

SCOPE OF INVESTIGATION/REVIEW

Independent Police Conduct Authority (IPCA)

Independent investigation and review (“the Review”) of the policing of the occupation on and around Parliament grounds in Wellington during February and March 2022 (“the Protest”)

Purpose

A review by the IPCA of the policing of the Protest on and around Parliament grounds in Wellington during February and March 2022 will provide the public, Police, and other key stakeholders with an independent assessment of the information Police had, the decisions Police took, the tactics used, and whether the approach taken to policing the Protest as it evolved was lawful, proportionate, and appropriate.

Context and Rationale

The Protest is an unprecedented event in New Zealand and represents one of the most significant policing challenges in recent years. It has been the subject of intensive media and other commentary. The policing of protesters in and around the Parliamentary precinct has also generated nearly 1900 complaints to the IPCA which is the largest number of complaints received about a single event/Police operation.

As the oversight body for Police, the IPCA has its own statutory mandate under the Independent Police Conduct Authority Act 1988 (“the Act”) to investigate complaints about Police, assess any themes arising from complaints and look at any operation in totality.

The IPCA can also conduct thematic reviews, which draw on complaint investigation findings but focus more broadly on areas of Police policy, practice and procedure that may benefit from more in-depth scrutiny, and possibly reform.

Given the unprecedented nature of the Protest and the public debate and scrutiny, it is appropriate the IPCA, as the oversight body, undertakes an independent investigation and review of police actions.

Police often formally debrief major operations and complete a review which assesses an operation from a policy, practice, and procedure point of view. Such reviews are designed to identify lessons from which Police may learn for the future. The IPCA Review will assess any Police reviews but will not be constrained by them.

Scope of the Review

The review will examine:

A: Protest at Parliament

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

B: Complaints

Nearly 1900 complaints have been received to date. Many are from individuals who were not present at the Protest but concerned about Police actions or inactions. Some are from individuals who were physically present and made complaints about specific or more general Police activities, such as the lawfulness of their powers, use of force, or particular tactics and treatment in custody.

In relation to the complaints received, the Review will:

1. Assess and triage each complaint to determine themes and issues arising.
2. Determine how complaints will be dealt with in accordance with section 17 of the Act and in particular which complaints require independent investigation by the IPCA and which complaints identify issues which will inform the review.
3. Advise all complainants of how their complaint will be dealt with and what further contact, if any, they will receive from the IPCA.
4. Undertake independent investigations if required.

Out of scope

The Review will not examine:

1. Policing of any other protests around New Zealand during February and March 2022, unless the policing of other protests influenced or informed in any way decision making processes for the Protest.
2. Issues of the spread of misinformation/disinformation on social media, and other digital platforms, and how that influences people's behaviour (unless social media posts are shown to have materially influenced Police plans and actions).
3. The political or socio-economic motivation of any complainant or group of complainants.
4. Complaints relating to Police actions at any other protest sites. These will be managed as part of the usual IPCA complaint process.

Methodology

A project plan and team structure will be developed setting out the detailed work plan and key deliverables with specified milestones and responsibilities. This will include:

1. How anyone with relevant information (including digital footage) can contact the IPCA to provide this. (Likely establishment of a specific email address and Dropbox facility)
2. Determining who needs to be interviewed
3. Engagement with those directly affected by the Protest including the public, businesses, institutions in the immediate vicinity of the parliamentary precinct and the Wellington City Council
4. The process for obtaining all relevant information and views from:
 - Police
 - Mainstream and social media outlets
 - Protesters
 - Affected communities and stakeholders
 - Wider community/public
 - Experts in appropriate fields
5. Triaging and response to all complaints
6. Investigation plans for specific complaints
7. Workplans for the thematic areas to be covered by the review

The Review will generally apply standard IPCA operating practices, including:

1. Categorisation of complaints according to IPCA Standard Operation Practice set out in attachment A;
2. Deciding to take no action on a specific complaint in accordance with section 18 of the Act;

3. Regulating its own procedure and where necessary invoking its powers under the Commissions of Inquiry Act 1908 in accordance with section 23 of the Act; and
4. Maintaining confidentiality and secrecy of information in accordance with section 32 of the Act.

The Review may also call on outside assistance (including international expertise), where required, to reach appropriate conclusions on matters within scope of the review.

Outcomes

The Review will result in:

1. Report(s) about individual complaint findings.
2. A final thematic Review report summarising key findings and offering any recommendations or lessons learnt that may inform future Police actions. This thematic report will speak to issues raised by the majority of complaints.

Timeframe

The Review and individual complaint investigations will be conducted in parallel to the extent possible and practicable, and are anticipated to be conducted over a period of 12 months starting 1 April 2022.

The IPCA will report to the Secretary of Justice at regular intervals about the probable timeframe and progress towards it.

Delivery against the timeframe is subject to:

1. The availability of the resources to undertake the project. While we envisage the project being resourced in part by IPCA staff, there will be a need to second or contract specialists. Our ability to backfill IPCA staff on the project and availability of specialist staff are a risk that may have an impact on timeframes.
2. The number of individuals that may need to be interviewed.
3. The volume and accessibility of information from Police, the public and others that will need to be assessed.
4. Court processes.
5. Covid.

Attachment A: IPCA Categorisation

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 (e.g. 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 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.