoint by this group is neither lawful or appropriate, it is not aligned with the Health Order or the direction provided by our partners and most importantly does not align with our values”.*
140. In his interview with us, that same Inspector added: *“...it was absolutely paramount in terms of the spread of COVID, you know, we followed that Health Order to the letter of the law”.*
141. Another senior officer also commented: *“...it’s a Ministry of Health order so, to me when there’s something in there that’s black and white, that takes the discretion out of it for us”.*
142. Officer A states that the feedback from Officer C confirmed that: *“Police have to apply common sense and humanity to our decision-making processes in relation to matters such as these”.* He says the feedback from the Assistant Commissioner: *“...advised me that he supported the decision that I had made and would have also authorised it as we are required to do the right thing and, in the circumstances, my decision was the correct one”.*
143. Officer C was aware of the criticism Officer A and the MPES team were receiving from other officers because of the events involving Group V and Group W. This was creating a lot of tension on the checkpoint and Officer C wanted the Assistant Commissioner to endorse the decisions which had been made in those two situations so that everyone could just move on. She had spoken with the Assistant Commissioner a number of times about the difficulties the restrictions on travel for tangihanga were creating. On about 9 September 2021, Officer C called the Assistant Commissioner and says she briefed him on the issues. She told us:

“I went back to [the Assistant Commissioner] and said, “we have to sort this out, this is just becoming a flashpoint, this is an absolute flashpoint for our staff.” And that’s when he gave us the authority to continue to make those common-sense decisions and that he would support us.”

144. Officer C also reiterated that advice to the Forward Commanders on the checkpoint, saying:

“Look I’ve had this, this is the plan, it’s going to all of Government. I’ve raised it with the Assistant Commissioner, who has said that the settings that we have at the moment are in the right place and that he will continue to support our decision-making.”

145. This is not how the Assistant Commissioner remembers the conversations with Officers A and C and he believes they have both misinterpreted the conversations he had with them. He says that he was made aware by Officer C that Officer A was working under pressure and struggling with the challenges of his role, particularly in light of the settings in the Health Order around tangihanga. He says he advised Officer C that formal submissions should be made outlining those concerns and he called Officer A simply to provide general support. He also says that he was unaware at that time that Officer A had been involved in the border crossings by Group V and Group W and that he would never have approved such specific actions because Police had no discretion or power to provide exemptions in these matters.

146. This was an extremely busy time for Police and there were a number of calls each day dealing with different elements of the lockdown, including the border and checkpoint issues. There were limited notes or emails created about these conversations and assumptions were made about prior knowledge of events. We accept that everyone’s recollection of these calls is uncertain, but it is clear that Officers A and C believed the Assistant Commissioner had endorsed the decisions which had been made and it is equally clear that the Assistant Commissioner strongly believed he had not and could not endorse such actions.

147. This confusion, in addition to the failure by Officer C to appropriately manage the allegations about Officer A’s conduct and provide feedback and direction about the absence of Police discretion when enforcing the Health Order, has led Officer A to believe his decisions were sanctioned by Police and to act accordingly.

FINDINGS ON ISSUE 2

The District Commander, Officer C, should have ensured Police fully considered and investigated Officer A’s actions when she was first informed of them on 5 September 2021.

Officer C should have provided clearer advice to Officer A of the extent of his role and discretion in such circumstances.

ISSUE 3: DID THE ACTIONS OF OFFICER A IMPINGE ON PUBLIC TRUST AND CONFIDENCE?

Did Officer A’s actions align with Police’s values and Code of Conduct?

148. New Zealand Police has six values and officers undertake to uphold all six values when carrying out their role as part of the legal process.

149. These Police values are aspirational. They are professionalism, respect, integrity, commitment to Māori and the Treaty, empathy, and valuing diversity. They are expanded on as follows:

Professionalism - We take pride in representing Police and making a difference in the communities we serve. Looking and behaving professionally, combined with our expertise is core to helping our colleagues and communities feel safe and be safe.

Respect - We treat everyone with dignity, uphold their individual rights and honour their freedoms. Being respectful of each other and the communities we work with builds trust and confidence in our organisation.

Integrity - We are honest and uphold excellent ethical standards. Our integrity as individuals, and as an organisation, is critical to building the trust and confidence of our colleagues and the communities we serve.

Commitment to Māori and the Treaty - We act in good faith of, and respect, the principles of Te Tiriti O Waitangi – partnership, protection and participation. Working with Māori is essential to our success. Only together can we build the support and relationships vital to reversing the over-representation of Māori in the criminal justice system.

Empathy - We seek understanding of and consider the experience and perspective of those we serve. We get better results when we appreciate situations from the point of view of the people we serve and work alongside.

Valuing Diversity - We recognise the value different perspectives and experiences bring to making us better at what we do. Reflecting the communities we serve and appreciating different thinking will lead to better problem solving and results”.

150. Officer C in her interview with the Authority noted that Police officers: “Honour six values, not one...we live by six values”. None of the values stand alone or are prioritised above the others. Rather, each of the values is entwined with the others.
151. At the time of these allegations, Officer A was a senior officer with more than 14 years’ experience in Police. For three of those years, he has been the Māori Responsiveness Manager for Counties Manukau.
152. Tikanga Māori and the Police value of Commitment to Māori and the Treaty are interwoven throughout the six Police values. Officer A believes his actions during these allegations were a way of continuing to uphold the Police values while finding an equitable outcome for the Māori community. He believed he acted in a way which promoted compliance with the spirit of the Health Order for example by putting appropriate health measures in place during the transportation of Group V.
153. Although we can see that his actions throughout appear to be genuinely motivated and well-intentioned attempts to uphold the Police values, by failing to ensure his actions and authorisations were lawful, Officer A has nevertheless breached the Police Code of Conduct.
154. It appears that Māori Responsiveness Managers are, on occasion, placed in situations of conflict between law and lore - between their duties as Police officers and their service to their Māori communities. Officer A has been in this position in at least two of these allegations.
155. Another Māori Responsiveness Manager told us:

“...the guidelines were quite black and white from a Government point of view. But that introduced the very, I guess, real conflict for particularly me or any of my staff that work in Te Ao Māori in terms of Tikanga versus the law and obviously the acknowledgement in common law now of Tikanga Māori. ...I have to say there’s been a lot of talk but not a lot of action sometimes...you know, it was finding the balance between the conflict”.

“On the one hand the organisation is saying these things about they want us to, you know, do the right thing by Māori and when we look at our Māori strategy, you know, there’s reference to being cognisant of Tikanga, but then you have that very real conflict of how you facilitate that in instances like this”.

156. The Authority agrees that Tikanga Māori should be an integral part of law making and should be given weight during the legislative process. However, once a law is enacted, whether or not it is felt that Tikanga has been given due consideration, Police are expected to enforce that law. In a similar way to Police discretion, Police values cannot be used to rationalise behaviour that is unlawful.
157. The Authority does regard it as important that this ongoing tension is recognised, and that officers are trained to recognise potential situations of conflict, and encouraged to obtain advice and elevate matters where needed. Active management and guidance should be provided to officers in similar positions to Officer A to ensure they are supported when difficult situations arise.

Were Officer A’s actions justified under Te Huringa o Te Tai – the Police Crime Prevention Strategy?

158. As well as citing Police values, Officer A further defends his actions by saying he was acting in accordance with the Police Te Huringa O Te Tai (The Turning of the Tide) crime prevention strategy.
159. Te Huringa o Te Tai strategy was developed by iwi and Police in 2012 to address the over-representation of Māori in the criminal justice system. It is a way of operationalising the Police value of Commitment to Māori and the Treaty to try and achieve better outcomes for Māori.
160. A national expert in the areas of criminal justice and state sector responsiveness to Māori, gave evidence at a trial in November 2017 that:

“The Turning of the Tide strategy invites officers dealing with Māori offenders to, one, take another look. Is there an alternative way to deal with this situation? Two, talk to your iwi liaison officer and your Māori partners. What other Māori agencies, or whānau, or providers can you go to for help or assistance? Three, think outside the square. Dealing with a situation effectively and efficiently doesn’t always mean by the book. Tino rangatiratanga, empowering the whānau unit, means long-term solutions”.

161. Officer A’s actions in seeking to provide guidance and alternatives to the Māori community are consistent with the Police stated aim of being responsive to Māori and with current Police policies and strategies. However, Officer A was not dealing with offenders, nor was this a criminal justice situation. Rather, his actions occurred in a COVID-19 setting and under the restrictions of a Health Order that applied to the entire population.

162. The national expert also noted in his evidence that there is a caveat on the implementation of the strategy:

*“Obviously, it goes without saying that the adoption of Turning of the Tide strategies, in any particular case, **must operate within the framework of the law**. Turning of the Tide does not give any mandate to Police to operate outside of the law. It does, however, encourage officers to seek alternative, **lawful** solutions to respond to situations involving Māori offenders”.* (Emphasis ours).

163. The Authority agrees with this, which reinforces that Officer A’s reliance on the Te Huringa o Te Tai strategy does not justify his actions.
164. The Authority does not accept that this Police strategy gave Officer A the lawful authority to permit travel by members of the public across the border against the restrictions of the Health Order in place at the time. Nor does it empower him to take unlawful action, such as personally transporting Group V through the border to a tangihanga when such action was specifically prohibited by the Health Order at the time.
165. Officer A’s actions were beyond the scope of his authority as a Police Inspector and inconsistent with Police policy applicable at the time.

Did Officer A’s actions undermine public trust and confidence?

166. When the fourth iteration of Operation Romeo commenced (see paragraph 9), the Delta variant of COVID-19 had been found in Tāmaki Makaurau and there was a high risk of a community outbreak (particularly in areas with low vaccination rates). This required strict and necessary health measures.
167. Police acknowledge that policing by consent carries significant responsibilities and how vital it is for communities and whānau to have trust and confidence in the way that policing is delivered in New Zealand.¹⁰
168. At the time of these events, public trust and confidence in the Police and the Ministry of Health restrictions to control the borders was generally considered to be high. The purpose of the borders was to prevent the spread of COVID-19 into the rest of New Zealand.
169. Many of the checkpoints that had been set up around Tāmaki Makaurau had iwi members working alongside officers. However, in her interview with the Authority, Officer C noted that the southern border did not have iwi working on the checkpoint and that this was because: *“Iwi trusted us to enforce and manage those borders to keep them safe”*.

¹⁰ New Zealand Police | Nga Pirihimana o Aotearoa “Programmes and Initiatives: Understanding Policy Delivery”: www.police.govt.nz.

170. In a media statement on 22 September 2021, the Deputy Commissioner: Iwi & Communities noted:

“Waikato Māori want to ensure the safety of their people...they are very supportive of Police managing the border and checkpoints and have assisted in addressing any initial border related issues with a local hapū in the area. They have left Police to manage the borders and checkpoints while they get on with the key task of getting as many of their people vaccinated and supported.... This is engagement with our people. This is how to do it well”.

171. Many people were restricted from attending tangihanga and from crossing the border and were helped by Police and iwi on the borders to understand the reasoning for these restrictions. MPES staff also had a role in reassuring whānau at the border and this helped many whānau to trust that the restrictions were necessary and to trust the Police role in the process.

172. Officer A’s actions in personally breaching the border, together with his continued facilitation, or attempted facilitation, of others crossing against the restrictions then became known to the general public through the media. At the time, there were highly publicised cases where members of the public who had breached the border were being arrested and prosecuted promptly. Some members of the public became disgruntled that there appeared to be no action being taken against Officer A, particularly since the events appeared to involve a wilful disregard of restrictions during a national pandemic.

173. At the time of these events, Officer A was in a position of trust and authority. His actions were arguably an abuse of that position. Members of the public expect Police to undertake their duties fairly and apply the law the same way to everyone.

174. Officer A denies his actions would have impinged on public trust and confidence. He asks: *“Whose trust and confidence has been undermined? Because actually, in the eyes of our Māori, it’s been significantly enhanced”.*

175. This may well have been the case for some in his community, but much of the feedback has not been so positive. As an example, one member of the extended Group V, who is also a Police officer, was part of the initial whānau discussions with MPES but did not facilitate or attend his relative’s tangihanga. This was because he was aware of the restrictions around such travel and understood the reasoning for them. He was unaware that Officer A had transported the whānau across the border without exemptions and, when interviewed, was clearly upset and disappointed by the whole matter.

176. Additionally, there have been a number of emails to both Police and Officer A himself from members of the public who have seen the matter as being a case of ‘one rule for us and another for the Police’.

177. The actions of Officer A have impacted on the trust and confidence the general public have in Police. This has been further impacted by the lack of any visible repercussions being taken by Police as Officer A was not charged with any offence.

178. Overall, we find that Officer A's actions were unlawful and counterproductive to the Commissioner's intent of 'Policing by consent' and *"to have the trust and confidence of all"*.

FINDINGS ON ISSUE 3

Though Officer A attempted to uphold Police values, by failing to ensure his actions and authorisations were lawful, Officer A has breached the Police Code of Conduct and impinged on public trust and confidence in the New Zealand Police.

Officer A's actions were not justified under Police's Te Huringa o Te Tai – the Police Crime Prevention Strategy.

Subsequent Police Action

179. Police initially undertook a fact-finding investigation and, when prompted by the Authority, a criminal investigation. Officer A was invited to attend an interview under caution but declined and instead provided written submissions through his lawyer. The criminal investigation found no evidential sufficiency and that prosecution was not in the public interest.

180. Police held their employment investigation in abeyance pending the outcome of the criminal investigation. While that outcome was pending, Officer A resigned from Police and no employment outcome was concluded.



Judge Kenneth Johnston KC
Chair
Independent Police Conduct Authority

24 August 2023

IPCA: 21-9202

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Kenneth Johnston KC.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our independence is similar to that of a Court.

The Authority employs highly experienced staff who have worked in a range of law enforcement and related roles in New Zealand and overseas.

WHAT ARE THE AUTHORITY'S FUNCTIONS?

Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

This report is the result of the work of a multi-disciplinary team. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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