



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihiimana Motuhake

# Officer investigated for planting ‘point bags’ inside vehicles

## OUTLINE OF EVENTS

1. In June 2018, while attending a pre-shift line-up<sup>1</sup> at the Otahuhu Police Station, Officer A produced two empty point bags<sup>2</sup> and made a comment suggesting that he was going to use them as ‘throw downs’<sup>3</sup> to enable him to search motor vehicles during his shift.
2. In July 2018 Officer A made a comment to Officer C to the effect that he (Officer A) was planting point bags inside motor vehicles in order to conduct searches under the Search and Surveillance Act 2012. Officer C was unsure if Officer A made this comment in jest, but it concerned him sufficiently to advise his acting supervisor, Officer G.
3. On 29 August 2018 during a pre-shift line-up, Officer A pulled three point bags out of his Police vest pocket. Two of the point bags were empty and one contained a residue (an unusable quantity) of a white powder, which the officer thought was probably methamphetamine.
4. After the line-up, Officer A’s supervisor, Officer H, spoke with him about the point bags. Officer A said he could not remember precisely where they came from but said he would have put them in his vest after seizing them from someone. He explained that he had intended to dispose of them at the Police station but had forgotten to do so. Officer A and another officer, Officer B, were stood down from duty while Police investigated this matter. After initial investigations were conducted, Officer B returned to duty.

<sup>1</sup> A briefing of Police officers before they commence their shift.

<sup>2</sup> Point bags are small, zip-lock bags, often used to contain drugs.

<sup>3</sup> A colloquial term used to describe the planting or fabrication of evidence.

## Police investigation

5. The Police investigation included the interview of 19 officers, including Officers A and B, a search of Officer A's home, work environs, mobile phone and text data, and an analysis of his notebook entries, arrests, and search and surveillance notifications.
6. The investigation concluded there was no evidence that Officer A had planted evidence or used 'throw downs'. However, the investigation identified shortcomings in relation to property handling procedures that were to be dealt with through an employment investigation. Officer A resigned from Police before that process was concluded.

## THE AUTHORITY'S INVESTIGATION

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7. The Authority completed an independent investigation in relation to the allegations. The Authority conducted interviews with key officers and reviewed the Police investigation file.
8. The Authority identified and considered the following issues:
  - 1) Did Officer A use 'throw downs' to search vehicles under the Search and Surveillance Act?
  - 2) Does the interaction between the officers indicate a wider problem with policing practice?
  - 3) Are Police officers informally destroying non-evidential exhibits in breach of policy?

## THE AUTHORITY'S FINDINGS

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### Issue 1: Did Officer A use 'throw downs' to search vehicles under the Search and Surveillance Act?

#### *Background*

9. After graduating from Police College in 2017, Officer A completed his probationary training period at the Otahuhu Police Station in Auckland. He spent his first year on the Public Safety Team (PST) before being transferred onto the Neighbourhood Policing Team (NPT). During his time on PST Officer A established a reputation as a conscientious Police officer who was very capable at seeking out and searching suspicious vehicles for drugs and weapons.
10. Around May 2018, the term 'throw down' became a colloquial term used loosely by some officers on Officer A's PST section. The Authority understands the term originated from a pre-shift line-up some weeks earlier. It became apparent during the Authority's investigation that officers would joke amongst themselves about using throw downs to invoke searches of motor vehicles. By all accounts, none of the officers took the term seriously, and all denied that throw downs actually occurred. Rather, they considered the term to be nothing more than a joke amongst themselves.

### Officers spoken to

11. Several officers were interviewed by Police and the Authority in relation to their knowledge of the term 'throw down' as it was used by Officer A and other members of Officer A's section.

### Officer B

12. Officer B described to the Authority his working relationship with Officer A while on the PST. He said he worked several times on patrol with Officer A and they stopped many cars during a shift. Officer B said he was a *"big believer [that] you're not going to... find stuff unless you stop cars and speak to people. So the way I operate, I will stop as many cars as I can in a shift because it's a numbers game."*
13. In relation to the term 'throw down', Officer B said that he and Officer A joked about it while on section, more than their colleagues did, probably because they got along together and had the same sense of humour. He said he had only recently learnt of the term and it *"sort of just became a joke"* amongst staff. He said the term was *"... just like banter, a running joke between people... you're taking the piss, I guess for lack of a better word. You take the piss with it but you never actually do it."*
14. Officer B acknowledged the comments that had been made and the banter between himself and Officer A about throw downs, but strongly denied ever having practised a throw down or seen Officer A doing so.

### Officer E

15. Officer E also told the Authority that the term 'throw down' was used in a joking sense amongst some staff on section, often in the context of Officer A's inclination to stop and search vehicles. He said that Officers A and B would often openly poke fun at each other about using throw downs to search vehicles.
16. Officer E described a line-up in June 2018 where someone said to Officer A: *"Hey [Officer A], are you going to get into another car tonight?"* to which Officer A replied: *"Yeah, like this"*, and then produced two point bags from his pocket. Officer E said this was an example of the banter between Officers A and B and was the only time Officer E had seen Officer A with point bags.

### Officer C

17. Officer C told the Authority that around July 2018 he was working with Officer A who had recently joined the NPT and they had a general discussion about search and surveillance. During this discussion Officer A said words to the effect: *"I keep some point bags on me in case I need to get into a car."* Officer C said he didn't really know how to respond to this comment because he *"didn't know whether he [Officer A] was joking or being serious"*. Officer C replied to Officer A: *"You need to be careful about that because [you] might get yourself in trouble."* Officer C told the Authority that Officer A's comment *"didn't sit well"* with him so he raised it with his acting Sergeant (Officer G) a few days later.

18. In relation to the pre-shift line-up on 29 August 2018 Officer C described how the group were asked to produce their disposable gloves for inspection. Officer C said that during this inspection, Officer A produced some point bags from his pocket in view of everyone sitting around the table. Officer C noticed some white powder residue in one of the bags.

#### *Officer H*

19. The 29 August 2018 pre-shift line-up was conducted by Officer A's Sergeant, Officer H, who asked the group to produce their disposable gloves for inspection. In a statement to Police, Officer H described Officer A producing a point bag from his pocket when the gloves were presented. After the line-up Officer H spoke privately to Officer A about this, and Officer A produced three point bags from his pocket. One of them contained what appeared to be white powder residue. Officer A was unable to provide Officer H with a definitive explanation of where the bags had come from, although he believed one had come from a recent arrest and the other two from cars he had searched.

#### *Text messages*

20. As part of its investigation, the Police obtained text message data from Officer A's mobile phone. Text messages dated 13 June 2018 between Officer A and his domestic partner (also a serving Police officer) were retrieved that made reference to throw downs:
- Officer A sends text message *"got to get better at getting into cars"*.
  - Partner replies *"better at the fish and chip act haha"*.
  - Officer A sends text message *"actually use my throw down"*.
  - Partner replies *"yeah exactly"*.

#### *Officer A's explanation*

21. Officer A told the Authority it was common practice for him and Officer B to talk between themselves and with others about their success in searching cars and arresting offenders. He said their ability to achieve results led to praise from many people: *"I mean, we were effectively famous for it on section and outside of section...."*
22. In relation to the term 'throw down', Officer A explained that he first heard the term at a line-up around May 2018. He said there was a light-hearted discussion about the days before Police had the powers under the Search and Surveillance Act and whether officers may have used throw downs to make arrests. He said the suggestion was made as a joke amongst those present.
23. In relation to the comment he made to Officer C that *"I keep some point bags on me in case I need to get into a car"*, Officer A recalled joking with Officer C about it, telling the Authority *"Yeah, I remember joking with [Officer C] because he was part of the section. It was just a joke."*

24. In relation to the June 2018 line-up where Officer A was asked if he was *“going to use a throw down to get into a car that night”*, and to which he allegedly responded by pulling some point bags from his pocket exclaiming: *“Yeah, like this”*, Officer A told the Authority he could not recall that happening but acknowledged that that sort of joke may have been made.
25. When spoken to about the 29 August 2018 line-up, Officer A said that three point bags fell out of his pocket while the staff were presenting their disposable gloves. He said he spoke with Officer H after the line-up explaining that he could not recall exactly where the point bags had come from, but he thought they may have been from a recent search he had done of someone’s car.
26. In relation to the text message he sent on 13 June 2018 saying *“got to get better at getting into cars”*, Officer A explained that he was wanting to enhance the way he searched vehicles and he was considering at the time preparing a guidance sheet for inserting into his notebook to remind him of the areas in the car that should be searched. In relation to the throw down comment in that text exchange, Officer A said it was a *“running joke on section and that is a text message and pretty easy to take out of context which is clearly what’s happened because if you look at it within the context of the section it was pretty common terms, a pretty common thing to joke about.”*
27. In summary, Officer A was adamant that he had never used, and would never use, point bags or any other item as a ‘throw down’ to enable him to search a car. He stressed that any comments made about him or attributed to him in relation to throw downs were in the context of a joke and nothing more.

### *Concluding comments*

28. The Authority has reviewed the full Police investigation file including the interviews which came to the conclusion that there was no evidence to indicate that Officer A used *“throw downs”* in order to unlawfully search vehicles or any other searches.
29. The Authority’s view is that the combination of the possession of point bags on separate occasions two months apart, the discussion between officers of their potential use, and the text messages between Officer A and his (domestic) partner creates a level of suspicion over the policing practices of Officer A. Notwithstanding this, the Authority agrees with Police that there is no evidence to substantiate a finding that Officer A was acting unlawfully and corruptly by ‘planting’ evidence in order to search motor vehicles.
30. The Authority has, however, identified some broader shortcomings in exhibit handling which is discussed below at Issue 3.

### **FINDING ON ISSUE 1**

**There is no evidence to substantiate a finding that Officer A used ‘throw downs’ to unlawfully search vehicles under the Search and Surveillance Act.**

## Issue 2: Does the interaction between the officers indicate a wider problem with policing practice?

31. Whilst the investigation has found no conclusive evidence that throw downs were being used by Police officers, the Authority is concerned that the context within which the term was being used points to a set of inappropriate attitudes and practices, at least within the particular section within which the officers were working.
32. It is clear from the Authority's interviews with Section staff that they partly measured success on the job in terms of the number of arrests they made as a result of random or suspicious vehicle stops. While the references to "throw downs" may have been intended as a joke, they were being made as part of broader conversations about how to stop and search vehicles. Officers A and B admitted to talking amongst themselves and to others about how to increase their success in making arrests through vehicle stops. Officer A's text messages to his partner also appear to demonstrate a willingness to stop cars on dubious legal grounds in order to increase his arrest statistics.
33. The Authority has two significant concerns about the policing culture manifested by this behaviour.
34. Firstly, it points to a willingness for officers to stop vehicles for the primary purpose of questioning occupants and searching vehicles in the hope of uncovering evidence of offending and making an arrest. However, unless officers have reasonable grounds to suspect an offence that enables a stop and search without warrant under the Search and Surveillance Act 2012 (and there is nothing to suggest that the officers were talking about stops under these provisions), their only general power to stop is under section 114 of the Land Transport Act 1998 for the purposes of the administration and enforcement of that Act.
35. Secondly, as international policing research has clearly shown, if officers focus on "suspicious" drivers and vehicles, without any concrete evidence to support their suspicions, this will inevitably be likely to result in enforcement practices that discriminate against some groups more than others. In particular, the suspicious cues upon which officers rely will most likely have elements of ethnic and socio-economic stereotyping. It is precisely this sort of enforcement practice that leads to accusations of unconscious bias in policing. It is also increasingly discordant with the culture and philosophy being espoused and encouraged by the Police as an organisation.

### FINDING ON ISSUE 2

Although the Authority found no evidence of actual incidents, comments made by officers during interview demonstrate that they were prepared to engage in improper and potentially discriminatory policing practices by stopping vehicles for the primary purpose of questioning the occupants and searching the vehicles in the hope of discovering evidence of offending and making an arrest.

### Issue 3: Are Police informally destroying non-evidential, low value exhibits in breach of policy?

36. During the course of its investigation, the Authority spoke with a number of officers in more general terms about the handling, recording and destruction of exhibits, particularly those that are considered to be of little or no monetary or evidential value (such as unused point bags or those containing only residue).
37. Whilst the need to document exhibits for storage or destruction appeared to be well understood, some officers said it was not uncommon for items of little value to be destroyed in an informal way, without first being documented or without any form of paper trail, particularly if it was inappropriate or impractical to return it to the owner.
38. Police policy, as a general principle, provides that all seized property, with the exception of cash, should be recorded and stored in a common property store. However, the Authority learned that there was some variation in how seized items were destroyed. It was not uncommon for some Police officers to dispose of low value non-evidential items in an informal way (for example, in the rubbish bin or skip bin at the Police station), rather than completing the appropriate paperwork. One officer told the Authority that he personally would not throw away a point bag with residual powder in it, even if it was unlikely to be sufficient for evidential purposes, but he still indicated that this was simply the exercise of his personal discretion rather than the application of policy.
39. The Authority appreciates that the practice of informal disposal may be considered by some officers as an efficient and practical way of dealing with some items, negating the need for paperwork. However, the Authority considers there are risks associated with this practice, particularly if it were to be challenged. Accordingly, the Authority recommends that Police clarify its policy on exhibit management, particularly as it relates to the destruction of non-evidential, low value items.

#### FINDING ON ISSUE 3

Non-evidential, low value exhibits are sometimes being destroyed in a manner that is contrary to policy.

## CONCLUSIONS

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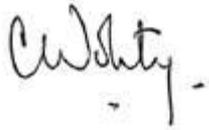
40. The Authority concluded that:

- 1) There is no evidence to substantiate a finding that Officer A used 'throw downs' to search vehicles under the Search and Surveillance Act.
- 2) Although the Authority found no evidence of actual incidents, comments made by officers during interview demonstrate that they were prepared to engage in improper and potentially discriminatory policing practices by stopping vehicles for the primary purpose of questioning the occupants and searching the vehicles in the hope of discovering evidence of offending and making an arrest.
- 3) Non-evidential, low value exhibits are sometimes being destroyed in a manner that is contrary to policy.

## RECOMMENDATION

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41. The Authority recommends that Police clarify its 'Exhibit and property management' policy, particularly as it relates to the recording and destruction of non-evidential, low value items.



**Judge Colin Doherty**

Chair  
Independent Police Conduct Authority

7 November 2019

**IPCA: 18-0403**

## ABOUT THE AUTHORITY

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### Who is the Independent Police Conduct Authority?

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

It is not part of the Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Colin Doherty.

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

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

### What are the Authority's functions?

Under the Independent Police Conduct Authority Act 1988, the Authority:

- receives complaints alleging misconduct or neglect of duty by Police, or complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- investigates, where there are reasonable grounds in the public interest, incidents in which Police actions have caused or appear to have caused death or serious bodily harm.

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

### This report

This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. 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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