

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE INDEPENDENT POLICE CONDUCT AUTHORITY
AND THE
NEW ZEALAND POLICE**

Parties

1. The Parties to this Memorandum of Understanding (MOU) are the Independent Police Conduct Authority (the IPCA), and the New Zealand Police (Police).

Introduction

2. This MOU sets out the principles and processes through which the Parties will cooperate to ensure effective independent oversight of Police conduct.
3. The IPCA is established and regulated by the Independent Police Conduct Authority Act 1988 (the IPCA Act).
4. Police is regulated by the Policing Act 2008.

Principles

5. This MOU is based on the following principles:
 - 5.1 That effective and efficient policing services are a cornerstone of a free and democratic society under the rule of law.
 - 5.2 That policing services are provided independently and impartially, in a manner that respects human rights, and through Police employees acting professionally, ethically, and with integrity.
 - 5.3 That effective policing relies on a wide measure of public support and confidence; Police have adopted the principle of “policing by consent”.
 - 5.4 That public confidence in the performance and integrity of Police is enhanced through robust and independent oversight of Police conduct.
 - 5.5 That close cooperation and coordination between the Parties will help to ensure robust and independent oversight of Police conduct, and to provide reassurance that New Zealand policing standards are of the highest calibre.

Interpretation

6. For the purpose of this MOU:
 - 6.1 The ‘Authority’ means the Chairperson of the IPCA.
 - 6.2 The ‘Commissioner’ means the Commissioner of Police.

6.3 A 'complaint' means any allegation about the misconduct or neglect of duty of a Police employee¹ or concerning any practice, policy, or procedure of the Police affecting the person or body of persons making the complaint in a personal capacity.

6.4 A 'notifiable incident' (in terms of section 13 of the IPCA Act) means an incident involving death or serious bodily harm caused, or apparently caused, by a Police employee acting in the execution of their duty.

6.5 "Serious bodily harm" means any:

- fracture
- deep laceration
- significant injury to internal organ
- significant impairment of a bodily function
- injury that results in admission to hospital (excluding treatment only at the Accident and Emergency Department)
- blow to the head that renders the recipient unconscious or results in discernible head injury or concussion

6.6 'Senior Representatives' shall be:

General Manager
Independent Police Conduct Authority
PO Box 25221 | Wellington 6146
<http://www.ipca.govt.nz>

Director: Integrity and Conduct
Police National Headquarters
180 Molesworth Street
P O Box 3017 / Wellington 6011

Practice Notes

7. The Parties may, from time to time, develop Practice Notes to describe the processes by which Police and the IPCA will work together.

8. Any Practice Note that is developed by the Parties will be attached to this MOU as a schedule.

Complaints and Notifiable Incidents

9. It is the function of the IPCA to:

9.1 Receive, and if appropriate, to independently investigate, complaints regarding Police conduct.

9.2 Investigate of its own motion, where it is satisfied there are reasonable grounds to carry out an investigation in the public interest, any notifiable incident.

9.3 Oversee Police investigations of complaints or notifiable incidents.

¹ The IPCA does not have jurisdiction over contractors with Police

- 9.4 Take such action in respect of complaints, incidents and other matters as is contemplated by the IPCA Act, including investigating and making recommendations about matters relating to Police policy, procedure or practice.

Reporting Internal Police complaints and Other Matters

Internal Police Complaints

10. Where an internal complaint is made by one Police employee in relation to actions taken against them by another, it should be treated as a notifiable complaint under section 15 of the IPCA Act if the act or omission complained of might:

- be criminal; or
- be serious misconduct; or
- in combination with other available information (including other similar behaviour against that employee) be evidence of behaviour that reaches the threshold of misconduct or neglect of duty.

11. For the avoidance of doubt, misconduct or neglect of duty, without limitation, includes any of the following:

- acts or omissions by one officer against another in the workplace;
- acts or omissions by a supervisor towards a supervisee, or vice-versa.

12. Where there is any doubt about whether a complaint reaches the threshold for notification, the parties should discuss the case before a final decision on notification is made.

Other matters

13. In addition to the statutory notification requirements under section 13 and section 15 of the IPCA Act, the Commissioner has decided to request the IPCA to investigate the following matters in terms of section 22(2) of the IPCA Act:

- any matter involving criminal offending or serious misconduct by a Police employee, where that matter is of such significance or public interest that it places or is likely to place Police reputation at risk;
- any incident where a Police employee has intentionally² discharged a firearm;
- any matter where there has been judicial adverse comment against a Police employee or Police practice, policy or procedure;
- any incident involving attempted suicide or self-harm by a detainee in Police custodial facilities³; or
- any unintentional dog bite involving a member of the public⁴.

² For clarity this does not include unintentional discharges or destroying animals unless the circumstances meet the threshold for referral under section 13, section 15, or a general MOU referral.

³ These are incidents where there would likely have been injury to the detainee, without Police staff intervention (by removing items or taking direct preventative action).

⁴ For clarity this provision does not include unintentional bites of on-duty Police employees.

14. The IPCA may act on these notifications in the same manner as a complaint notified under section 15 of the IPCA Act.

15. In addition to the statutory requirements under section 16 of the IPCA Act, the IPCA may notify the Commissioner of information relevant to the function and purpose of Police.

Protected Disclosure

16. For the purposes of this part of the MOU:

- An **“employee”** of Police includes current and former employees, any person seconded to work in Police, any person who is working for Police under contract, and any person working in Police on a volunteer basis.
- **“Serious wrongdoing”** includes:
 - a. An unlawful, corrupt, or irregular use of police funds or resources.
 - b. An act, omission, or course of conduct that constitutes a serious risk to public health, public safety or the environment.
 - c. An act, omission, or course of conduct that constitutes a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences and the right to a fair trial.
 - d. An act, omission, or course of conduct that constitutes an offence.
 - e. An act, omission, or course of conduct that is oppressive, improperly discriminatory, grossly negligent, or that constitutes gross mismanagement.

17. Where Police receive a protected disclosure, it shall be notified to the IPCA as a complaint as required by section 15 of the IPCA Act.

18. If Police or the IPCA are of the view that the employee believes on reasonable grounds that the alleged wrongdoing is serious, the Parties will take all practicable steps to ensure that, in categorising and investigating or resolving the complaint, they afford the employee the protections provided in the Protected Disclosures (Protection of Whistleblowers) Act 2022.

19. If neither Police nor the IPCA believe that there are reasonable grounds to regard the alleged conduct as serious wrongdoing, Police will advise the employee accordingly and give him/her the opportunity to withdraw the complaint as a protected disclosure complaint or proceed with it in the ordinary way.

20. Where the IPCA receives a complaint by way of a protected disclosure, it will treat the complaint as a protected disclosure only if:

- it is satisfied that the employee believes on reasonable grounds that the alleged conduct is serious wrongdoing; and
- one of the following circumstances applies:
 - a. the Commissioner is or may be involved in the alleged serious wrongdoing;
 - b. immediate reference to the IPCA is justified by reason of the urgency of the matter to which the complaint relates; or
 - c. there has been no action or recommended action on the matter to which the disclosure relates within 20 working days after the disclosure was made to Police.

21. If the IPCA determines under paragraph 20 that it will treat the matter as a protected disclosure, it will notify the Director: Integrity and Conduct of:

- the fact of the disclosure;
- the basis for its decision that it is a protected disclosure;
- such other information about the nature of the disclosure that can be divulged without identifying the employee;
- those steps that the IPCA intends to take to investigate or resolve the matter.

22. If the IPCA believes that further inquiries are needed before it can determine whether to treat the matter as a protected disclosure, it will notify the Director: Integrity and Conduct of the fact of the complaint and the steps that it is taking to clarify the matter, but will not divulge the identity of the employee.

23. If the IPCA determines that the complaint is not a protected disclosure, it will advise the employee accordingly and give him or her the opportunity to:

- withdraw the complaint as a protected disclosure complaint; or
- have the matter treated as an ordinary complaint.

Correspondence and Liaison between the Parties

24. The Senior Representatives to this MOU shall be responsible for correspondence and liaison between the Parties, and shall meet regularly to share information and discuss key activities, including the following:

- significant issues that need to be brought to the attention of the other party;
- communication strategies;
- issues and trends in case management and investigations; and
- prevention strategies.

25. All correspondence and communications referred to in the Practice Notes attached to the MOU as requiring to be addressed to the Commissioner will also be sent to the Director: Integrity and Conduct.

26. All communications between the IPCA and Police shall, wherever practicable, be in electronic form.

27. If either Party has any concerns about any issues, disputes, or differences, including operational or policy matters, these will be raised and resolved at the earliest opportunity using the communication and escalation strategy set out in Practice Note 11.

Access to information

28. Police will provide applicable IPCA staff with access to the core Police computer systems, which enable the IPCA to undertake its functions, and will provide and maintain Police devices on Authority premises for that purpose.

29. The IPCA will undertake random audits of the use of NIA by IPCA staff to ensure that use is within the permitted parameters for IPCA work and aligns with the Police policy on Acceptable Use of Technology.

30. Police acknowledge the requirements of section 21 of the IPCA Act and that this extends to the provision of information relating to an employee's health and employment matters which are relevant to the complaint.

31. Police also acknowledge that IPCA is a National Preventive Mechanism under the Crimes of Torture Act 1989 and Police agree to provide all requested information to the IPCA to enable it to comply with its duties and functions under the Crime of Torture Act 1989.

Legal Advice on Police Investigations

32. The ability of the IPCA to require information relating to any matter under investigation by the IPCA does not include or extend to information that is legally privileged.

33. Legal advice provided by in-house legal counsel or sourced from external lawyers (including Crown Law) attracts legal privilege.

34. The IPCA may request disclosure of information that is legally privileged, and Police Legal Services will consider, on a case-by-case basis, any such request. However, providing copies of legal advice to the IPCA is not a waiver by Police of legal privilege. The IPCA undertakes not to compromise the privileged nature of the information in any report, or in any response to a complainant.

35. Legal privilege relating to in-house or Crown Law legal advice rests with the Attorney-General. If a waiver of privilege is sought, to enable publication of legally privileged information, the IPCA may request that the Commissioner seek a waiver of the privilege.

Media Inquiries and Privacy Act Requests

36. Where either Party receives a media inquiry or Privacy Act request about any complaint or other matter that has been referred to the IPCA, it shall, as appropriate, transfer the inquiry or request to the other Party or consult with the other Party about the proposed response to that inquiry or request where the response:

- comments on any actions taken or proposed to be taken by the other Party;
- discloses any findings made following an investigation by either Party that have not already been the subject of a public release;
- discloses any actions taken, or proposed to be taken, to resolve a complaint that have not already been the subject of a public release.

Conditions and Costs

37. Nothing in this MOU shall make either Party liable for the actions of the other or constitute a legal relationship between the Parties.

38. Nothing in this MOU affects the ability for the IPCA to act independently in the performance of its statutory functions and duties, and in the exercise of its statutory powers, as required by section 4AB of the IPCA Act.

39. Unless mutually determined otherwise, costs arising from this MOU shall be met by the Party incurring the cost.

Review, Variation and Revocation

40. This MOU will be reviewed after one year, with bi-annual reviews thereafter to ensure it remains fit for purpose.

41. Substantive changes to the MOU may be made in writing with the approval of the Authority and the Commissioner.

42. Changes to the Practice Notes attached as a schedule to this MOU may be made as the need arises, and may be approved by the Senior Representatives.

43. The Authority or the Commissioner may revoke this MOU by notice in writing.

44. All previous understandings, arrangements and protocols touched upon by this MOU are hereby revoked.

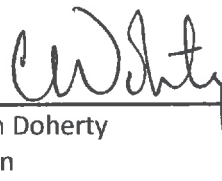
Dated at Wellington this *16th* day of *November* 2022

Signed by:



Andrew Coster
Commissioner
New Zealand Police

Signed by:



Judge Colin Doherty
Chairperson
Independent Police Conduct Authority