



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihimana Motuhake

# **INDEPENDENT POLICE CONDUCT AUTHORITY**

## **Briefing to Incoming Minister Hon Kiritapu Allan**

**June 2022**

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## INTRODUCTION

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1. The Independent Police Conduct Authority (“the Authority”) is an independent crown entity which deals with complaints about Police conduct. The core purpose of the Authority is to enhance public trust and confidence in Police.
2. 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. Police exercise significant coercive powers and ensuring that these powers are exercised lawfully, fairly, and in a way which minimises the impact on an individual’s rights, is the Authority’s *raison d’être*.
3. The Minister of Police has portfolio responsibility for the 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 portfolio responsibilities of the Minister of Police.
4. Within the current Statement of Intent 2020-2024 five areas of strategic focus were identified. They are:
  - maximising efficiency & effectiveness;
  - using data insights to develop targeted services;
  - increasing the emphasis on prevention;
  - enhancing engagement within our communities; and
  - working with Police to ensure a greater focus on good custodial practice.
5. The Authority will produce an updated Statement of Intent during the 2023/24 outlining our strategic priorities, as well as targeted risk mitigation strategies, including:
  - creating a culture of agility through the development of multidisciplinary teams and cross-disciplinary capability in order to deliver our services more quickly;
  - development of a long-term strategy and corresponding operating model that best delivers trust and confidence in investigation and resolution of complaints, specifically addressing timeliness;
  - investment in technology solutions that enhance our expertise and reduce timeframes in which we can deliver services; and
  - supporting staff wellbeing and improve staff retention and recruitment.
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 challenges which have impacted our organisation recently and

summaries of our upcoming work. We have identified a number of ongoing strategic challenges and opportunities that have presented themselves recently.

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

## THE AUTHORITY

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8. The Authority is established under the Independent Police Conduct Authority Act 1988 (our 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; and
  - 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. 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 if there has been no complaint.
10. Section 17 of the Our 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 an increase (from a baseline appropriation of \$4.671M in 2019/20 to \$5.700M in 2020/21) to help us adequately deal with the increasing number of complaints. While this uplift allowed the Authority to apply appropriate levels of resourcing to some critical areas of our work, some areas of our work (such as our OPCAT work) remain resourced below minimum viable levels. Budget 2022 has provided a small increase to the Authority's baseline appropriation. This will be applied directly to staff retention and recruitment, as well as providing some additional resource for our OPCAT work, specifically allowing us to undertake more frequent inspections of Police custodial facilities.
14. During the 2022/23 financial year, the Authority's Vote Justice baseline revenue will be \$6.74 million (GST exclusive).

## Funding received for review and investigation of the policing of the 2022 Parliament Protest

15. Within the 2022/23 financial year, the Authority will receive the residual allocation of \$2.75 million provided to undertake the independent investigation and review of the policing of the occupation and protest activities on and around Parliament grounds during February and March 2022 (the Parliament Protest Review).

## Our independence

16. We are statutorily independent by virtue of the Independent Police Conduct Authority Act 1988 (our Act) and the Crown Entities Act 2004. Statutory independence is critical for our effectiveness.
17. Effective, efficient, and independent 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.
18. 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.
19. 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.

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

20. 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 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.
21. We strive to ensure that we have a cooperative and consultative relationship with Police, while always being clear that our findings and recommendations are made independently.



OUR WORK AT A GLANCE (SNAPSHOT OF THE AUTHORITY YTD JUNE 2022)

**\$5.7M** Annual Revenue from the Crown 2021/22



**\$3.5M** Funding to complete Parliament Protest Review

**\$6.7M** Annual Revenue from the Crown 2022/23



45 FTE Staff (BAU activities)



33% Male / 67% Female staff



Board – Chair and 2 Members



YTD (mid-June) Received 5800 complaints about Police, anticipate 6000 by EOY



Received a further **36%** increase in complaint numbers on the previous year (*incl Parliament Protest complaints*)



Met 50% of our performance expectations, maintaining or improving performance levels within those measures that are being met.



YTD concluded **56** independent investigations,



Oversaw **202** Police investigations



Facilitated **1182** agreed resolutions of complaints against Police



YTD published **39** Public Reports, anticipate **41** by EOY



Published **155** website summaries of oversight outcomes of Police investigations

## YOUR RESPONSIBILITIES

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22. 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; and
  - funding and appropriation decisions: we are fully funded from a small Non-Departmental Output Expense Appropriation within Vote Justice.
23. These matters are facilitated by the Ministry of Justice, which monitors us on your behalf.
24. The Minister of Justice and the Minister for Courts are 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 1961 Search and Surveillance Act 2012, Criminal Procedure Act 2011, Criminal Procedure (Mentally Impaired Persons) Act 2003, and Summary Proceedings Act 1957
25. We have recently identified the potential need for amendments to legislation within the Justice Portfolio. These include amendments to our own Act, along with amendments to the Search and Surveillance Act. These amendments are discussed further in the part of this briefing which discusses *Strategic Challenges and Opportunities*.
26. 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

27. The Police portfolio is most directly impacted by the work of the Authority. The Minister of Police is also the Minister who has most direct influence over the matters that we are concerned with, that is, the conduct of Police.
28. Section 29 of our Act provides that if the Authority is not satisfied with the Police response to its recommendations we must inform the Attorney-General and the Minister of Police. We may also provide a copy of our report to the Attorney-General for presentation to Parliament if we consider it appropriate, and the Attorney-General must present it.

29. The Authority has not yet used this power but has considered doing so recently. Our aim is to reserve this power, resorting to its use only if we have no other option available (i.e. where ongoing discussions with Police at all levels have proved to be unsuccessful).
30. 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 the new Minister of Police, with a copy of this briefing.

## THE IMMEDIATE FUTURE: CURRENT FOCUS

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32. The Authority is currently experiencing considerable pressure upon our already constrained resources, prompted in large part by the focus on delivering the Parliament Protest Review, and continuing to ensure quality and timeliness delivery standards are met within our BAU activities. Continuing changes in 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 and the communities which they police, make this an exciting and transformative period for the Authority and our work.

## VOLUME OF WORK – OUR EFFICIENCY AND EFFECTIVENESS

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33. With the inclusion of the 1900 complaints received in relation to the protest/occupation and associated policing activities at Parliament grounds, the Authority has recorded an increase of 130% in the number of complaints and notifications received by the Authority over the last four years.

34. The Authority faces a continuing increase in demand for our services and ongoing constrained resources. In response to the recommendations provided by the external review of our business processes (commissioned in 2020) the Authority has now made changes that have maximised effectiveness and efficiency to the fullest extent possible. These changes were enabled by the additional resources received through our 2020 Budget Bid. Specifically, the Authority has:

- continued to work with Police in a co-operative way to find areas of shared agreement, thereby reducing the time spent on renegotiating with them the Authority's mandate;
- restructured some existing operational roles to create a clearer division of labour and span of control, giving effect to some of the efficiencies contemplated by the review;
- introduced additional functions, including some specialist senior operational roles, to reflect the growing maturity of the Authority, and make some additional appointments to existing roles to better manage the current and future increases in volume;
- improved the effectiveness and efficiency of a range of processes and the core complaints management system, including:
  - reviewing agreed processes and timeframes for Police response to our information requests (RFI's);
  - reviewing and streamlining some aspects of our triaging and categorisation processes;
  - working co-operatively with Police, developed additional channels through which clarification and resolution of any contestable aspects of complaint resolution can be quickly and efficiently addressed without the need for elevation;

- assessed the proportionality of resource allocation and investigative methodology employed relative to the complexity assessment of cases requiring independent investigation;
- participated in and provided feedback to Police Professional Conduct personnel about the Police Disciplinary Pilot which is due for nationwide implementation in July 2022;
- continued engagement with our technology vendor to better utilise and extend the analysis and insights functionality available via our complaint management system (CMS); and
- continued to explore technological solutions that can assist in lifting the overall capabilities and currency of our systems.

35. We are committed to the continued maximisation of efficiency and effectiveness and the adoption of an agile operating approach so that redeployment and scaled application of resources can be applied across the entire organisation through building multi-disciplinary teams.

### ENGAGING WITH COMMUNITIES AND USING OUR DATA FOR BEST EFFECT

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36. We have made substantial improvements to our operational processes, internal and external performance reporting, and how we measure the quality of our outputs over recent years. These include:

- using our Case Management system (CMS), to track our business and collect better data about the work we do;
- continuing to refine 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 on monitoring longer-term trends and the overall impact of our activities (as set out in the attached 2020/21-2023/24 Statement of Intent).

37. We expect to use our data insights to develop more targeted services, enhance our emphasis on prevention, and continue to enhance our community engagement.

38. Within our limited resource, the Authority has spent time on increasing the transparency of our work and improving public understanding of our function. Our focus is on improving awareness and increasing accessibility for those people within the community who might most need our assistance.

## CONTINUING TO STRENGTHEN WORKING RELATIONSHIPS WITH POLICE

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39. Over the last four 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 staff, 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. Currently just over 30% of complaints are resolved in this way.
40. We remain committed to achieving the most effective liaison with Police possible.
41. 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.
42. 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.

## THEMATIC REVIEWS

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43. 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 the Fleeing Driver Policy, our 2021 review of Bullying and Culture within Police, and our most recent work on Policing in Small Communities. The first of these resulted in an agreed programme of change in how Police deal with drivers who flee, and the Authority continues to monitor progress made by Police in implementing that programme. The latter two pieces of work resulted in the commission of a survey that Police use to monitor workplace culture and response to the change initiatives within Police, and 41 recommendations which have been accepted by Police and are being actively monitored as they are implemented by Police.
44. 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.
45. We currently have thematic reviews underway which cover:
  - the investigation and review of the policing of the 2022 Parliament Protest;
  - Joint Agency Review (the Authority and the Office of the Privacy Commissioner) – Police Photographing in Public Places;
  - Joint Agency Inquiry (the Authority, the Office of the Inspectorate at the Department of Corrections, and the Inspector-General of Intelligence and Security) Review of events leading up to the attack at New Lynn Countdown on 3 September 2021;

- Police handling of fraud cases; and
  - remands in Police cells and prisoner transportation
46. Our thematic reviews often address, or reveal, crosscutting policy issues which affect agencies other than Police and, at times, wider than the justice sector
47. Participation in Joint Agency work supports our thematic approach, broadening our investigative inquiry beyond individual complaints, encompassing consideration of broader influences and cross-sector involvement and response.

## PARLIAMENT PROTEST REVIEW 2022

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48. The protest was 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.
49. The policing of protesters in and around the Parliamentary precinct has generated nearly 1,900 complaints to the Authority, which is the largest number of complaints received about a single event/Police operation.
50. The scope of work for the project team includes providing 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.

## STRATEGIC CHALLENGES AND OPPORTUNITIES

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51. 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. These are issues which not only bear on our operations but are also relevant to the Justice Sector as a whole.
52. 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.

## RELATIONSHIP WITH POLICE PROFESSIONAL CONDUCT AND ISSUES ABOUT POLICE CONDUCT CAPABILITY

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53. We consider our relationship with Police critical to the effectiveness of our work. Our primary liaison point is Police Professional Conduct staff.
54. 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, we consider there are some needless areas of tension. 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.
55. 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

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### Fraud

56. 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. The Authority considers 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.
57. The Authority has nearly completed 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).



58. We intend to publish the results of our inquiry in a public report that we expect to release shortly. 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. We would value the opportunity to discuss the contents of that report with you before it is released publicly.

## Custody

59. 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. We provide recommendations in our reports for Police to action to improve custody facilities and practice. We follow up the Police response to our recommendations to ensure action is taken. The Authority continues to work with Police on a case-by-case basis to address custody issues as they arise.

60. 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. Police have established a Custody Group at Police National Headquarters focused solely on custody. We work with this group to influence policy and practice.

61. We consistently observe issues relating to custody in the following three areas.

- *Physical infrastructure:* Despite 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 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. Police are developing a training package for custody supervisors to be run nationally at Police College. We will be presenting at these courses.

- *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. 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.

62. The Authority intends to expand upon its current programme of work so that we can inspect and audit custodial facilities at the level of frequency required to meet international standards. We will devote a portion of the additional funding received in Budget 2022 to strengthen this area of our work.

## LIMITS OF OUR LEGISLATION

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63. Following 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.

### Clarification of the intent of section 17 and 20

64. 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, we refer approximately 75% of cases we back to the Police for investigation rather than independently investigating them ourselves. 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 scope of our jurisdiction is unclear*

65. 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.
66. 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.
67. 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.

#### *We do not have the power to require draft reports*

68. 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 have often seen investigation reports only after a final decision has been made, and in these cases may find that we do not agree with either the adequacy of the investigation undertaken or the final outcome.
69. In such cases, the Authority's role has been limited to then making adverse comment. This has invited the criticism that the Authority is toothless, and it has done little to enhance public trust and confidence in the Police. We have recently been working with Police to develop a new

Memorandum of Understanding between the Chair of the Authority and the Minister of Police which we expect will result in improved processes in this regard. However, we believe there is merit in having a legislative requirement that Police must refer draft reports and proposal to the Authority so that any concerns can be discussed in advance of any final decision.

### *Our role in employment investigations*

70. There is an additional problem in employment investigations (which are a substantial proportion of the investigations undertaken by the Police upon referral by the Authority).
71. The Police Association strongly argues that any decision as to a sanction 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.
72. 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. That should include the ability to have input into whether, for example, there should be a performance conversation with the Police member, or he or she should receive a warning or be dismissed. Legislative clarification to resolve the issue would therefore be desirable.

### **“Own motion” investigations**

73. 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. By the same token, it precludes us from initiating an investigation into suspected wrongdoing by an individual officer that has come to our attention (e.g. through media coverage) even though we have not received a specific complaint.
74. 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.




### **Powers to prosecute (or to refer prosecution decisions to the Crown)**

75. 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. That is the view that was recently taken by the High Court in *Wallace v Attorney-General* [2021] NZHC 1963, which found that for the purposes of section 8 of the New Zealand Bill of Rights Act 1991 the Police investigation was not, and could never have been, independent. That decision, which is under appeal by the Crown, has far-reaching implications, especially in cases where death or serious injury results from Police actions. If the decision withstands appeal, it necessarily means that the power to investigate and prosecute must lie elsewhere – arguably with the Authority. We note that in other jurisdictions, bodies similar to ours have the ability to undertake full criminal investigations and 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). We think that would be a benefit in a consideration of the benefits and disadvantages of extending the Authority’s jurisdiction in this respect, either generally or on a restricted basis. This should be done as a matter of some urgency, so that the government is in a position to respond if the appeal against the *Wallace* decision fails.

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.

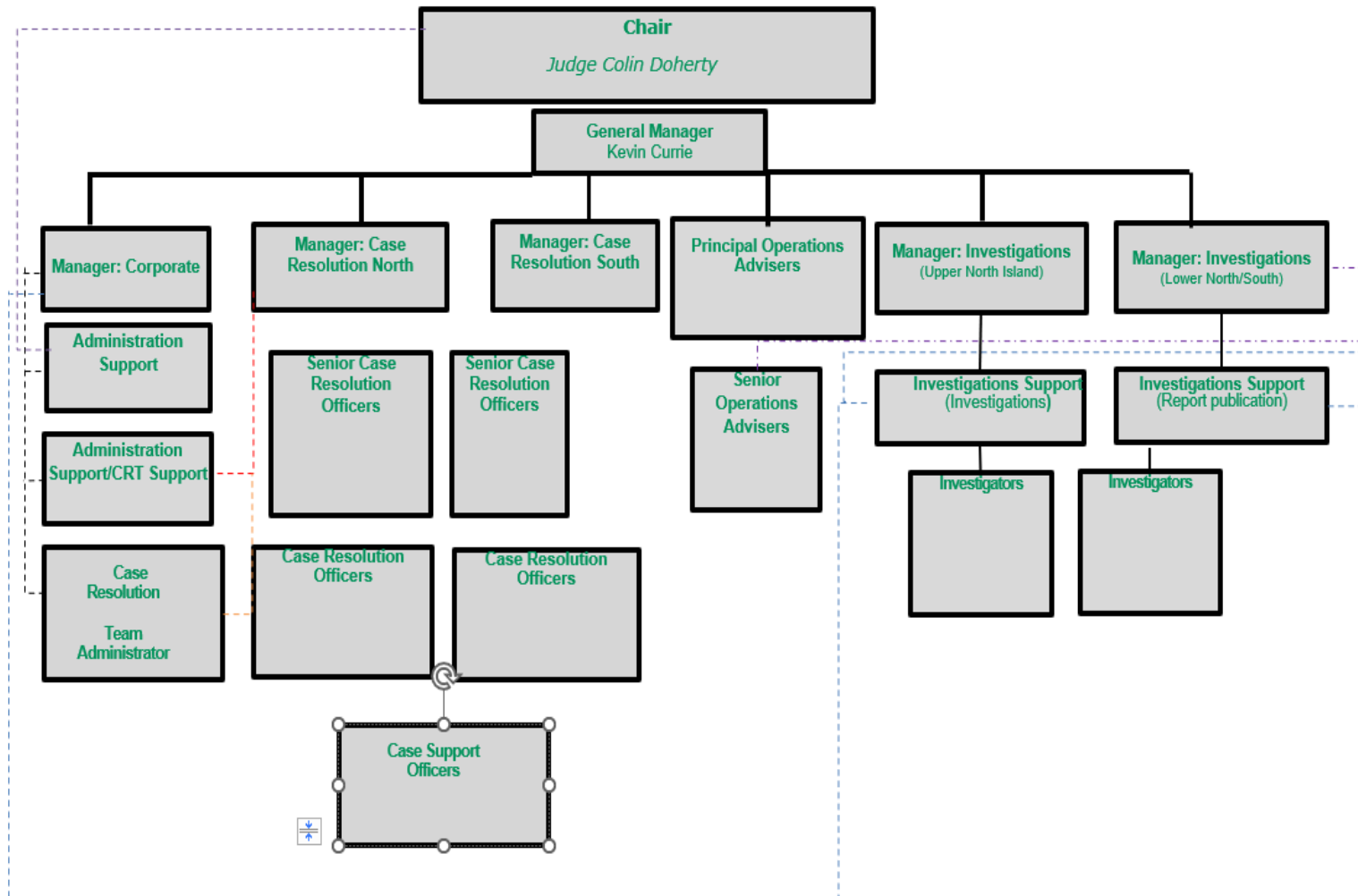
78. In regard to the day-to-day management of the Authority, the full-time Chair discharges a range of executive functions and is supported by an organisational structure that prioritises available resources toward the efficient and effective delivery of operational services.

79. The previous Minister and Judge Doherty agreed the Judge’s tenure should be extended until March 2023 to oversee the delivery of the Parliament Protest Review and other significant reports currently in progress

## IPCA MANAGEMENT AND STAFF

80. The Authority has 47 individual staff excluding the two Board members (45 full-time equivalents) across a mix of permanent and fixed term roles.

81. The organisational structure is pictured below:



## APPENDIX A: TYPES OF COMPLAINTS

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### 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; or
- 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.

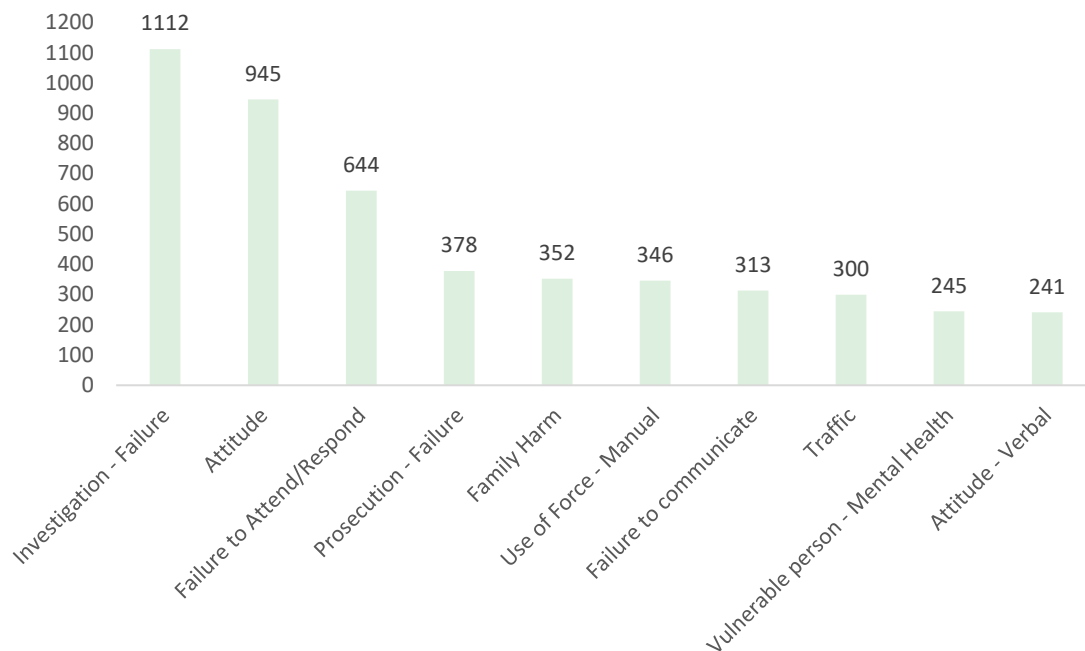
## Guidelines

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.

## APPENDIX B: DRAFT FINANCIAL STATEMENTS

### Forecast Statement of Comprehensive Income 2022/23

	2021/22	2022/23	2023/24	2024/25
Revenue from Crown	6,497,000	9,492,000	6,742,000	6,742,000
Interest Income	14,031	6,000	8,219	-
Other Income	196	-	-	-
<b>Total Income</b>	<b>6,511,227</b>	<b>9,498,000</b>	<b>6,750,219</b>	<b>6,742,000</b>
Audit Fees	46,902	52,711	59,575	59,575
Amortisation	27,183	20,387	15,290	11,468
Communication charges	31,306	35,206	35,206	35,206
Depreciation	91,344	66,189	65,198	76,025
Other Expenses	369	-	-	-
Personnel	4,455,945	5,834,873	5,933,971	5,935,304
Printing and Stationery	12,645	16,494	16,494	16,494
Professional Fees	178,692	335,000	255,000	255,000
Rent	466,974	412,438	427,807	434,330
Services and Supplies	287,401	225,172	225,172	225,172
Subscriptions	2,483	9,767	9,767	9,767
Training	585	87,000	87,000	87,000
Travel and Accommodation	55,430	90,000	90,000	90,000
Review Expenditure	125,000	3,375,000	-	-
<b>Total Expenses</b>	<b>5,781,090</b>	<b>10,560,238</b>	<b>7,220,481</b>	<b>7,235,341</b>
<b>Net Surplus</b>	<b>730,137</b>	<b>-1,062,238</b>	<b>-470,262</b>	<b>-493,341</b>

	2022	2023	2024	2025
Cash and Cash Equivalents	721,271	791,362	964,684	618,728
Term Deposits	1,500,000	750,000	-	-
Debtors /Accrued Interest	2,581	2,581	2,581	2,581
GST Receivable	38,062	115,970	30,206	30,314
<b>Total Current Assets</b>	<b>2,261,913</b>	<b>1,659,912</b>	<b>997,471</b>	<b>651,623</b>
Property, Plant and Equipment	322,660	256,471	191,273	115,248
Intangibles Assets	79,283	58,896	43,606	32,138
<b>Total Non-Current Assets</b>	<b>401,943</b>	<b>315,367</b>	<b>234,878</b>	<b>147,386</b>
<b>Total Assets</b>	<b>2,663,856</b>	<b>1,975,279</b>	<b>1,232,349</b>	<b>799,008</b>
Bank Overdraft	-	-	-	-
Capital Contribution (Current)	13,333	2,222	-	-
Creditors	78,031	405,025	74,579	74,579
Employee Entitlements	208,749	268,749	328,749	388,749
GST Payable	-	-	-	-
<b>Total Current Liabilities</b>	<b>300,113</b>	<b>675,996</b>	<b>403,328</b>	<b>463,328</b>
DNZ Capital Contribution	2,222	-	-	-
Make-good Provision	75,833	75,833	75,833	75,833
<b>Total Non-Current Liabilities</b>	<b>78,055</b>	<b>75,833</b>	<b>75,833</b>	<b>75,833</b>
<b>Total Liabilities</b>	<b>378,169</b>	<b>751,829</b>	<b>479,160</b>	<b>539,160</b>
<b>Net Assets</b>	<b>2,285,688</b>	<b>1,223,450</b>	<b>753,189</b>	<b>259,848</b>
Retained Earnings	1,555,551	2,285,688	1,223,450	753,189
Current Years Earnings	730,137	-1,062,238	-470,262	-493,341
<b>Total Public Equity</b>	<b>2,285,688</b>	<b>1,223,450</b>	<b>753,189</b>	<b>259,848</b>
	2021	2022	2023	2024
<b>Working capital</b>	<b>1,961,800</b>	<b>983,916</b>	<b>594,144</b>	<b>188,295</b>





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