



IPCA

Independent Police
Conduct Authority

Mana Whanonga Pirihimana Motuhake

INDEPENDENT POLICE CONDUCT AUTHORITY

Briefing to Incoming Minister 2020 General Election

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Introduction

1. The Authority is an independent agency which deals with complaints regarding Police conduct. The core purpose of the Authority is, and always has been, to enhance public trust and confidence in the integrity and professionalism of Police.
2. We are most effective in achieving our core purpose when our work not only holds Police to account for misconduct and recommends appropriate remedial action, but also when it prevents similar problems from recurring by influencing future Police policy, practice and procedure. To this end, a large part of our role involves working with Police to help them to understand conduct issues and implement appropriate means to address these themselves.
3. As Minister of Justice, you are responsible for oversight of all justice sector matters. The work of the Authority is a small, but critical, contributor to overall justice system integrity. Our role is grounded in the need to protect the basic rights and interests of those who find themselves involved with Police; the organisation where the “rubber hits the road” in criminal justice, with significant coercive state powers which – when exercised – impact directly on the basic rights of New Zealand citizens. Ensuring that these powers are always exercised lawfully, fairly, and in a way which minimises the impact on an individual’s rights, is the Authority’s *raison d’être*.
4. Your colleague, the Minister of Police, has portfolio responsibilities comprising oversight of the general conduct, functions, and duties of the Police, and the effective, efficient, and economical management of the Police. The work of the Authority is aimed at both improving Police conduct and holding Police to account when issues of conduct arise; in this respect, the Authority also contributes to the achievement of the portfolio responsibilities of the Minister of Police.
5. Five areas of strategic focus were identified in the Authority’s most recent Statement of Intent. They are:
 - Maximising efficiency & effectiveness
 - Using data insights to develop targeted services
 - Increasing the emphasis on prevention
 - Enhancing engagement within our communities
 - Working with Police to ensure a greater focus on good custodial practice.
6. This briefing is an introduction to our organisation and how we work; we describe who we are, what we do, and how our work can support you to achieve your portfolio responsibilities. The briefing covers significant changes which have impacted our organisation recently and key pieces of our upcoming work. In addition, we have identified a number of strategic challenges and opportunities, that have presented themselves recently and that we think you should be aware of. We also provide information on the

challenges and opportunities we see in relation to conduct of policing, along with our priorities over the next three months.

7. We would welcome the opportunity to meet with you to discuss some of these challenges and opportunities.

THE AUTHORITY

8. The Authority is established under the Independent Police Conduct Authority Act 1988 (IPCA Act). It is an Independent Crown Entity under the Crown Entities Act 2003. Its purposes are to:
 - receive complaints (i) alleging misconduct or neglect of duty by any Police employee or (ii) concerning any Police practice, policy or procedure affecting a complainant; or
 - investigate incidents in which a Police employee (acting in the execution of his or her duty) causes or appears to have caused death or serious bodily harm.
9. Additionally, a Memorandum of Understanding provides that Police should refer to the Authority matters of Police conduct that present reputational risk to the Police, including serious offending or corrupt behaviour by a Police officer, even though there has been no complaint.
10. Section 17 of the IPCA Act provides various ways in which the Authority may deal with complaints: investigate the complaint itself; refer it to the Police for investigation under the Authority's oversight; facilitate a resolution of the complaint by the Police; defer action; or take no action in terms of section 18 of the Act.
11. Under our Act, the Commissioner of Police is required to take action to give effect to our recommendations or give satisfactory reasons for any departure from them.

Optional Protocol to the Convention Against Torture (OPCAT)

12. Separately, but allied to the management of public complaints against the Police, the Authority also serves as a National Preventive Mechanism under the Crime of Torture Act 1989, which implements the United Nations Optional Protocol to the Convention Against Torture (OPCAT). This involves inspecting Police detention facilities throughout New Zealand to ensure they are safe and humane and that they meet international standards.

Funding

13. We are funded through a Non-Departmental Output Expense Appropriation within VOTE Justice. In 2020/21 we received a significant uplift (from a baseline appropriation of \$4.671M in 2019/20 to \$5.700M in 2020/21) in order to allow us to adequately deal with the increasing number of complaints. The Authority has recently completed an efficiency and effectiveness review, the results of which will assist us to determine how best to apply this funding uplift.

Our independence

We are statutorily independent by virtue of the Independent Police Conduct Authority Act 1988 (IPCA Act) and the Crown Entities Act 2004. Statutory independence is critical for our effectiveness.

14. Effective, efficient Policing services are the cornerstone of a free and democratic society. Independent oversight provides assurance for both the public and Police that allegations of misconduct or neglect of duty are properly dealt with.
15. Independent oversight:
 - protects citizens against abuse of those powers, including the use of excessive force
 - exposes misconduct
 - improves Police practice and policy
 - provides public accountability
 - encourages discipline within the Police
 - protects against corruption
 - protects against politicisation of the Police
 - enhances public trust and confidence in the justice system and
 - contributes towards the justice sector outcomes of a safe and just society.
16. There are four factors critical to our independence:

Statutory independence: We are statutorily independent by virtue of the Independent Police Conduct Authority Act 1988 and the Crown Entities Act 2004. That statutory independence is critical for our effectiveness.

Operational independence: We have investigative capability and capacity to carry out our own investigations into the most serious matters; to independently oversee Police investigations; to conduct our own reviews; to monitor Police performance; and to publish reports.

Impartiality: We act impartially in all our dealings and take great care to do so, and to be seen to do so. The importance of actual and perceived impartiality is constantly reinforced in all our actions.

Transparency and accessibility: Sunlight is said to be the best disinfectant; electric light makes the most efficient policeman¹. Our services are easily accessible and available to anyone who might have concerns about Police conduct. We have the unfettered ability to highlight conduct issues publicly, providing visibility for the public and fostering true public accountability for policing activity within New Zealand.

17. Our credibility as an oversight body depends upon not only actual but perceived independence. A perception of alignment with Police will not engender public trust and

¹ Justice Louise Brandeis *Other People's Money, and how Bankers Use It* Washington: National Home Library Foundation (1933)

confidence in either the Authority or Police. At the same time, our ability to produce outcomes that are seen to be fair, and to influence Police policy, practice and procedure, depends upon effective working relationships with the Police. Independence does not necessarily mean distance. A delicate balance must be struck between these competing requirements.

18. We strive to ensure that we have a cooperative and consultative relationship with Police, whilst always being clear that our findings and recommendations are made independently.

Our work at a glance (snapshot of the Authority)



\$5.7M Annual Revenue from the Crown



Received 3882 Complaints about Police



Experienced a 28% increase in complaints



Maintained or improved throughput despite increased volumes



Concluded 57 Independent Investigations



Oversaw 222 Police investigations



Facilitated 1242 agreed resolutions of complaints against Police



Published 44 Public Reports, An increase of 26%



Published 150 website summaries of oversight outcomes of Police investigations



Monitored the implementation of 39 active recommendations



Received in excess of 168,000 visits to our website, an increase of 40%



Undertook two virtual inspections of custodial units during the Covid19 lockdown



Successfully implemented the roll-out of our new Case Management System, and updated all core business systems to a cloud-hosted environment



41 FTE Staff



Chair, and 2 Board members

Your responsibilities

19. As Minister, one of your portfolio responsibilities is administration of the Independent Police Conduct Authority Act 1988. Primary recurring decisions you may be asked to make include the following:
 - Appointments of the Chairperson and members of our Board: under sections 5 and 5A appointments are made by the Governor-General on the recommendation of the House of Representatives, after your initial consideration/recommendation;
 - Funding and appropriation decisions: we are fully funded from a small Non-Departmental Output Expense Appropriation within VOTE Justice.
20. These matters are facilitated by the Ministry of Justice, which monitors us on your behalf.
21. The Minister of Justice and the Minister for Courts are also responsible for the bulk of the legislation against which we consider Police standards. Key pieces of legislation which affect the work of the Police, and therefore the work of the Authority, include the Policing Act 2008, Crimes Act 1961², Search and Surveillance Act 2012, Criminal Procedure Act 2011³, Criminal Procedure (Mentally Impaired Persons) Act 2003, and Summary Proceedings Act 1957⁴.
22. We have recently identified the potential need for amendments to legislation within the Justice Portfolio through our work. These include amendments to our own Act, along with amendments to the Search and Surveillance Act. The detail of these amendment opportunities are discussed further in the part of this briefing which discusses *Strategic Challenges and Opportunities*.
23. In order to ensure you are properly informed as to our performance and any issues confronting us, we provide four-monthly reports to you which summarise the results of our most recent investigations, the themes we are considering, and the focus of our work with Police. Our public reports on our independent investigations, summaries of cases where we oversee Police investigations, along with a summarised sample of cases where we reach agreed resolutions with Police, are available on our website at <https://www.ipca.govt.nz/>.

Legislative responsibility of Minister of Police

24. The portfolio of your colleague, the Minister of Police, is most directly impacted by the work of the Authority. The Minister of Police is also the Minister who has most direct influence

² Joint administration (Justice Portfolio and Courts Portfolio)

³ Ibid 2

⁴ Ibid 2

over the matters that we are concerned with; that is, the conduct of Police. The Minister of Police has the following responsibility under our legislation:

- Receiving reports from the Authority where the Authority considers no adequate action to give effect to recommendations has been taken: Under section 29(2)(a) of our Act, if the Authority is not satisfied with the Police response to its recommendations, we must inform the Attorney-General and the Minister of Police. Under section 29(2)(b) if it considers it appropriate the Authority may also transmit a copy of its report to the Attorney-General for tabling in Parliament, and the Attorney-General must do so (section 29).
25. The Authority has not yet used this power but has considered doing so recently. Our aim is to reserve this power, only resorting to its use if we have no other option available (ie. where ongoing discussions with Police at all levels have proved to be unsuccessful).
26. Given the impact our work has on the Police Portfolio and the responsibility of the Minister of Police to receive reports from us where our recommendations are not acted upon, you may wish to consider providing your colleague, the Minister of Police, with a copy of this briefing.

The next three months: Recent changes and upcoming focus

28. The Authority is in a period of change, prompted in large part by an increasing volume of work and the need to ensure quality delivery standards continue to be met. Changes in the Police leadership, and structures below it, are also affecting the way we might be best able to work to achieve our goals. This, together with the increasing size of the Police force and the changing demographic of front-line police, make this an exciting and transformative period for the Authority and our work.

VOLUME OF WORK – OUR EFFICIENCY AND EFFECTIVENESS

29. Since January 2019 there has been a step increase of approximately 30% in the number of complaints and notifications received by the Authority, caused in part by an unintended previous failure of Police to notify us of all complaints made directly to Police. The result has been an immediate and continuing strain on our capacity and capability. This step increase is additional to the steady increase in numbers of complaints as a result of factors such as the recent (and projected) increase in the number of Police. Our recent funding uplift is intended to assist with managing this increase in volume. However, we need to prioritise its application carefully to achieve the best effect.
30. We therefore continue to be focused on increasing our effectiveness and efficiency. To this end, we recently commissioned an independent review of our operations, and it will be a priority in 2020/21 to use the recommendations from that review to build on the gains made over the last four years. The review was completed in September 2020. The Authority is currently developing its response to the review; details of the report recommendations, and how we intend to respond, are set out in the next part of this document (*Strategic Challenges and Opportunities*).
31. We are committed to maximising efficiency and effectiveness, and expect that the outcome of this work will be changes in how the Authority operates.

ENGAGING WITH COMMUNITIES AND USING OUR DATA FOR BEST EFFECT

32. We have made substantial improvements to our operational processes and how we measure the quality of our outputs over the past 18 months. These include:
 - implementing a new Case Management system, which allows us to better track our business and collect better data about the work we do;
 - developing new operational policies, and further refining our processes to ensure we can deliver effective and timely service for dealing with complaints; and

- Introducing new performance measures focused at monitoring longer-term trends and the overall impact of our activities (as set out in the attached 2020/21-2023/24 Statement of Intent and 2020/21 Statement of Performance Expectations).
33. We expect to use our data insights to develop more targeted services, enhance our emphasis on prevention, and continue to enhance our engagement with particular communities.
 34. Within our limited resource, the Authority has spent some time and energy on increasing the transparency of our work and improving public understanding of our function. This is not an exercise in self-aggrandisement; our focus is on improving awareness and increasing accessibility for those portions of the community who might most need our assistance. We intend to do more to increase our reach, by developing and implementing a long-term strategy for enhancing our communications and our community engagement.

CONTINUING TO STRENGTHEN WORKING RELATIONSHIPS WITH POLICE

35. Over the last three years, we have significantly changed the way we work with Police. We have focused on building better and more effective working relationships with Police Professional Conduct, with a view to trying to resolve more complaints without the need for formal investigation reports and recommendations; this approach often results in better quality, and more timely, resolutions for complainants. Our model of complaint categorisation sees us working with Police to agree appropriate resolutions for complaints without the need for full investigations (by either us, or Police) wherever possible - currently just over 30% of complaints are resolved in this way.
36. A new way of working to support this approach has been successfully implemented across both Police and the Authority, but opportunities to enhance the interface between the two organisations continue to arise. We remain committed to achieving the most effective liaison with Police possible, and a renewed focus on this work will become increasingly important as any changes are made to the structure and operations of the internal Police Professional Conduct capability.
37. Our focus is on prevention where possible, and we see merit in working with Police to review policies, practices and procedures where we identify issues that need to be addressed. The strength of our working relationship with Police is the lynchpin for this. We intend to continue focusing on early communication to Police of issues we identify, and discussing how they might best be able to address these. In addition, these relationships are an important part of our thematic work (discussed in more detail in the next section).
38. We are interested in making good use of any other Police mechanisms which may allow the lessons learned from our work to be applied more broadly into policing work at a practical level. We see particular value in being able to share what we have learned where our work has identified systemic issues. We regularly speak with new recruits at the time of their initial training, but this alone may not be enough to enable the lessons from our work to be embedded into the work of frontline officers. Previously, we have had some success

working directly with Police Response and Operations to roll out specific police-wide policy and training; we would be eager to see more work like this occur, and have recently raised with Police the possibility of doing more to ensure lessons learned from our work are well-understood and able to be implemented by frontline staff.

THEMATIC REVIEWS

39. The Authority sees considerable value in its thematic reviews, which seek to address specific, identifiable issues from a range of individual complaints and incidents. Recent thematic reviews include work on Fleeing Driver Policy; this has resulted in an agreed programme of change regarding how Police deal with drivers who flee, and the Authority continues to monitor progress made by Police in implementing that programme.
40. We expect to continue to make greater use of thematic reviews, as the contribution they make to improving Police policy, practice and procedure overall is significant; this approach leads to more impactful outcomes beyond merely making findings and recommendations to Police about a particular incident or complaint. A thematic approach is most useful where recurring or intrinsically related issues are being identified across a particular work area.
41. We currently have thematic reviews underway which cover:
 - Police handling of fraud cases
 - Remands in Police cells and prisoner transportation
 - Bullying and culture within Police
 - Driving – speed of officers when undertaking Urgent Duty Driving
 - Policing in small communities
42. We are also intending to undertake a thematic review of Police response to family harm, which will commence as resources allow.
43. Our thematic reviews often address, or reveal, crosscutting policy issues which affect agencies other than Police – and, at times, wider even than the justice sector. The Authority’s reach and influence is limited (including by, for example, legislation and capacity); for wider uptake from the Authority’s findings in these cases, interagency policy leadership must be engaged.

Strategic challenges and opportunities

44. In considering complaints and working to investigate and/or resolve them, we have noted some ongoing – or emerging – issues related to Police conduct. We raise these with you early as they cover areas which you may need to make decisions about, or which we may be asking you to take action on in the near future. These are issues which not only bear on our operations but are also relevant to the Justice Sector as a whole.
45. A number of the challenges and opportunities we have identified give rise to potential legislative amendments. We would welcome the opportunity to discuss these matters with you.

RESPONSE TO THE EFFECTIVENESS AND EFFICIENCY REVIEW

46. Overall, the independent review which was recently undertaken did not find any fundamental changes that need to be made to improve the Authority's effectiveness and efficiency, within the current legislative mandate. It found that the Authority is independent and generally functions well, and systems and processes also generally function well. Some fairly straightforward internal changes were suggested, and the Authority is currently considering how it might implement these.
47. However, the review highlighted that the Authority relies significantly on Police; the quality of the relationship between the Authority and Police is critical, and the level of resources that Police makes available for undertaking investigations and responding to the Authority also has the potential to significantly affect the quality and timeliness of our work. One of the key considerations for the Authority when deciding how to respond to the recommendations of the review will be the shape of internal capability within NZ Police for dealing with conduct issues. We are aware that some changes are occurring in this area, and will continue to work to try to align the service we provide with Police's own conduct capability.
48. The review predicts an ongoing increase in volume of the Authority's work, and a deficiency in the ability of the Authority to continue to produce its core outputs in this scenario. The review also makes note of potential legislative changes regarding the scope of our work and our powers, and the desirability of additional functions to assist us to achieve our strategic objectives.
49. The review recommends a funding scenario which would see an uplift to the Authority's baseline of between \$0.844 and \$1.331M, to meet the expected increase in demand and develop the Authority's core capabilities.
50. The Authority is currently developing its response to the review, with the intention of effecting some of the relatively easy and cost-neutral internal changes recommended by the review over the next six months. Further work will be needed to determine the appropriate response to recommendations which have external dependencies, including

potential legislative changes about the scope of the Authority’s jurisdiction and its powers, and the way in which we might be able to work with Police. The funding recommended by the external review is also expected to provide the basis for further work to develop proposals for Budget 22.

RELATIONSHIP WITH POLICE PROFESSIONAL CONDUCT AND ISSUES ABOUT POLICE CONDUCT CAPABILITY

51. As flagged previously, we consider our relationship with Police critical to the effectiveness of our work. Our primary liaison point is Police Professional Conduct (PPC). Changes are currently being considered in the structure and make-up of the PPC function. We have been pleased to be consulted on these changes, and look forward to continuing to be involved. We ourselves have identified, as an interested party, some capability and capacity gaps in the PPC function, and are hopeful that these will be addressed through the upcoming changes. Ensuring that the internal PPC function is in a position to effectively influence the work of all Police, and has sufficient capability and capacity to work on the issues arising, would go a long way to building professional conduct system credibility.
52. Overall, our working relationship with Police is a positive one, and it continues to strengthen as we both remain focused on growing the most effective relationship possible. However, there are some needless areas of tension, in our view; these seem to be partly caused by lack of coordination within and between Police business units themselves, and misunderstandings about matters like the nature of our role in overseeing employment investigations and outcomes.
53. We have also raised questions about how and when legal opinions are sought and relied upon by Police, and whether legal professional privilege should impede or prevent the Authority’s access to those opinions when they relate to a case we are investigating.

THEMES ARISING IN POLICING ACTIVITY

Fraud

54. The Authority has been concerned for some time about Police’s failure to investigate—or adequately investigate—complaints of significant fraud. Police categorise fraud complaints as “high-volume, low priority” regardless of value. In the Authority’s view, they are frequently wrongly categorised as civil rather than criminal in nature, and are either not recorded as a complaint at all or recorded and closed without any investigation. When they are recorded as a complaint, they often remain unassigned for a long period, and when they are eventually assigned to an officer they may receive low priority. As a result, many victims who have lost a substantial proportion of their assets may be left without a just outcome.
55. The Authority is therefore conducting a thematic inquiry into this area of policing. We are examining the way in which fraud cases are categorised, assigned and investigated across districts; whether appropriate resources are being allocated to such investigations;

whether Police possess sufficient capability and expertise; and the way in which Police interact with other government agencies who have a role in preventing or investigating fraud (the Serious Fraud Office, Police, CERT NZ, Financial Markets Authority, Commerce Commission, and NETSAFE).

56. We are aware that a National Corruption and Financial Crime Strategy is under development by the justice sector. However, we fear that the Strategy does not address the concerns we have with the way in which the fraud that is being committed against ordinary New Zealanders on a daily basis. “Low-level” fraud makes up the vast bulk of offending and has a very significant impact for victims; ensuring the Strategy is geared to help to address these issues is vital.
57. We intend that the results of our enquiry will be set out in a public report that we expect to release within the next three months. That report will identify the nature and scale of the problem; discuss some of the reasons for the inadequacy in the Police response in this area; and present some possible options for an improved response. We are likely also to emphasise the need for a comprehensive and properly coordinated All-of-Government response to the problem.

Custody

58. The Authority’s role as a National Preventive Mechanism under the Crime of Torture Act 1989, which implements the United Nations Optional Protocol to the Convention Against Torture (OPCAT), requires us to assess the adequacy of custodial facilities on an ongoing basis. Police have a duty to adequately care for those who are in their custody, and those who are in custody are most vulnerable to the risk of breaches of basic human rights. We carry out regular audits, and periodic inspections, of custody units when discharging our OPCAT function. The Authority continues to work with Police on a case-by-case basis to address custody issues as they arise.
59. The Authority has been concerned for some time about the lack of strategic focus by Police on custody as an area of high risk. This has changed recently, with the new Commissioner of Police articulating custody as one of his priorities, and we are pleased that Police have recently initiated work (currently in scoping phase), to review overall Police custodial policy and practice.
60. We consistently observe issues relating to custody in the following three areas:
 - *Physical infrastructure:* Notwithstanding the fact that there has been some remedial work to address physical issues in custody units over the last 15 years, a substantial number of Police cells are currently not fit-for-purpose and expose both staff, and those in custody, to risk. We acknowledge that this is an issue that can only be addressed over time, but note that significant up-front investment in infrastructure may be needed to bring custody units up to standard.
 - *Inadequacies in staff skills and training:* We continue to encounter issues which suggest that too few police receive sufficient training on their obligations when dealing with those in

custody; this is a time when people are at their most vulnerable, and ensuring all custody staff comply with basic Police policy at all times is fundamental to safeguarding the welfare of those in their care. Staff who are acting in a custodial capacity must understand that their primary responsibility is to care for inmates rather than just keep them in custody, and must maintain this focus at all times.

- *Coordination between Police and Corrections (transportation between custodial facilities):* Police try to ensure that those who have been remanded in custody by a court are kept in Police custody for as short a time as possible. That is because Police custody units are unsuitable for longer-term detention, and if those in custody are kept in such conditions for significant lengths of time they may be put at significant risk. However, it may not be practicable to transfer to a Corrections facility a person who is on remand for a relatively short time until their next court appearance, because the distances between the court and the nearest Corrections facility are too great. This is exacerbated by the fact that there is sometimes relatively poor coordination between Corrections and Police about how transfers should be managed. Often an expected transfer will not happen as a result of a deficiency in logistical arrangements; for example, transport vans may not be available, or Court sitting times may not be sufficiently coordinated with transport departure times. In addition, when movement between facilities does occur, often the mode of transport used is unsafe or of an unacceptable standard. For example, remandees may be transported for many hours in a van with no toilet and no rest stops, and may be locked in cubicles in handcuffs without seatbelts because there are not enough staff to maintain security.

61. The Authority intends to continue its regular programme of work to inspect and audit custodial facilities. We have recently received additional funding to allow us to strengthen this area of our work. In addition, we are in the process of preparing an overall summary of the findings of the special project we undertook in 2018/19 to inspect every custodial facility where detainees are routinely held overnight. This summary will be publicly released, and will set out the main themes that have been the subject of detailed recommendations to individual Police districts. We are also working to feed our findings into Police's overall review of custodial policy, in an effort to ensure the issues we find are addressed in that review.

LEGISLATIVE POWERS

Sections 39 and 40 of the Crimes Act 1961

62. There appears to be a lack of clarity regarding Police powers to use force that are contained in sections 39-40 of the Crimes Act 1961. In particular, the sections are silent as to the basis upon which the necessity for the use of force is to be assessed.
63. That lack of clarity is a particular issue in relation to section 40, which authorises Police to use such force as may be necessary to prevent the escape of a person who has taken flight to avoid arrest. It is generally accepted that the force used must be reasonable and proportionate. However, the Police and the Authority disagree about whether the

proportionality is to be assessed against the circumstances that the officer *actually* believed to exist or *reasonably* believed to exist (ie whether the officer's belief is to be assessed subjectively or objectively). Nor is it clear what types of circumstances are relevant. Arguably the need to use force should be judged against both the seriousness of the suspected offence and the public interest in bringing the person to justice, and the ongoing risk that the person poses if they are not immediately apprehended. However, it is unsatisfactory that there is no statement of the law to that effect.

64. The same problem has arisen to a lesser extent in relation to section 39, which authorises Police to use such force as may be necessary to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process. Again, it is not clear on the face of the statute whether the officer's belief as to the circumstances is to be assessed subjectively or objectively. Nor is there any case law directly on point.
65. Because these sections are routinely relied upon by officers on a daily basis, the Authority believes that it is desirable that there be urgent legislative clarification to put the matter beyond doubt.

Section 8 of the Search and Surveillance Act 2012: entry without warrant to avoid loss of offender or evidential material

66. Section 8 of the Search and Surveillance Act 2012 authorises a Police officer to enter a property without warrant where a constable has reasonable grounds to believe that a person who is wanted for arrest is on the property and that, if entry is not effected immediately, the person they are searching for will flee or evidential material will be destroyed. The Courts have consistently held that the threshold for "reasonable grounds to believe" is higher than the threshold for "reasonable cause to suspect", which is the threshold governing arrest powers. In order to be met, it requires a substantial degree of likelihood that the state of affairs exists.
67. In their 2018 review of the Act, the Ministry of Justice and the Law Commission considered whether the ambit of section 8 should be expanded in light of the submissions they received, and rejected that proposal. The Authority agrees that there is no need for section 8 to be expanded; it is a limited power for use in exceptional circumstances.
68. However, there appears to be a widespread misunderstanding within Police about the scope of this power. In particular, in a number of cases that have come to the Authority's attention officers have interpreted the section as only requiring a *suspicion* that flight or destruction of evidence *may* occur. In these cases, responses from Police and individual officers to findings from the Authority that there has been an unlawful entry suggest that the section is being used on a routine basis to enter properties without warrant to effect an arrest.
69. Part of the problem appears to have arisen from the use of words "may occur" in section 8, which have been interpreted by some as allowing entry on the basis of a mere reasonable possibility that flight or destruction of evidence will occur. In the Authority's view, this is

not a tenable interpretation of the section. However, legislative amendment would assist to put the matter beyond doubt.

Section 118 of the Search and Surveillance Act 2012: detention incidental to search of places and vehicles

70. A similar broad misunderstanding continues to arise in relation to section 118, which provides a limited power for Police to detain people when searching a property or vehicle; such detention must only be for the purposes of ascertaining that person's relationship to the object of the search. Instead, it is reasonably common for us to see Police detain all people at a search scene, without progressing inquiries to ascertain their involvement – or not – in the search objectives. We consider such detention to be unlawful.
71. Legislative amendment may be desirable to clarify the length of time for which Police may detain persons and search a scene. This should include clarification as to whether (as Police practice suggests) police officers are able to detain people indefinitely while they search, and use the results of the search itself to identify whether or not the detained persons are connected. If it is the latter, the legislation may need to make clearer that Police are authorised to detain any individuals found at the scene of a search, for the length of the search itself.

LIMITS OF OUR LEGISLATION

72. Following the recent independent review of our operations, we have considered whether there are amendments which could be made to strengthen our legislation or align our powers with those of similar bodies in other jurisdictions. A number of possible reforms have been identified in this respect.
73. *Clarification of the intent of section 17 and 20:* There is considerable uncertainty, and occasionally conflict with Police, about the scope of the Authority's jurisdiction in respect of matters referred back to the Police for investigation. This uncertainty has a substantial impact upon the Authority's work. That is because, of the cases that cannot be resolved without further in-depth investigation, approximately 75% of cases we determine should be investigated are referred back to the Police for investigation rather than being independently investigated by the Authority itself. Generally, the Authority specifies whether it expects the Police investigation to be criminal or employment or both. There are three related issues in this respect:
 - The Authority's powers to refer matters back to Police for investigation are contained in section 17 of our Act. There has been a patchwork development of that section through amendments to the original Act in 1994, 2007 and 2008. As a result, the way in which the different options available to the Authority fit together is by no means clear. In practice, matters are referred to Police for investigation under section 17(1)(ab) and (c) of the Act, which enables the Authority to oversee the form of the investigation. However, it is not evident whether this is being undertaken on behalf of the Authority or independently. Nor does the statute state the scope of the Authority's jurisdiction to give directions. As a result,




the Authority's role is effectively limited to signalling what we consider the issues to be the outset and reviewing investigation material as it is generated. We often struggle to engage successfully with the investigating officer, and the final outcome is often not as robust as we believe it should be.

- More significantly, the Authority does not have any specific power to require the Police to provide us with drafts of investigation reports before final decisions by the Police are taken. Section 20(3) provides that, where Police investigate a complaint, the Commissioner of Police *may* consult with the Authority on Police proposals for action prior to reporting to us on a complaint, but this is not mandatory. As a result, we often see investigation reports only *after* a final decision has been made, and in these cases may find that we do not agree – either with the adequacy of the investigation undertaken, or the final outcome. In such cases, the Authority's role is limited to then making adverse comment. This invites the criticism that the Authority is toothless, and it does little to enhance public trust and confidence in the Police. We believe there is merit in requiring a more cooperative approach, where Police *must* refer draft reports and proposal to us so that any concerns can be discussed in advance of any final decision.
 - This problem is particularly acute in employment investigations (which are a substantial proportion of the investigations undertaken by the Police upon referral by the Authority). The Police Association strongly argues that any decision following an employment investigation is a matter between the employer and employee, and that the Authority has no role to play. For the most part, the Police have acted in accordance with that view. As a result, even if we were consistently presented with and able to comment on draft investigation reports before finalisation, we would continue to have little or no role in subsequent decision-making. In the Authority's view, where an employment proceeding results from a complaint by a member of the public, there is a legitimate public interest in ensuring that the employment outcome is robust. Legislative clarification to resolve the issue would therefore be desirable.
74. *“Own motion” investigations:* Currently the Authority does not have the power to instigate its own investigation on any matter that does not involve death or serious bodily injury. As a result, there has been some suggestion that the “thematic reviews” that we undertake into matters of policy, practice and procedure are beyond our jurisdiction. In practice we undertake such reviews under section 12(1)(c) and 12(2) of the Act where we identify a systemic issue as a result of one or more complaints or referrals. However, this precludes us from undertaking a thematic review in an area that has not been the subject of specific complaints – for example, a policing practice that has been the subject of widespread public comment and concern in the media. There may be merit in a legislative amendment which would allow us to pursue matters which we initiate on our own motion. Allowing us to initiate our own work in areas where we consider it necessary would improve our preventive ability; we would be able to consider and make recommendations on areas of vulnerability, before they become problematic.
75. *Powers to prosecute (or to refer prosecution decisions to the Crown):* The Authority does not have the power to prosecute; instead, Police are solely responsible for making such decisions. Leaving the decision to prosecute or take disciplinary action in Police's hands alone has some

benefit; it leaves Police wholly accountable for the action taken in relation to their staff who have demonstrated questionable conduct. The downside is that Police may, at times, lack enough objectivity to make good decisions, and may not be as adept at striking the correct balance between the critical nature of dealing with conduct issues effectively and being a good employer who protects and supports their frontline staff. In other jurisdictions, bodies similar to ours have the ability to pursue prosecutions directly. In addition, there are options which might include allowing the Authority the power to refer some matters direct to the Crown for decisions on prosecution to be made (such as driving matters, or cases regarding use of excessive force). While the Authority has no strong view on whether or not it should have the power to prosecute, we think that would be some benefit in a reconsideration of the benefits and disadvantages of extending the Authority's jurisdiction in this respect, either generally or on a restricted basis.

Who we are – Organisational Structure

76. The Authority’s Board has a full-time Chair and two part-time members. Including the Chair, the Board may comprise up to five members. The current Authority Board members are:

Chair - Judge Colin Doherty	Board Member - Simon Murdoch*	Board Member – Liz Sinclair*
		
31 August 2017	24 September 2015	8 May 2020
		*1 – 2 day per month

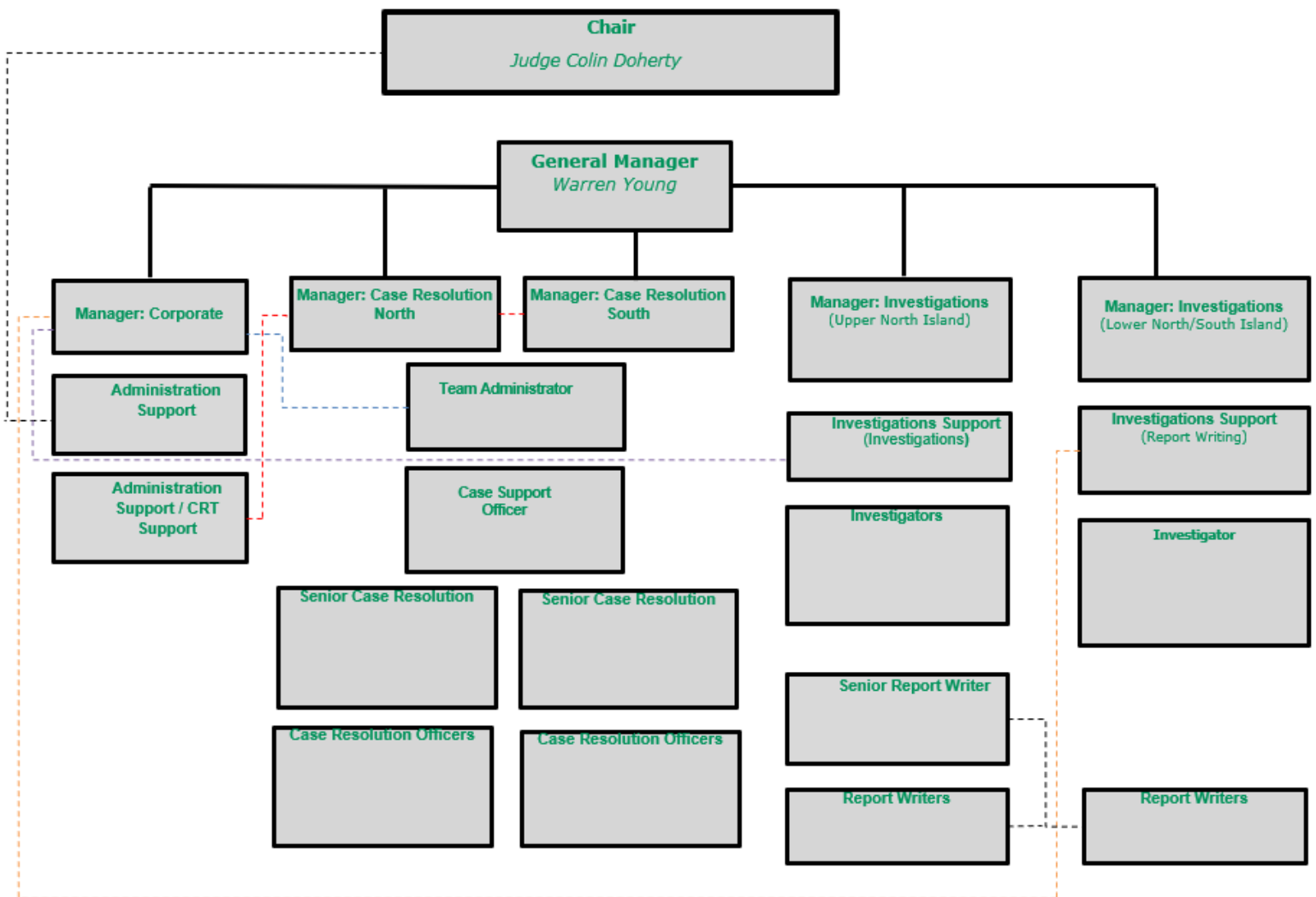
77. Authority Board members have a range of relevant skills and experience including knowledge of the law and law enforcement, executive-level management, and public sector expertise. The Board currently meets monthly and focuses on three key issues in regard to its governance functions: setting strategic direction and high level policy; assessing the effectiveness of the Authority’s delivery of services against its strategic objectives; and monitoring the extent to which the requirements of relevant legislation and public expectations are met.

78. In regard to the day-to-day management of the Authority, the full-time Chair discharges a range of executive functions and is supported by an organisational structure that prioritises available resources toward the efficient and effective delivery of operational services.

IPCA MANAGEMENT AND STAFF

79. The Authority has 43 individual staff excluding the two Board members (41 full-time equivalents) across a mix of permanent and fixed term roles.

80. The organisational structure is pictured below:



Complaint DEFINITIONS

Category A – IPCA independent investigation

Principle

Guidelines

There are a number of cases that are so serious that they will typically lead to a Category A investigation. These include:

- a) cases involving death or serious injury caused or appearing to be caused by Police actions;
- b) cases containing elements of corruption or serious criminal misconduct;
- c) other cases of deliberate wrongdoing or other serious misconduct that would significantly impact on public trust and confidence in Police.

A case that meets one of the above criteria will not necessarily be independently investigated if the Authority is satisfied that it has been or is being responded to robustly and expeditiously by Police (eg by investigation with a view to possible criminal prosecution or disciplinary proceedings against one or more officers). Conversely, a case that does not meet one of the above criteria may be deemed suitable for a Category A investigation if:

- d) it raises one or more significant systemic issues;
- e) it shows a pattern of significant misconduct by an individual officer;
- f) it raises integrity issues in relation to a senior officer or an area, District, or Police generally;
- g) a Police investigation on its own is unlikely, in the view of the Authority, to be perceived by the public as being sufficiently robust; or
- h) Police have indicated, or the Authority determines, that for public interest reasons it is preferable for the Authority rather than Police to investigate.

Category B –Police investigation with active IPCA oversight

Principle

Where a case requires investigation before the appropriate resolution can be determined, but does not meet the criteria for independent investigation, it will be referred to the Police for investigation with active IPCA oversight.

This may sometimes comprise a limited factual inquiry by the Police (eg a phone call to the complainant or a witness to clarify a factual matter) so that it can be determined whether the case is suitable for alternative resolution.

The concluded Police investigation is subject to a full, independent review to confirm that all complaint issues have been addressed and that the outcomes achieved are in accordance with the weight of evidence. The Authority makes its own findings and reports these to the Commissioner and, where applicable, the complainant.

Category C – Facilitated Case Resolution

Principle

Where the complainant has a reasonable grievance to be addressed and the issues are clear, the case should be resolved by appropriate action and redress as soon as practicable.

Guidelines

This category of complaints has the following characteristics:

- a) the issues raised by the complaint are clear;
- b) there does not need to be a substantial investigation to determine the facts;
- c) there is no need for a criminal or employment investigation into the actions of the officers complained about;
- d) some redress or other action to resolve the issues raised by the complaint is practicable.

Complaints in this category can range from the serious to the relatively minor. Their distinguishing feature is that they can be resolved quickly, efficiently and effectively. This means that complainants can receive timely redress, and that appropriate lessons can be learned by individual officers or Police as an organisation soon after the event.

Before a case with these characteristics are categorised, there will be a discussion with the District Professional Conduct Manager (and, if necessary, Police Professional Conduct at Police National Head Quarters) to discuss and agree on the appropriate actions and a timeframe within which they are to be undertaken. If no such agreement is reached, the case will not be made a Category C.

Category D – No further action

Principle

It is in the interests of both the complainant and Police that matters of no real substance are identified and concluded at the earliest possible opportunity. This decision will only be made after appropriate

research, collation and analysis of available information relating to the complaint has been undertaken.

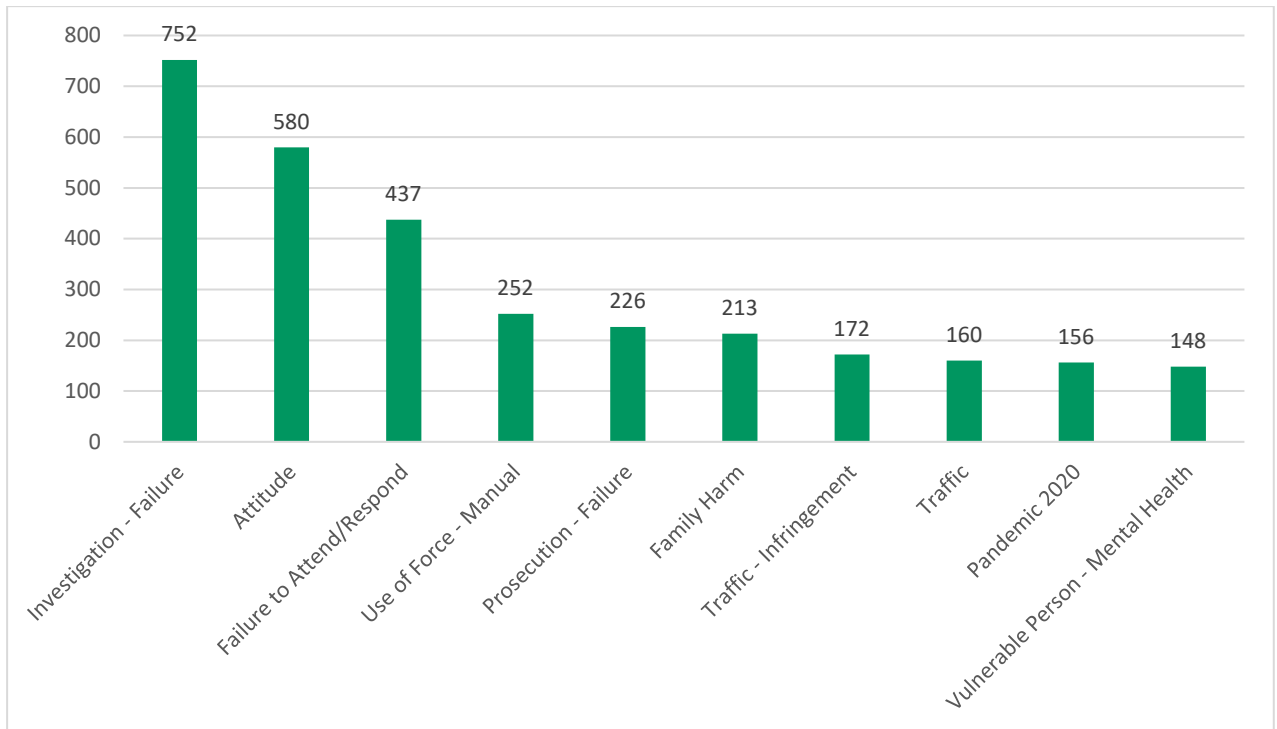
Guidelines

This category of complaint has one or more of the following characteristics:

- a) matters which the Authority considers as minor, frivolous or vexatious;
- b) matters where there is no support from the person centrally aggrieved;
- c) have been, are about to be or are able to be, decided by another tribunal or by the Court;
- d) matters which disclose no issue requiring investigation;
- e) matters which relate to an incident of which the complainant has had knowledge for over one year;
- f) a conflict in the evidence about the issues complained of that is unlikely to be resolved by further investigation.

Common complaint types

As in previous years the most common types of complaint were about: failure in an investigation, an officer's attitude or use of language, inadequate service and the use of force without a weapon. These four complaint types feature consistently as the top 4 each year. Of concern was the elevation into the top 10 complaint types of complaints about the inadequacy of Police response to Family Harm incidents, and complaints received in relation to Vulnerable People – Mental Health. Not unexpectedly, complaints about policing during the Covid 19 lock-down period also made it into the top 10 complaint types.



An individual complaint may include more than one 'complaint issue'. For example, *failure to investigate* and *attitude/language* complaints may arise from the same incident.

Our case management system will allow us to refine our ability to identify complaint themes, which in turn will enable us to inform the prevention work being undertaken by other agencies within the justice sector.

Forecast Statement of Comprehensive Income 2020/21 – 2022/23

Forecast Financial Performance			
	2021	2022	2023
Revenue from Crown	5,700,000	5,747,000	5,747,000
Other Income	-	-	
Interest Income	57,027	39,982	35,203
Total Income	5,757,027	5,786,982	5,782,203
Audit Fees	38,083	38,083	38,083
Amortisation	36,595	27,447	20,585
Communication charges	30,499	30,499	30,499
Depreciation	119,388	96,222	76,355
Personnel	4,563,100	4,896,298	5,090,924
Printing and Stationery	16,494	16,494	16,494
Professional Fees	348,716	188,716	188,716
Rent	412,884	412,884	412,884
Services and Supplies	215,758	215,758	215,758
Subscriptions	9,767	9,767	9,767
Training	10,000	10,000	10,000
Travel and Accommodation	100,000	100,000	100,000
Total Expenses	5,901,284	6,042,167	6,210,065
Net Surplus	(144,257)	(255,186)	(427,863)

Forecast Financial Position

	2021	2022	2023
Cash and Cash Equivalents	469,957	433,941	209,685
Term Deposits	650,000	500,000	350,000
Debtors /Accrued Interest	13,545	13,545	13,545
GST Receivable	31,590	27,424	27,424
Work in Progress	-	-	
Total Current Assets	1,165,092	974,910	600,654
Property, Plant and Equipment	304,488	238,267	191,912
Intangibles Assets	108,731	81,285	60,700
Total Non-Current Assets	413,220	319,552	252,612
Total Assets	1,578,312	1,294,462	853,265
Capital Contribution (Current)	13,333	13,333	13,333
Creditors	88,828	73,496	73,496
Employee Entitlements	160,000	160,000	160,000
GST Payable			
Total Current Liabilities	262,161	246,829	246,829
DNZ Capital Contribution	60,834	47,502	34,168
Total Non-Current Liabilities	60,834	47,502	34,168
Total Liabilities	322,995	294,330	280,996
Net Assets	1,255,317	1,000,132	572,269
Retained Earnings	1,399,575	1,255,317	1,000,132
Current Years Earnings	(144,257)	(255,186)	(427,863)
Total Public Equity	1,255,317	1,000,131	572,270



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