

*Independence*

*trustworthiness*

*accountability*

*vigilance*

*integrity*

Police closure of a party at 70 Homebush Road, Khandallah on 5 September 2009

October 2013



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October 2013

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INDEPENDENT POLICE CONDUCT AUTHORITY

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# Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. At 11.59pm on the evening of Friday 4 September 2009 Police received a 111 call from a female (Partygoer 1) attending a house-warming party at 70 Homebush Road, Khandallah, Wellington. She had been asked by one of the tenants to call Police, as approximately 20 gate crashers had arrived and there was fighting outside of the property. She asked for Police's help to remove the gate crashers.
2. Police from the Tactical Policing Unit (TPU) were dispatched to attend. By the time they attended the address, approximately eight minutes later, there were no gate crashers visible to Police on the street and fighting was no longer occurring outside the property.
3. Police took the view that the party was out of control. They asked one of the tenants, Partygoer 2, to shut the party down and for him to ask the guests to leave. He refused to comply with that request and instead told Police that they were not required. Police subsequently decided to close the party by forcibly entering the property and ejecting all of the party-goers.
4. Eleven partygoers reported to the Authority during its investigation that Police officers struck them with a baton while ejecting them from the property. One partygoer, Partygoer 3, sought medical attention on 5 September 2009 and was advised that he had sustained a displaced fracture of the C7 spinous process. A further 11 partygoers informed the Authority that they were grabbed, shoved, pushed or manhandled from the property by Police officers.
5. Partygoer 3 made a complaint to the Independent Police Conduct Authority (the Authority). Police notified the Authority of a further nine complaints they received about Police actions during the incident. The Authority conducted an independent investigation in respect of these 10 complaints and two complaints about subsidiary issues. This report sets out the results of that investigation and the Authority's findings and recommendations.

## Glossary of terms

Abbreviation/term	Explanation
Advancing the skirmish line with voice appeal	A line of officers walks towards the crowd with arms outspread and swung backwards and forwards indicating a requirement to move back. Officers issue commands for people to move.
Enforcement officer	A local authority noise control officer with powers under the Resource Management Act 1991 (which can include authorised security guards, or employees of licensed security guards).
Inner chop	A type of strike with the side-handle baton where the short end of the baton is driven forward in a chop action.
Investigation plan	A document describing the investigation process and setting out the roles, responsibilities, timeframes, principal activities, critical decision points and objectives for an investigation.
Master arm	A person's dominant arm, for a right-handed person this would be the right arm.
Moderate force	Includes placing a person in a restraint hold to temporarily deprive the person of unrestricted movement, or tripping or pushing the person so that he or she falls to the ground.
Penetration line	Officers form a line standing one behind the other.
Scopie	A person who is hoping to join New Zealand Police and undergoing scoping hours with Police officers as a type of work experience.
Short end jab	A type of strike with the SHB involving the execution of a short jabbing action with the baton.
Single hand grip	A manner of holding the SHB, where the baton is held by the handle, short end pointing forward horizontally under the forearm of the master arm. The master arm elbow is bent so the arm forms a right angle along the body.
sitrep	Situation report
Skirmish line	A line of officers standing side by side across a given space to hold back a crowd or to hold ground.
CentComms	Police Central Communications Centre
Terms of reference	Sets the parameters of a Police investigation into complaints. Is agreed between a District Commander and investigator to avoid any doubt as to the authority to act, the scope and the objectives of the investigation.
TOR	Tactical Options Report
TPU	Tactical Policing Unit
Trifling force	Includes touching a person, holding a person's arm in circumstances that do not restrict that person's movement, or pushing a person in such a way that he or she does not overbalance.

**Index of officers**

TPU Staff	Roles/Comment
OC Sergeant TPU	Officer in Charge of TPU and the incident
Sergeant TPU	Sergeant within TPU and second in command
TPU Constable A	At head of the penetration line and first to enter the property
TPU Constable B	Second in the penetration line and assisted in smashing the glass window by the door
TPU Constable C	Third in the penetration line
TPU Constable D	Fourth in the penetration line
TPU Constable E	Fifth in the penetration line
TPU Constable F	Sixth in the penetration line
TPU Constable G	Seventh in the penetration line
TPU Constable H	Eighth in the penetration line
TPU Constable I	At the back of the penetration line

Investigative/Supervisory Staff	Roles/Comment
Officer J	Initial investigating officer
Officer K	Second investigating officer
Officer L	Detective Inspector in charge of the Criminal Investigation Branch at Wellington. Assisted second investigating officer with specific aspects of investigation
Officer M	1 <sup>st</sup> investigator into leaked preliminary report
Officer N	2 <sup>nd</sup> investigator into leaked preliminary report
Officer O	Detective assigned to conduct specific interviews with partygoers in March 2012
Area Commander P	Had oversight and supervision of the investigation from September 2009 to 2010
District Commander Q	Had overall responsibility for oversight and supervision of investigation from September 2009 to 24 December 2010
District Commander R	Had overall responsibility for oversight and supervision of investigation from December 2010 to September 2011
District Commander S	Had overall responsibility for oversight and supervision of investigation from September 2011 to its conclusion

Other officers	Roles/Comment
Officer T	CIB officer who attended incident and remained outside property

### Index of partygoers

Partygoer	Roles/Comment
1	Made 111 call to Police for assistance. Made complaint to Police.
2	Occupier who spoke to OC Sergeant TPU outside the property. Arrested 12.50am for disorderly behaviour. Made complaint to Police.
3	Alleges hit by baton strike to back of neck while in hallway. Made complaint to the Authority.
4	Alleges hit by baton in the bathroom.
5	Alleges hit by baton to stomach while in the lounge, and separately hit by baton to shoulders while on his way to the front door.
6	Alleges hit by baton on spine by the front door. Made complaint to Police.
7	Alleges hit by baton to lower back and sides by the front door.
8	Occupier who alleges hit by baton to the stomach while in the hallway. Made complaint to Police.
9	Alleges hit by a baton in the ribs while in the hallway. Arrested 12.43am for disorderly assembly.
10	Occupier who alleges hit by baton on back of the neck in the hallway. Made complaint to Police.
11	Alleges jabbed in the kidneys with a baton in the hallway by the front door.
12	Alleges hit by baton to back of the head in the hallway. Made complaint to Police.
13	Arrested at 12.20am for disorderly behaviour.
14	Arrested at 12.25am for assaulting Police.
15	Arrested at 1.03am for disorderly behaviour.
16	Arrested at 1.04am for disorderly assembly.
17	Arrested at 1.09am for disorderly assembly.
18	Arrested at 1.10am for disorderly assembly.
19	Made complaint to Police that she was forcibly pushed by an officer.
20	Made complaint to Police that she witnessed an officer hit Partygoer 5 in the stomach.
21	Made complaint to Police that she witnessed Police baton people. She was grabbed and pushed down the hallway by Police.
22	Made complaint to Police that she was grabbed and shoved. She received a hard blow to the side of the head from an officer.

### Timeline of events on 4/5 September 2009

Time	Event/Comment
8.30pm	House-warming party began at 70 Homebush Road, Khandallah.
Approx 11.00pm	Partygoer 10 (party host) asked one of the gate crashers to leave. He refused and a fight broke out, initially in the kitchen and then 20-25 people went outside the address.
11.01pm	Email containing details of complaint by neighbour about noise at 70 Homebush Road received by Recon Security.
11.33pm	Enforcement officer from Recon Security attended the property due to reports received about a noisy party. Deemed the noise to be excessive and served noise direction notice on one of the occupiers, Partygoer 2.
11.45pm	Enforcement officer left property.
11.59pm	Partygoer 1 made 111 call to Police for assistance. CentComms despatched TPU to attend. Information provided that 20 gate crashers present who had refused to leave, bottles being thrown and people fighting with fists.
12.03am	OC Sergeant TPU obtained sitrep from CentComms. Informed the last information received was that fighting was still going on.
12.07am	OC Sergeant TPU and his TPU section arrived at 70 Homebush Road. No fighting occurring or witnessed.
12.07-12.15am	OC Sergeant TPU spoke to Partygoer 1 for information and Partygoer 2, one of the tenants, instructing him to close the party down as it was out of control. Partygoer 2 was abusive to Police telling them that things were alright and that Police should " <i>Fuck off</i> ". OC Sergeant TPU warned Partygoer 2 that if he did not start to close the party down Police would enter the house and close the party down due to there being a breach of the peace.
12.13am	OC Sergeant TPU advised CentComms they were closing the party down.
12.15am	Second noise complaint received from neighbour.
12.15-12.25 approx	TPU formed a penetration line and approached the house. Police were refused entry. Police allege they heard bottles smash and saw one bottle thrown from a window. OC Sergeant TPU ordered officers to draw their side-handle batons for protection purposes. Police smashed the window by the side of the door. Police forcibly gained entry to the house. Eleven TPU officers entered and instructed all partygoers to leave and the party was closed down. Allegations from partygoers that TPU officers pushed, shoved and manhandled them from the house. Allegations that certain partygoers were struck by Police batons during their ejection. TPU officers reported five baton strikes were executed in self defence.
12.20am	Partygoer 13 was arrested outside the property for alleged disorderly behaviour.
12.25am	CentComms were advised that the party had been cleared and Police were moving 30 or so people along Homebush Road.
12.25am	Partygoer 14 was arrested for allegedly assaulting Police.
12-26-12.33am approx	All partygoers had been ejected from the house. Police reported that a group of 30-40 stopped in the middle of the street hurling threats and abuse at Police. OC Sergeant TPU instructed TPU officers to form a skirmish line across the street facing downhill towards the crowd. Batons were still held in the single handed grip. OC Sergeant TPU ordered the crowd to disperse and warned them twice for disorderly assembly. He then instructed TPU officers to advance the skirmish line with voice appeal in order to disperse the crowd.
12.33am	CentComms were advised that a couple of arrests had been made.
12.36am	Enforcement officers (three in total) returned to the property following a further complaint. Police assisted them to remove stereo equipment.

12.43am	Partygoer 9 was arrested for alleged disorderly assembly.
12.50am	Partygoer 2 was arrested for alleged disorderly behaviour.
12.52am	Second clearing of the street due to partygoers trying to return to the property. Sergeant TPU instructed TPU officers to reform the skirmish line and advance towards the group in order to disperse them.
12.57am	Enforcement officers left the property.
1.03am	Partygoer 15 was arrested for alleged disorderly behaviour.
1.04am	Partygoer 16 was arrested for alleged disorderly assembly and possession of a cannabis pipe.
1.09am	Partygoer 17 was arrested for alleged disorderly assembly.
1.10am	Partygoer 18 was arrested for alleged disorderly assembly.



# Executive Summary

INDEPENDENT POLICE CONDUCT AUTHORITY

6. Following a request for assistance with gate crashers at 11.59pm on 4 September 2009, Police attended 70 Homebush Road, Khandallah, Wellington. The Tactical Policing Unit (TPU) took control of the incident at the scene. When Police arrived there was no longer any fighting on the street. There were still 15-20 partygoers milling around outside. There was loud music and the noise of people coming from the house.
7. The Authority is aware that Police are routinely called to deal with 'out of control' parties taking place on private premises. These events can often cause tensions and dilemmas for Police. On the one hand the partygoers want and expect to be able to continue the party, while often members of the community expect Police to act and close down the party. Often Police are outnumbered, partygoers can be affected by alcohol and sometimes matters can escalate and violence can erupt either between partygoers, against members of the public or against Police.
8. It is routine Police practice to enter private property to close a party down when the Police reach the view that the party is out of control, namely when violence or disorder has occurred or is likely to erupt in the area.
9. If the owner or occupier does not agree to close down the party Police have to rely on restrictive powers under the Resource Management Act 1991 in relation to noise control, breach of the peace provisions or their powers to enter premises and arrest offenders. This means that often Police have to undertake quite intricate assessments of the situation at hand, often in very tense and pressured circumstances. In addition this involves frontline officers having a good understanding of a complex area of law.
10. In this instance the OC Sergeant TPU asked one of the occupiers hosting the party to close it down. He warned the occupier that Police would do so, by force if necessary, if he did not comply. Faced with a refusal to cooperate and, having made an assessment that this occupier was intoxicated and not in control of the party, OC Sergeant TPU decided that Police would close the party down.

11. Eleven TPU officers formed up and entered onto the property. Partygoers inside the house refused them entry by barricading the door. TPU officers started to break a panel adjoining the door and gained entry after partygoers moved from the doorway.
12. The TPU officers entered the house. These officers had already drawn their batons which were being held in a single hand grip.<sup>1</sup> The TPU officers quickly cleared all partygoers (estimated to be about 60 people) from the address. Many partygoers complained that during that process they were pushed, shoved, manhandled and struck by batons.
13. One partygoer (Partygoer 3) alleged that he had been struck on the back of the neck by a male TPU officer with a baton. He sought medical treatment some hours later and was diagnosed with a displaced fracture of the C7 spinous process.
14. After clearing the house a number of partygoers remained on the street outside. Police warned the crowd for disorderly assembly and started to march them down the road in order to disperse the crowd. A number of people were arrested for disorderly assembly or disorderly behaviour. One person was arrested for assaulting a Police officer.
15. The Authority received 10 complaints from partygoers about the actions of Police, specifically TPU officers, when they attended and closed down the party. These complaints were about the Police forcing entry to the house, allegations that TPU officers used batons to strike partygoers, allegations of being forcibly removed from the house by pushing, shoving and manhandling, as well as the general excessive force used by Police.
16. The Authority also received two subsidiary complaints about leaking of a preliminary report to the media and alleged dishonesty in accounts recorded in documents by specific officers.
17. The Authority's report also examines the Police investigation conducted into the complaints. The Police investigation took over three years to complete. A preliminary investigation report was leaked to The Dominion Post in October 2009 by an office administrator at Police National Headquarters. The contents of this report and the fact it had been leaked led to the partygoers losing faith in the Police investigation process. This had some impact on Police's ability to arrange interviews. Mr Iain Morrison, the father of one of the partygoers, acted as an advocate and liaison between Police and the partygoers. Police felt this hampered their ability to progress matters. Police also took the approach that they would not interview Police staff until they had a specific allegation against an identified officer. The Authority does not accept this as a valid approach. It fails to appreciate that Police officers do not have to be interviewed under caution as

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<sup>1</sup> This baton hold is explained in the Glossary above.

potential subjects of the complaint, but can be interviewed as witnesses to an incident for their perspective and as part of an information gathering exercise. Police would not take the same view of any incident involving an allegation against a member of the public whose identity was not known.

18. The Police investigation did not result in any criminal or disciplinary proceedings against any officer. It did conclude that TPU's entry onto the property was unlawful and that the use of force by TPU to eject partygoers from the house appeared to have been without lawful justification.
19. One complaint from a partygoer (Partygoer 12) that he was struck by a baton was upheld but it was determined that no further action would be taken. All other complaints were not upheld by Police. This was despite the fact that Police found the majority of instances of force by TPU were in the form of pushing, shoving and grabbing and these amounted to "*technical assaults*" that were at a relatively low level which would not warrant "*the intervention of criminal law*".
20. The Authority's investigation looked at issues raised about Police's actions when they attended the incident at 70 Homebush Road. It specifically considered whether Police complied with the law and applicable policies in relation to their entry onto the property, the force used to eject partygoers and the way they subsequently dealt with the crowd on the street. This included a consideration of the current legal provisions, Police practice and policies in relation to 'out of control' parties.
21. The Authority also investigated the two subsidiary complaints about leaking of a preliminary report to the media and alleged dishonesty in accounts recorded in documents by specific officers.
22. The Authority also examined the Police investigation into these complaints and whether that investigation was conducted in a fair, timely and effective manner in accordance with policy.

### **Authority conclusions**

23. Section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure which was the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
24. Pursuant to section 27(1) of the Act, the Authority has formed the opinion that:
  - TPU actions in entering onto the property and entering the house at 70 Homebush Road were contrary to law and unjustified.

- The decision of OC Sergeant TPU to instruct TPU officers to take such action was unjustified and unreasonable.
- A male TPU officer caused the injury sustained by Partygoer 3 by striking him with a baton. That use of force was excessive and contrary to law. It is not though possible for the Authority to make an unequivocal finding as to which male TPU officer used excessive force.
- OC Sergeant TPU struck Partygoer 5 with a baton. Due to the conflicting accounts the Authority is unable to make an unequivocal finding on whether this use of force was justified and proportionate.
- TPU officers' use of force by using batons, pushing and manhandling partygoers to eject them from the house was contrary to law and unjustified.
- OC Sergeant TPU's actions in warning the crowd for disorderly assembly were unjustified.
- The evidential test for charges in respect of disorderly assembly and disorderly behaviour were not met and Police withdrew five of those charges. Police's failure to deal with the other two charges in a similar manner was unfair.
- An office administrator working at Police National Headquarters sent a copy of the preliminary report to the media in October 2009, with a view to discrediting Partygoer 3. He took these actions alone and Police were not involved in the unauthorised disclosure.
- OC Sergeant TPU, Sergeant TPU and TPU Constable C did not deliberately lie or make false declarations in their job sheets and Briefs of Evidence.
- Police's failure to conduct a robust, thorough and timely investigation was unjustified, unreasonable and unfair.

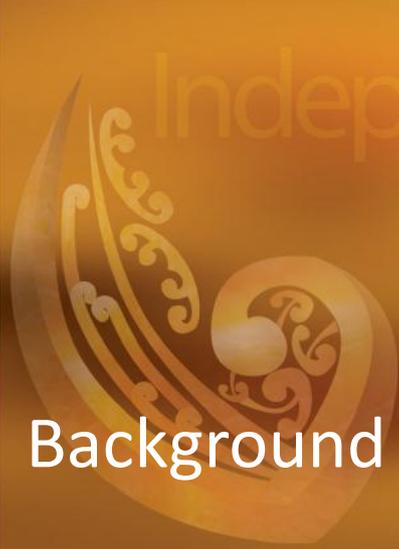
### **Section 27(2) recommendations**

25. As a result of this incident, and others reported to the Authority concerning Police actions when dealing with parties on private property, the Authority considers that the policy in relation to public order policing needs to be urgently reviewed, so that the manner in which the Police should deal with private parties considered to be out of control, and the powers available to them to do so, are specifically addressed.
26. Police acknowledge that their legal powers when dealing with parties on private properties are complicated and not understood by all officers. The Public Order Policy does not currently address these matters. The Authority has started to engage in

discussions with Police around these issues and Police are in the process of drafting policy to comprehensively address these matters.

27. Pursuant to section 27(2) of the Act, the Authority recommends that the New Zealand Police:
  - a) Urgently develop and implement a national policy for dealing with disorder situations such as out-of-control parties on private property.
  - b) Ensure that training occurs in respect of such a policy which contains clear instruction on the legal powers Police have in such situations.





# Background

INDEPENDENT POLICE CONDUCT AUTHORITY

## SUMMARY OF EVENTS

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### Initial TPU attendance at 70 Homebush Road

28. Three males who had recently moved into 70 Homebush Road, Khandallah, Wellington held a housewarming party on the evening of Friday 4 September 2009. It started at about 8.30pm. About 60 people attended the party. Approximately 20 gate crashers arrived later in the evening, around 11.00pm. They initially entered the house. One of them was asked to leave by one of the occupiers and refused. Arguments and fighting started inside the house, in the kitchen, and then a group moved outside to the driveway and onto the street.

29. The situation was escalating and at 11.59pm one of the partygoers, Partygoer 1, telephoned 111 for assistance. She had been asked to call Police by one of the occupiers hosting the party. In the 111 call she stated:

*“We’ve got one of those youth gangs turned up that are trying to fight everyone outside. We just want our little, you know, house gathering to carry on but we want them gone”.*

30. Partygoer 1 was asked what she meant by fighting and whether weapons were being used. She replied:

*“Ah there’s bottles being thrown but I don’t know if they’re using them as weapons”.*

31. The 111 call was handled by the Central Communications Centre (“CentComms”). As a result of the information provided, Wellington Tactical Policing Unit (“TPU”) was dispatched at midnight to attend the address. The information given to TPU was:

*“20 persons gate crashing a party there, bottles are being thrown, people fighting with fists. Numbers ranging between 30 and 40 outside. Informant has asked them to leave, they will not. No other weapons except bottles”.*

32. Three TPU units attended at the property with a total of 11 TPU officers. They had all arrived by 12.09am. The local crime car with two detectives and three other Police vehicles with a further five general duties officers also attended.
33. The first TPU unit that arrived at 12.07am included the Officer in Charge of the TPU that night. He was a Sergeant ("OC Sergeant TPU") and assumed control of the incident. When the first TPU unit arrived they did not observe any fighting occurring on the street. OC Sergeant TPU said that it was dark and the house was down a driveway and not visible from the street. He could hear loud music and the noise of people coming from the house. There were some 15-20 partygoers milling around on the street and the driveway. The OC Sergeant TPU told the Authority there was a tension palpable at the scene. He spoke to Partygoer 1 as she had called Police. She told OC Sergeant TPU that the gate crashers had gone. She was visibly upset. A couple of males were nearby, trying to stop Partygoer 1 from speaking to Police, and became very angry with her for doing so. TPU officers describe these males as being intoxicated, obstructive and abusive. TPU officers state they had to intervene to keep these males back and allow OC Sergeant TPU to speak to Partygoer 1.

#### **Decision to enter the property to close the party**

34. One of the males with Partygoer 1 was Partygoer 2. He was one of the occupiers hosting the party. OC Sergeant TPU then spoke to Partygoer 2 who was out on the street. OC Sergeant TPU reports that Partygoer 2 was intoxicated and uncooperative. OC Sergeant TPU informed Partygoer 2 that it was his belief that the party was out of control and needed to be shut down. Partygoer 2 did not agree with that assessment, was verbally abusive and told Police that everything was fine and they were to "*fuck off and leave*".
35. OC Sergeant TPU states, at this stage, he heard a bottle smash somewhere between the house and the TPU officers. There are conflicting accounts from the officers who attended about whether they heard this bottle smash at this time.
36. OC Sergeant TPU spoke with the other Sergeant present ("Sergeant TPU"). They agreed that the party needed to be closed down. OC Sergeant TPU states this assessment was based on his belief that they needed to prevent a breach of the peace. OC Sergeant TPU informed Partygoer 2 that he had five minutes to get his guests to start leaving and show that he was complying with the request to close the party. Partygoer 2 argued with OC Sergeant TPU and told Police again that they should leave. OC Sergeant TPU warned Partygoer 2 that if he did not start closing the party TPU would enter the house and close the party for him. OC Sergeant TPU believed he had the power to do so under section 42 of the Crimes Act 1961. (This aspect is examined in detail starting at paragraph 136 below).

37. Partygoer 2 informed some partygoers of the request made by OC Sergeant TPU and a few partygoers left. The majority though remained. Some partygoers were verbally abusive to Police and hurling taunts at TPU.

#### **TPU entry onto property**

38. OC Sergeant TPU instructed the TPU officers to form a penetration line and advance at a march down the driveway towards the front door of the house. The instructions did not include donning helmets or shields, or drawing batons.
39. The 11 TPU officers marched down the driveway in a single line, under the carport and down the side of the house leading up to the front door. They came to a stop at the door with some officers beside the bathroom and toilet windows, which were along the side of the house leading up to the front door.
40. TPU Constable A was at the head of the penetration line. As the lead man he had his baton out across his chest when advancing towards the door. He reached the door first. He knocked on the door and asked for it to be opened. He tried the door handle a couple of times. It turned but the door would not open, as there were people barricading it. He then attempted to gain entry by shouldering the door but this approach was unsuccessful.

#### **TPU draw batons**

41. While in the penetration line waiting to gain entry to the house, TPU Constables C, D and E report that they saw a bottle come past their heads and smash on the ground. TPU Constable E states he saw this bottle come out of one of the windows next to them (either the bathroom or toilet window).
42. TPU Constable E asked whether batons should be drawn due to the officer's belief that a bottle had been thrown. OC Sergeant TPU then gave the order for batons to be drawn in a single hand grip. All TPU officers were carrying side-handle batons and accordingly drew their batons. OC Sergeant TPU has explained that this decision was taken to provide the TPU officers with an additional means of protecting themselves.

#### **TPU entry into house**

43. TPU Constable A had not managed to open the front door by using bodily force. TPU Constable B attempted to assist by kicking the door. They were unsuccessful.
44. There was a reinforced glass panel to the left of the front door. A direction was given to break this panel. It is unclear which TPU officer gave this direction.
45. TPU Constables A and B used their batons to break the glass using a series of chopping movements. TPU Constable A used his foot to completely remove the glass panel.

46. OC Sergeant TPU formed an assessment that the partygoers had changed from actively resisting to assaultive. He was concerned for the safety of his officers as he believed that missiles could be thrown at them from inside the house. The TPU officers were not wearing any protective gear. In his assessment it was necessary to enter the house by force and close the party down as quickly as possible.
47. By this time the partygoers had moved back from the inside of the front door and so it was possible to open the door. All 11 TPU officers entered the house with batons drawn in a single hand grip and proceeded to clear the house and close the party down.
48. The method used was for officers to fan out and go to the farthest points of the house. They then ushered people directing them in a loud forceful manner to leave the house through the front door. TPU Constable I remained by the front door and stated that he removed bottles from passing partygoers as they exited.
49. It took approximately five minutes for TPU officers to eject all partygoers from the house.

#### **Use of force to eject partygoers**

50. TPU officers state that they were firm with partygoers, loudly informing them that the party was closed down and they must leave. The corridors in the house were narrow. While accounts vary about the number of people at the party it appears there were approximately 60 partygoers in the house when TPU officers entered. The officers were surprised by the number of people in the house.
51. Eleven partygoers have given accounts to the Authority stating that TPU officers struck them with a baton whilst ejecting them from the property. The Authority conducted these interviews between September 2009 and September 2010. The specific allegations are:
  - a) Partygoer 3 was in the hallway being herded out of the house when he was jabbed in the stomach with a baton. As he walked past an officer he was hit on the back of the neck. Partygoer 3 immediately responded by putting his hand to his neck, turning and asking the officer why he had hit him.
  - b) Partygoer 2 was in the hallway behind the front door as the TPU officers stormed in. He was knocked over and hit with a baton above the right ear.
  - c) Partygoer 4 was in the bathroom. A male TPU officer came into the bathroom and told him and a friend to “*get the fuck out*” and hit both of them with a baton.
  - d) Partygoer 5 was in the lounge heading towards the door when he was hit in the stomach by the OC Sergeant TPU. This caused him to fall to the ground. He was being

assisted by two friends to move forward and was further hit on his shoulders about three to four times by other officers while on the way to the front door.

- e) Partygoer 6 was the last partygoer to leave the house. As he was going out of the front door he was hit with a baton on the spine.
  - f) Partygoer 7 was in the kitchen when TPU officers forcibly entered the house. He describes TPU officers holding their batons in a single hand grip and as they were swinging their batons these were hitting people. As he was leaving the house he was hit on his lower back and sides resulting in bruising.
  - g) Partygoer 8 was one of the occupiers. He was in his bedroom. A TPU officer opened the bedroom door, grabbed Partygoer 8 by his right shoulder, pulled him out of the bedroom and jabbed him in the stomach with the ball end of the baton.
  - h) Partygoer 9 was in a bedroom and then moved to the hallway to leave the house. He had his hands raised above his head. A female TPU officer "*battered him in the ribs*".
  - i) Partygoer 10 was one of the occupiers. He was in the hallway outside Partygoer 8's bedroom when a TPU officer grabbed him by the front of his shirt, pulled him forward and hit him on the back of the neck with a baton.
  - j) Partygoer 11 had been in Partygoer 10's bedroom and was walking towards the front door. As he got to the door he was jabbed in the kidneys by a TPU officer with a baton.
  - k) Partygoer 12 was in the hallway behind Partygoer 3. The same TPU officer that hit Partygoer 3 subsequently hit Partygoer 12 in the back of his head with a baton causing him to drop his drink.
52. A further 11 partygoers have stated to the Authority that they were personally grabbed, shoved, pushed or manhandled from the property by TPU officers.
53. Additionally, 18 partygoers have provided accounts to the Authority indicating that they saw others being hit with a baton, or dragged, pushed, shoved or manhandled by TPU officers.
54. Four TPU officers have reported that they struck five male partygoers with their batons in defence of themselves or another officer. Other than these incidents all other allegations of baton strikes to partygoers are disputed. The specific circumstances are:
- a) OC Sergeant TPU executed a short end jab to the hip of a male in the lounge who had grabbed OC Sergeant TPU by the shoulder. OC Sergeant TPU took this action as he feared the male was going to drag him down. It is likely that this male was Partygoer 5 whose account is provided at paragraph 51 above.

- b) TPU Constable C executed a short end jab towards the hip of a large male wearing a green singlet in the hallway. This male was holding a bottle in his right hand raised up while yelling abuse at TPU Constable C. The Authority has not been able to determine the identity of this male.
- c) Additionally TPU Constable C executed an inner chop to the upper arm, near the elbow, of a tall male wearing a black hoodie in the hallway. This male was holding a bottle in his hand which he raised in the air while yelling abuse. TPU Constable C feared that this male was going to assault him. The Authority has not been able to determine the identity of this male.
- d) TPU Constable D executed a short end jab to the stomach of a tall male Caucasian wearing black. The male was abusive and turned towards TPU Constable D in an aggressive manner. This occurred in the hallway. The Authority has not been able to determine the identity of this male.
- e) TPU Constable E executed a short end jab to the buttock of a male in the lounge who was trying to grab OC Sergeant TPU with a bottle in his hand. The Authority has not been able to determine the identity of this male.

#### **TPU form first skirmish line to disperse crowd and advance**

- 55. Once partygoers had been ejected from the house some immediately left the area but others congregated outside the property on the street. Some partygoers have reported to the Authority that they had left wallets, bags and keys inside 70 Homebush Road and had no means of going anywhere. TPU officers report that about 30-40 people had stopped in the middle of the street and were hurling abuse and threats at Police.
- 56. There were two CIB detectives who had arrived outside the property after TPU. They remained while TPU cleared the property in case they would be needed to deal with any issues arising. One Detective, Officer T, has informed the Authority that he recalls several people coming up to them as they came out of the property stating that they had been assaulted by the officers that were inside. He advised those people to go to the Police station to make a statement in person about the specific allegation.
- 57. OC Sergeant TPU directed the TPU officers to form a skirmish line across the street facing downhill towards the crowd which was about five metres from them. This involved the officers standing side by side with approximately one arm's length between each officer. These TPU officers still had their batons held in a single hand grip. Their non master arm was held out, at the ready, in front of them.
- 58. OC Sergeant TPU consulted with Sergeant TPU as he considered that the crowd was a disorderly assembly. Both Sergeants agreed that a warning should be given, as required under section 5A of the Summary Proceedings Act 1981, for them to disperse or risk

being arrested. OC Sergeant TPU gave the warning and instructed them to leave. He wanted the crowd to disperse peacefully and states he was using the graduated response model to resolve the situation. A second warning was given some 30-45 seconds later as the crowd had not left. These warnings had no effect and OC Sergeant TPU states these were met with jeers, abuse, taunts and a refusal to leave from the partygoers.

59. OC Sergeant TPU then gave the order for the skirmish line to advance. This involved the line of TPU officers walking towards the crowd, still holding batons in a single hand grip and gesturing with their arms outspread, swinging backwards and forwards, in an ushering motion for the crowd to move. This was accompanied by the TPU officers shouting for the people to move.
60. The crowd started to move down the hill. OC Sergeant TPU reports that some individuals deliberately held back. He then gave the order for the skirmish line to advance quick time. This involved the TPU officers quickening their pace to a slow jog while still gesturing with their arms outspread and loudly instructing the crowd to move.
61. The crowd did thin out. The skirmish line halted about 150 metres down the hill and TPU officers returned to their vehicles outside of the property. At this stage TPU officers returned their batons into the clips on their belts.

#### **Attendance of enforcement officers**

62. Unknown to TPU officers at the time they arrived, an enforcement officer from Recon Security had attended 70 Homebush Road, Khandallah, Wellington and served a noise direction notice on one of the occupiers (Partygoer 2) at 11.33pm, due to reports received from a neighbour about a noisy party. That enforcement officer had conducted an assessment of the noise level and deemed it to be excessive. The enforcement officer warned the occupier that the notice was effective immediately and that if he did not comply and another complaint was received within 72 hours they would return and seize the stereo equipment.
63. The enforcement officer who initially attended the property reported to the Authority that he heard loud music and people's voices. As he approached the house he saw smashed glass on the public footpath and down the drive. He did not see any bottles thrown. There were about five people surrounding Partygoer 2 when he was speaking to him. They were all being abusive and were intoxicated. The enforcement officer felt that somebody less experienced than him would have been intimidated. After he had served the notice he reported to his control that he felt there would not be compliance with the notice, and if they were called again it would not be safe for a single officer to attend. None of this information was known by the TPU officers when they attended the property.

64. A further complaint about noise was received at about 12.30am and so the enforcement officer, accompanied by two colleagues, returned to the property to enforce the notice previously served.
65. By the time the enforcement officers arrived the party had already been closed down by Police. TPU officers assisted the enforcement officers as they entered the house and seized the stereo equipment.

#### **TPU form second skirmish line**

66. While the enforcement officers were removing the stereo equipment a number of people returned to the area and wanted to get back into the house. Partygoers have explained to the Authority that this was due to personal items being left inside the property as they were ejected, and their needing to retrieve these.
67. TPU officers advised these individuals that the party had been closed down and they were not allowed to re-enter. It does however appear that there was some discretion used by TPU officers and certain individuals were allowed to enter the property to get personal items.
68. TPU officers state that some males within the group tried to push past them. About 15 people became abusive and threatening to Police. Sergeant TPU therefore gave the command for the skirmish line to reform. TPU officers were not instructed to draw their batons.
69. Sergeant TPU then ordered the skirmish line to advance towards the group. The group began to disperse and then stopped. Sergeant TPU then gave the command for the skirmish line to advance quick time. As previously outlined in paragraph 60, this involved the TPU officers quickening their pace to a slow jog while still gesturing with their arms outspread and loudly instructing the crowd to move. This resulted in the individuals running off down the road.

#### **Arrests**

70. TPU officers arrested eight individuals during the incident:
  - a) Partygoer 13 was arrested by TPU Constable I at 12.20am. He was charged with disorderly behaviour. Partygoer 13 was verbally abusing Police. He was warned for his language but continued to be abusive. He also tried to break the skirmish line. Partygoer 13 states that he was trying to return to the house to collect personal belongings. This matter went to a hearing on 30 October 2009. It was dealt with by formal proof and he received a fine.

- b) Partygoer 14 was arrested by TPU Constable G at 12.25am. She was charged with assaulting Police. She had allegedly struck TPU Constable C on the shoulder. She received diversion in September 2009.
- c) Partygoer 9 was arrested by TPU Constable D at 12.43am for disorderly assembly. This was for earlier behaviour witnessed by TPU officers. It is alleged that Partygoer 9 had been verbally abusive and had made rude gestures towards TPU officers during the first skirmish line. Police state that having been warned to leave he had refused to do so. Partygoer 9 states he was returning to the address to get his car as he was a sober driver that night. He claims he was tackled to the ground and arrested. The charge was withdrawn in September 2010.
- d) Partygoer 2 was arrested by TPU Constable I at 12.50am. He was charged with disorderly behaviour. It is alleged that he had demanded to know why his girlfriend, Partygoer 14, had been arrested and became abusive. Having been warned to calm down he persisted. The charge was withdrawn in October 2009.
- e) Partygoer 15 was arrested by TPU Constable E at 1.03am for disorderly behaviour. It is alleged that prior to the second skirmish line being formed he refused to leave the area despite several warnings, was swearing at Police and purposely walking slowly. He claims that he was tackled by TPU officers from behind as he was walking downhill. The charge was withdrawn in September 2010.
- f) Partygoer 16 was arrested by TPU Constable C at 1.04am for disorderly assembly and possession of a cannabis pipe. It is alleged that he was verbally abusive and had failed to leave despite warnings prior to TPU officers forming the second skirmish line. He claims that he was tackled by two TPU officers as he was running away from the area. The charges were withdrawn in September 2010.
- g) Partygoer 17 was arrested by TPU Constable F at 1.09am for disorderly assembly. He was hiding in the bushes on private property when TPU officers were trying to clear the area. He received diversion in October 2009.
- h) Partygoer 18 was arrested by TPU Constable I at 1.10am. He was charged with disorderly assembly. This was for earlier behaviour witnessed by TPU officers. It is alleged that Partygoer 18 had been swearing and verbally abusive towards TPU officers. Having been warned to leave he had refused to do so. He claims he was "*clothes lined*" by a TPU officer. He also claims TPU officers stood on his head when they arrested him. The charge was withdrawn in September 2010.

### **Medical attention sought by Partygoer 3**

- 71. On the afternoon of Saturday 5 September 2009 Partygoer 3 went to the Wellington Accident and Urgent Medical Centre. He was seen initially by a triage nurse at 12.47pm.

It is recorded that he was complaining of pain radiating down his back due to having been hit on the back of the neck the previous night.

72. Partygoer 3 was subsequently assessed by a doctor. It is recorded that he informed the doctor that he had been at a party the previous night which had been broken up by Police, he had been drinking at the party and while being herded out of the house by Police he was hit on the back of the neck from behind by a Police baton.
73. The initial medical examination revealed that Partygoer 3 was moving very stiffly with reduced ability to flex and extend his neck. The lower spinal process of his cervical spine looked more protuberant and he displayed soreness in the lower part of his mid-line cervical spine. The doctor felt the presenting symptoms were consistent with the account provided by Partygoer 3 both in terms of mechanism and timing. The doctor arranged for an X-ray to be taken of the cervical and thoracic spine. This showed that Partygoer 3 had a displaced fracture of the C7 spinous process. The doctor informed Partygoer 3 that he had sustained a broken neck.
74. Partygoer 3 was transferred by ambulance from the Accident and Urgent Medical Centre to Wellington Hospital where he was seen at 3.35pm initially by an emergency department consultant. A CT scan was undertaken at 4.18pm that afternoon which confirmed the fracture of the C7 spinous process. He was fitted with a cervical collar to provide support and strength to his neck, and allowed home later that evening.
75. Partygoer 3 had regular follow up as at outpatient at the Orthopaedic clinic at Wellington Hospital. The cervical collar was removed towards at the end of October 2009 and he was discharged on 9 November 2009.

## COMPLAINTS

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### **Police actions at 70 Homebush Road, Khandallah, Wellington on 5 September 2009**

76. The Authority has received 10 complaints from partygoers about the actions of Police, specifically TPU officers, when they attended 70 Homebush Road on 4-5 September 2009. One complaint was received directly and the other nine were made to Police and then subsequently notified to the Authority. In summary these complaints concerned the following issues:
  - 76.1 Partygoer 3 alleges he was jabbed in the stomach with a baton and later hit on the back of the neck causing immediate pain. He was diagnosed on 5 September 2009 with a "broken neck." (More detail is contained in paragraph 51 a) above.)
  - 76.2 Partygoer 2 was one of the occupiers. He complained about Police attacking the front door and smashing a large glass window beside it causing people to be cut by

the showering glass. He alleged he was hit twice on the side of the head with a baton and knocked to the ground. He stated he was bodily thrown out of the house and was in a dazed state. He observed males and females inside the house being *"thrown around"* by Police. After being ejected from the house he discovered his girlfriend (Partygoer 14) had been arrested and went to her assistance. He complains that he was wrongly arrested for disorderly behaviour while on his own property, and that he was strip searched by two officers in front of his friends in an attempt to humiliate him.

76.3 Partygoer 6 was a sober driver that night. He was in the lounge when Police came into the property. He complained that he was *"batoned directly on the spine as I was exiting the property, whilst shielding my partner from the police batons"*.

76.4 Partygoer 8 was one of the occupiers. He was in his bedroom when Police entered. He complained that he was grabbed and thrown by Police down the hallway where he was *"bunted in the stomach with a police baton"*. He stated that the force of the hit winded him and he was helpless on the ground for some time. He complained that both he and his girlfriend (Partygoer 21) were assaulted by Police. He also alleged that Police, rather than neighbours, contacted enforcement officers as an excuse to be able to enter the property.

76.5 Partygoer 10 was one of the occupiers. He complained about the fact that Police were contacted for help but their actions had dramatic consequences causing injury to partygoers and damage to property. He specifically complained about the number of Police that arrived and that they had no reason to enter the premises, and indeed were not granted authority to do so. He complained about Police forcing entry to the house by smashing a glass panel, physically manhandling people and in some cases assaulting them in order to move them outside. He complained about Police using excessive force to people and also to property by kicking doors, and swinging batons causing damage to walls. He was hit on the back of the neck with a baton.

76.6 Partygoer 12 complained that he had been in Partygoer 10's bedroom with Partygoer 3, when Police smashed their way into the house. An officer slammed open the bedroom door, was waving his *"riot baton"* around and shouting at the partygoers present to get out. Partygoer 12 was in the hallway on his way out of the house when he saw an officer in the corner jab Partygoer 3 on the back of the neck with his baton. He complained that the same officer then hit him on the head.

76.7 Partygoer 19 complained that as she was going through the front door she was forcibly pushed by a male officer. Her bag broke and when she tried to pick it up she was forcibly pushed down some stairs. She complained that the actions of

Police officers that night were *“traumatising for many of the girls who were manhandled and the boys who were batoned”*. She complained that the level of force used by Police was completely unnecessary. In addition she complained that it was wrong of Police to refuse them access to their car.

76.8 Partygoer 20 complained about the force used by Police in ejecting partygoers, both by using batons and by violently pushing people out without warning. She witnessed an officer hit Partygoer 5 in the stomach with a baton. She complained that as officers were moving people down the road she lost a shoe. As she went to pick up her shoe Police continued their march and she was knocked off her feet. In addition she complained that Police did not allow them access to their car for some time.

76.9 Partygoer 21 was in Partygoer 8’s bedroom when Police entered the house. She complained that she was horrified to see people getting batoned by Police in the hallway when she opened the bedroom door. She stated that a police officer came storming down the hallway with baton raised and yelled to *“get the fuck out.”* While she was trying to leave the same officer grabbed her by her clothing and pushed her down the hallway with such force that she almost lost her feet. She stated that when she was able to return to the house later she had informed an officer who appeared to be in charge that she had been ruthlessly shoved and assaulted.

76.10 Partygoer 22 was in the bathroom when she first saw Police outside the bathroom window. She complained that Police stormed into the house pushing, screaming and hitting people. She took a couple of steps back into the bathroom to avoid getting hurt. A Police officer came over to her and a friend screaming at them to leave. The officer then grabbed her and shoved her with unnecessary force down the hallway. She stated she was going towards the door with her hands raised when she received *“a hard blow to the side of my head by one of the officers standing to the right of me”*. That same officer grabbed her and pushed her outside. She stated she felt dizzy and her head still hurt the following morning.

#### **Allegation that Police leaked their preliminary report to the media**

77. On 14 October 2009 a report appeared in The Dominion Post headed *“Police say teen injury ‘overstated’.”* A preliminary Police report in relation to the complaint by Partygoer 3 had been sent to The Dominion Post which formed the basis of the article. On 22 October 2009 Partygoer 3 made a further complaint to the Authority alleging that Police had *“leaked”* the preliminary report in an attempt to discredit Partygoer 3.

### Allegation that three TPU officers made false declarations about events on 5 September 2009

78. Partygoer 1 complained to the Authority on 20 July 2010 that OC Sergeant TPU, Sergeant TPU and TPU Constable C had made false declarations in their job sheets or Briefs of Evidence about the events that occurred at 70 Homebush Road on 5 September 2009.

### POLICE INVESTIGATION

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#### Preliminary report from Officer J

79. The Police investigation was initially assigned to Officer J who worked as an internal investigator for the Wellington Area. He was instructed to prepare a preliminary report which the Authority had requested from Police on 8 September 2009. The purpose of the preliminary report was to provide further information to the Authority to assist it in deciding whether the matter should be independently investigated.
80. Officer J considered the information held by Police about the event which included jobsheets and Tactical Options Reports (“TORs”) from the 11 TPU officers who attended 70 Homebush Road, as well as the information provided and received by CentComms.
81. The provisional recommendations contained in the report were:

*“As yet there is no evidence to support the allegation made” by Partygoer 3.*

*“Police arrived to a party that was very likely out of control and had to be shut down. If they hadn’t it is this investigator’s opinion there would have been continued violence....”*

*Their low key approach was met with active resistance and assault. Importantly was the one bottle thrown out the bathroom window that missed a Constable’s head by inches.*

*Early indicators would point to a perfectly lawful entry to the house.*

*Inside the address the Officers were again confronted with a number of males intent on intimidating and threatening the Officers – several were grabbed and man handled.*

*Several males were batoned – when they fronted up to the Officers.*

*Also very importantly is [Partygoer 3’s] previous history and behaviour.*

*The evidence supports that he acts in a very irrational manner when drinking, and harbours racist views.*

[Partygoer 3] *has stated that he calmly walked out, but considering his previous history, his intoxication and the presence of a number of his close friends, this is not considered likely. It is more probable that he was obstructive or resistive to Police requests, or commands.*

*To support this one Officer on this night has commented on [Partygoer 3's] behaviour outside the premises saying he was abusive and confrontational – and made no mention of his neck.*

[Partygoer 3] *does not have much credibility (when the rules of credibility are applied to him – namely does he have a reason to lie? And does his story “seem right?”) and many of his associates are very anti-police and well known for prior confrontational attitudes.*

*There are also well placed concerns as to his injury itself – namely that it has been overstated, and sure (sic) be referred to as a “chipped bone” as opposed to a broken neck”.*

82. Officer J's overall recommendation was that the investigation be “scaled back” to a more directed investigation rather than interviews of all persons.
83. The detail of the preliminary report was provided to the Authority on 23 September 2009. On the same day the Authority confirmed that it would undertake an independent investigation.

#### **Investigation into the leaking of the preliminary report**

84. The preliminary report of Officer J was the subject of an article in The Dominion Post on 14 October 2009. The leaking of this report was the subject of a separate complaint from Partygoer 3 made on 22 October 2009 as outlined at paragraph 77 above.
85. A separate investigating officer, Officer M, was assigned to this matter on 20 October 2009. He reported on 17 June 2010 that the person responsible for the unauthorised disclosure had not been able to be identified through the investigation.
86. The investigation was reviewed by an Inspector at Professional Standards who suggested other avenues of inquiry that should be taken. He also expressed concern at the length of time (eight months) it had taken so far and requested that a more senior investigator be assigned to complete the case.
87. The matter was assigned to an Inspector, Officer N, who conducted further inquiries. He was able to establish the identity of the person who had posted the report to The Dominion Post. This was an office administrator who was working in the Professional Standards office at Police National Headquarters on a fixed term contract which expired

in January 2010. He was interviewed by Police on 27 July 2010 and admitted disclosing the report.

88. Part of the office administrator's duties was to file reports received from Districts concerning complaint matters. These had to be uploaded electronically onto a computer system. When he received the preliminary report the office administrator read it. He considered that Partygoer 3 was lying and trying to discredit Police. The office administrator had also spoken to Partygoer 3 on the telephone, when Partygoer 3 had phoned up to speak to someone in charge about his complaint, and had been short with the office administrator. The office administrator therefore photocopied the report and deleted the names of the individual officers before photocopying it again and posting this redacted copy to The Dominion Post. In interview he stated he was sorry for what he had done and that he had not thought through the consequences.
89. The outcome of the Police investigation was notified to Partygoer 3 in a letter dated 6 August 2010.
90. The Authority conducted its own investigation into this complaint. The Authority's findings will be considered at paragraph 181 below.

#### **Investigation by Officer J**

91. Following the disclosure of the preliminary report, Officer J continued to conduct the Police investigation into events at 70 Homebush Road. On 20 October 2009 he started to contact the occupiers of the address to make arrangements to interview them.
92. On 21 October 2009 Iain Morrison, father of one of the partygoers, contacted Officer J and confirmed that he was acting as an advocate for Partygoer 3 and a number of other partygoers. He sent a letter to Officer J outlining the position:

*"Following an information leak to the Dominion Post of a preliminary report and (I understand) internal police report, I have lost faith, as have the young people involved in this incident, in the formal police investigation process."*

93. Mr Morrison assured Officer J that there would be full co-operation with the Police investigation, but also made it clear that they may wish somebody to be present during Police interviews of individual witnesses. Mr Morrison explained that the reason for this was to ensure fairness and that the matter was robustly investigated.
94. Officer J was in charge of the Police investigation until the end of January 2011. During that time no investigation plan was completed. Officer J encountered difficulties in arranging interviews with the individual partygoers who had made complaints. He did not manage to interview the main complainant, Partygoer 3. He did manage to obtain statements from five partygoers. Three of these partygoers (10, 20 & 22) were

complainants. Officer J also spoke to an additional three partygoer complainants (6, 19 & 21) on the telephone.

95. Officer J only interviewed two TPU officers and had a question and answer session with OC Sergeant TPU and two other TPU officers. He also obtained a statement from the enforcement officer who initially attended. He conducted a review of the Police documents available.
96. Officer J's file was sent to Crown Law to be reviewed. It was determined that there was insufficient information available at the time and Officer J was tasked to contact three main persons, namely Partygoers 1, 3 and 12. Officer J has outlined to the Authority that further attempts to arrange interviews with these individuals failed.
97. Officer J felt frustrated in his efforts to progress the investigation. He has explained that he was more than happy to liaise with Mr Morrison, as advocate for the partygoers, but became increasingly frustrated as he felt Mr Morrison was not assisting the investigation, but in fact was hampering it. Officer J decided the relationship had broken down and accordingly the investigation was reassigned to Officer K at the beginning of February 2011.

#### **Investigation by Officer K**

98. Officer K took over as investigating officer in February 2011. She was tasked by District Commander R to concentrate on interviewing three of the partygoers. These were Partygoers 3 and 12, both of whom were together in the hallway and complained they were each struck with a baton. Partygoer 12 was believed to have witnessed the baton strike to Partygoer 3. The third person Officer K was to interview was Partygoer 1 who made the initial telephone call to Police. She had also made a separate complaint alleging certain officers had made false declarations about what occurred on that night (see paragraph 78 above for further details).
99. Officer K continued to liaise with Mr Morrison to arrange these interviews. After concerted efforts she managed to conduct DVD interviews of Partygoer 3 on 10 April 2011, Partygoer 12 on 13 May 2011 and Partygoer 1 on 9 August 2011. Officer K reports that she faced similar difficulties as Officer J when trying to gain assistance from Mr Morrison. The Authority acknowledges the real difficulties Police faced in this respect but notes there was no reason why Police could not approach the partygoers direct, as the Authority had done, and as Police subsequently did many months later.
100. After obtaining legal advice Police decided further enquiries needed to be undertaken of other partygoers. In March 2012 Officer O was assigned to assist the investigation by carrying out interviews with particular partygoers. He had phone calls with four partygoers and met a fifth (none of these had made formal complaints). He was only

assigned to the investigation for a couple of weeks. Following this assignment Mr Morrison raised an issue of Officer O having a possible conflict of interest.

### **Role of Officer L in the investigation**

101. On 28 March 2012 Officer L was asked to assist with resources for certain specific aspects of the investigation. Officer L was the Detective Inspector in charge of the Criminal Investigation Branch at Wellington. He was asked to assign investigators from his team to complete the investigation into the central allegation by Partygoer 3 of being struck with a baton by a TPU officer. It was not his role to make any recommendations, rather to complete the investigation and provide that information to the investigating officer which would then also be reviewed by a lawyer. Officer L met with Mr Morrison on 12 April 2012 to outline his involvement in the investigation.
102. Officer L's initial assessment was that a significant amount of resources would be required to complete all the necessary tasks. He sought and gained approval from District Commander S on 13 April 2012 for an analyst to be assigned to assist. Officer L appointed a Detective Sergeant to work full time on the matter for five weeks as a permanent second in command, with a view to working with the analyst to review the file to date, identify the additional investigative work required and prepare a plan for that to occur.
103. Throughout May 2012 varying numbers of Detectives were assigned (the most being 12 for a five day period) to complete the investigation mainly by locating and interviewing potential witnesses and undertaking detailed analysis of those accounts and plotting them in terms of the scene. This team of detectives contacted 46 individuals during that time.
104. The information obtained was passed back to Officer K as the officer in charge of the Police investigation of the complaint matters.

### **Police investigation conclusions**

105. The final Police investigation report considered each of the complaints received and decided whether each was upheld. It also looked in a general way at the lawfulness of the TPU entry to the premises, the lawfulness of TPU actions and whether TPU breached the Code of Conduct.
106. Officer K finalised the investigation report. In summary this concluded that:
  - TPU's entry onto the property was unlawful as neither section 315 nor 317 of the Crimes Act 1961 was used, and Police do not have the power to force entry to prevent a breach of the peace.

- The use of force by TPU to eject partygoers from the house appears to have been without lawful justification. This is on the basis that there was no violence witnessed or evident inside the house and as such there was no breach of the peace.
  - The majority of instances of force by TPU were in the form of pushing, shoving and grabbing. These amounted to “*technical assaults*” that were at a relatively low level which would not warrant “*the intervention of criminal law*”.
  - Even though TPU officers were unlawfully on the property, the use of force by certain TPU officers, in particular the use of a baton, could be justified if the officer acted in self defence.
  - Four arrests were assessed as not meeting the requisite evidential test and so charges were withdrawn. These were the arrests of Partygoers 9, 15, 16 and 18.
  - The complaint made by Partygoer 12 that he was struck with a baton was upheld, however “*due to the nature of the contact and the context of the circumstances, no further action will be taken.*”
  - The complaints made by Partygoers 3, 6, 8 and 10 that they were struck with a baton were not upheld.
  - The remainder of the complaints from partygoers were adjudged to be “*technical assaults*” which did not require any action, or were not upheld.
  - Bottles were prevalent at the party; “*at least one or two bottles were thrown at the Police on the road, and one was thrown at Police as they stood lined up beside the address.*”
  - The TPU officers acted professionally, OC Sergeant TPU exercised sound judgment and offered the occupiers every chance to cooperate and resolve the situation. At the time the OC Sergeant TPU “*believed in good faith he had a lawful right to enter the property and he acted to prevent further problems by closing the party.*” They did not breach the Code of Conduct.
  - There is no physical evidence to support a finding that TPU officers used excessive force, or deliberately treated any person harshly.
107. Police did not bring criminal or disciplinary proceedings against any officer involved in the incident.
108. Officer K sent dispositive letters to the complainants on 21 December 2012 confirming the outcome of the Police investigation. These letters reported the outcome of the Police investigation in respect of each individual’s specific complaints.

109. The letter to Partygoer 3 states that during the investigation Police had spoken to *“approximately 70 partygoers, neighbours and all the Police Officers who attended.”*
110. The Police findings on the individual complaints and the contents of the dispositive letters will be considered in more detail starting at paragraph 188 below.

### **Oversight of Police investigation**

111. The two main investigating officers (J and K) assigned to look into the complaints made by 10 partygoers concerning the actions of Police attending 70 Homebush Road on 4-5 September 2009 were, at the time, an internal investigator and the Employee Practices Manager.
112. At the time this investigation commenced in September 2009, the line management and supervision of the two investigating officers was not straightforward. Officer J reported to the Area Commander for Wellington, but also had regular liaison with the Professional Standards Manager. Officer K reported to the Human Resources Manager, Wellington District but also updated the District Commander and Professional Standards Manager.
113. Additionally this matter was overseen by the relevant District Commanders who at times had hands on involvement and made decisions as to the direction of the investigation. The District Commander has responsibility under Police policy for actively managing the investigations of complaints and providing monthly updates to the National Manager: Professional Standards (see paragraph 264 below).
114. During the course of the Police investigation there were four area commanders and three district commanders.
115. Area Commander P publicly stated in the immediate days after the incident that he expected the Police investigation would be concluded within six months. He gave that as *“an assurance to the community and also to the complainants that we’d deal with this as quick as we could”*. This was based on Officer P’s five years’ experience as Area Commander dealing with and overseeing investigations of serious complaints. He was confident Police had the *“ability and capability”* to comply with that timescale.
116. In fact the Police investigation took over three years to complete. The incident occurred in September 2009 but the complainants were not notified of the outcome until 21 December 2012.





# The Authority's Investigation

INDEPENDENT POLICE CONDUCT AUTHORITY

## THE AUTHORITY'S ROLE

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117. Under the Independent Police Conduct Authority Act 1988 (the Act), the Authority's functions are:

- to receive complaints alleging misconduct or neglect of duty by any Police employee, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint; and
- to investigate, where it is satisfied there are reasonable grounds for doing so in the public interest, any incident in which a Police employee, acting in the course of his or her duty has caused or appears to have caused death or serious bodily harm.

118. The Authority's role on the completion of an investigation is to determine whether Police actions were "*contrary to law, unreasonable, unjustified, unfair, or undesirable*". The Authority has a duty to express its findings in this language used in the Act. Accordingly whenever a finding is expressed in the report it is done so in these terms.

119. Although the Authority is chaired by a Judge its findings do not have the same effect as a decision made by a court. Throughout this report the Authority makes findings that a number of Police actions were contrary to law. If court proceedings were taken against Police in relation to these actions, the findings made in this report would not be binding on, or affect the decisions of, that court.

## THE AUTHORITY'S INVESTIGATION

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120. The Authority received a complaint from Partygoer 3 on 7 September 2009. As required under section 16 of the Independent Police Conduct Authority Act 1988 (the Act), the Authority notified Police of the complaint on 8 September 2009. The Authority confirmed to Police on 23 September 2009 that it would independently investigate the matter pursuant to section 17 (1)(a) of the Act.

121. In December 2009 Police notified the Authority of a further nine complaints from partygoers about Police actions and use of force when closing down the party.
122. The Authority received two additional complaints relating to ancillary matters:
- a) from Partygoer 3 on 22 September 2009 complaining that Police had “leaked” a preliminary report to the media in an attempt to discredit him; and
  - b) from Partygoer 1 in July 2010 that three specified Police officers had lied or made false declarations in their jobsheets and Briefs of Evidence.
123. In addition to the above formal complaints, the Authority received information during interviews or meetings conducted as part of its investigation. These interviews and meetings were with individuals that were able to provide accounts of their particular experiences or involvement with the incident. This information has been considered as part of the Authority’s independent investigation when forming opinions and recommendations.
124. The Authority has conducted an independent investigation into all 12 complaints. The investigation has been extensive and involved various members of staff over the years. The Authority has independently interviewed:
- 36 partygoers;
  - two medics who were involved with the diagnosis and treatment of Partygoer 3’s injuries;
  - one medic who was consulted by another partygoer;
  - all 11 TPU officers who entered the property;
  - four enforcement officers, a manager and three officers who attended the property during the evening due to noise control issues;
  - five neighbours;
  - nine officers who investigated or oversaw the Police investigations into the complaints;
  - three other Police staff;
  - one “scopie” who was with general duties Police undertaking work experience; and
  - an assistant editor with the Dominion Post.

125. The Authority does not publicly report on its independent investigations until it is satisfied that the most thorough investigation has been conducted and all reasonable natural justice processes have been completed.
126. The Authority has reviewed and analysed the entire Police file in relation to the Police investigation of the complaints including jobsheets, notebook entries, copies of CentComms transmissions, Tactical Options Reports, statements from officers and partygoers and medical and legal opinions obtained.
127. The Authority has conducted a thorough review of Police policy both at the time of the incident in September 2009 and, as this has subsequently been developed, to the present time. This has also involved ensuring that Police policy reflected the legislative provisions applicable at the relevant times.

#### COMMENT ON DELAY

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128. It is now more than four years since the incident at 70 Homebush Road occurred.
129. The completion of the Authority's investigation has been delayed due to a number of factors, including the Authority deciding to wait for Police to conclude its criminal investigation before undertaking interviews of TPU officers.
130. This decision contributed to unacceptable delays. When the Authority took this decision in May 2010, it did not anticipate that it would take Police until December 2012 to complete the criminal investigation.
131. In addition the Authority acknowledges that its oversight of the Police investigation was not time focussed. When the Authority saw flaws in the Police investigation it was not rigorous in drawing these to the attention of Police so that these could be addressed.
132. The Authority has recently changed its processes to address the issue of timeliness and ensure that it completes investigations more quickly than it has been able to in the past. For example the Authority has moved towards conducting its own investigation alongside the Police investigation, rather than waiting to receive final reports from Police, bringing issues and concerns to the attention of Police as they arise and setting timetables for completion of matters.
133. The Authority apologises to the complainants for its part in the failure to investigate and resolve the complaints in a timely manner.

ISSUES CONSIDERED

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134. The Authority's investigation considered the following issues:

- 134.1 Was the entry to the property by Police lawful and justified?
- 134.2 Was the use of force by TPU officers to eject partygoers lawful and justified?
- 134.3 Were Police justified in warning the partygoers for disorderly assembly and subsequently charging some individuals?
- 134.4 Did Police leak their preliminary report to the media with a view to discrediting Partygoer 3?
- 134.5 Did TPU officers lie or make false declarations in their jobsheets or Briefs of Evidence?
- 134.6 Was Police's investigation into the complaints conducted in a fair, timely and effective manner in accordance with policy?

135. There are some subsidiary issues raised by complainants which do not form part of the above issues. These subsidiary issues have been addressed by the Authority during its investigation and can be succinctly dealt with as follows:

- 135.1 Partygoer 2 complained that he was arrested for disorderly behaviour while on his own property. He was arrested on the street. The charges were withdrawn in October 2009.
- 135.2 Partygoer 2 also complained that he was strip-searched by two officers. Partygoer 2 was searched upon his arrest, but not strip-searched. Police accept they took the belt off his jeans, in accordance with standard practice when an arrested person is being placed in a Police van. As a result of this the jeans fell down around his ankles.
- 135.3 Part of Partygoer 8's complaint was that Police, rather than neighbours, contacted noise control officers as an excuse to be able to enter the property. As outlined in paragraph 62 above, this is not the case. A neighbour did make a complaint to the council about the noise as a result of which an enforcement officer attended the property.



# The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

## ISSUE 1: WAS THE ENTRY TO THE PROPERTY BY POLICE LAWFUL AND JUSTIFIED?

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136. Partygoer 1 called Police for assistance due to gate crashers causing problems at the party. A number of Police attended the address. The incident was controlled by TPU and in particular OC Sergeant TPU who took charge of the matter. The original information provided by CentComms is outlined in paragraph 31 above. In light of that information, TPU officers expected to find fighting and bottles being thrown when they attended. However, when they arrived there was no fighting outside the property and no gate crashers were present.
137. There were some people still milling around the driveway and on the street. While OC Sergeant TPU was trying to speak with Partygoer 1 a couple of males were being obstructive and abusive to Police. Both music and voices could be heard from inside the house. The house was on a slope down the driveway. It was dark and OC Sergeant TPU was unable to see the house properly from the street and what was occurring.
138. OC Sergeant TPU recorded in his jobsheet and confirmed to the Authority that he formed the view that the party needed to be closed down and gave instructions to the TPU officers to that effect. He records in his jobsheet:
- “... I believed that the party needed to be shut down as I believed [Partygoer 2] had lost the ability to control it and if we left then fighting or even worse violence was likely to break. We would use the power contained in Section 42 Crimes Act 1961 to prevent a continuance or renewal of a breach of the peace.”*
139. A breach of the peace is defined in Police policy as outlined at paragraph 250 below. It involves an actual assault, fighting or noisy damage of property or a real threat of such things. This is often the situation Police face when they are called to attend an ‘out of control’ party but was not the situation encountered by Police here. The Authority interviewed all 11 TPU officers present at the scene and none of those officers was able to provide evidence of having witnessed such behaviour. There was also no evidence to suggest there was a breach of the peace occurring inside the house.

140. While the TPU officers report that they witnessed abusive and obstructive behaviour towards them on the street by a handful of people, this did not constitute a breach of the peace.
141. Partygoer 2 was an occupier and he clearly told TPU officers on more than one occasion that they were to leave, and that their attendance was no longer required. OC Sergeant TPU accepts he did not have the occupier's consent to go onto the property or enter the premises. In the absence of consent from an occupier Police must have lawful authority to enter a property.
142. OC Sergeant TPU, in conjunction with Sergeant TPU, had formed the opinion that the party was out of control and needed to be closed down. They were prepared to use force if necessary and had warned Partygoer 2 of that possibility. The clear intention, purpose and understanding of all TPU officers when they formed the penetration line and advanced onto the property was that they were to clear the house of all partygoers and close the party down. It may have been hoped that the partygoers would comply and leave voluntarily but TPU officers were prepared to use force if necessary.
143. The Authority understands that Police are regularly called out to attend 'out of control' parties at private addresses. They regularly decide to close a party down if it is deemed to be out of control. There is though no legal power for Police to close a private party down and eject people from the premises. Police have to rely on breach of the peace provisions or their powers to enter premises to arrest offenders or prevent offences. This means that Police have to undertake quite complex assessments of the situation at hand, often in very tense and pressured circumstances. The legal position is outlined in more detail starting at paragraph 227 below.
144. OC Sergeant TPU explained to the Authority that at the time it was his understanding that Police had the power to close down a private party, by using force if necessary, pursuant to section 42 of the Crimes Act 1961. This was a common belief by Police.
145. Section 42 of the Crimes Act 1961 (see paragraph 227 below) does not specifically give Police the power to enter private premises to interfere with or prevent a breach of the peace and any common law power to do so had been subsumed by section 317 of the Crimes Act 1961. In any event there was no evidence of a breach of the peace.
146. OC Sergeant TPU said he had been advised subsequently that the actions of the TPU officers forcibly entering the house would have been lawful if he had relied on the power under section 317 of the Crimes Act 1961.
147. The Authority however has formed the opinion that, in these circumstances, the actions of the TPU officers would still have not been justified. Section 317 (1) (see paragraph 231 below) allowed an officer to enter a property to arrest an offender. In this case, at the

time the decision was taken to enter onto the property, there was no evidence that anyone inside the house had committed an offence there or anywhere else.

148. Section 317(2) of the Crimes Act (see paragraph 234 below) allowed an officer to enter a property to prevent the commission of any offence that would be likely to cause immediate and serious injury to any person or property. The Authority's investigation has determined that no officer had reasonable grounds to believe this was the case prior to entering the property.
149. OC Sergeant TPU and 3 other TPU officers have stated that a bottle was thrown at them when they were standing alongside the side of the house. Even if a bottle had been thrown, this was after TPU Constable A had started to shoulder the door in order to gain entry. Therefore this event could not have provided the justification for Police to forcibly enter the house. Any offence allegedly committed would have been after the forcible entry to the house had commenced.
150. The Authority notes all the subsequent justifications provided for entering the property do not actually bear any resemblance to the situation. It is clear that the purpose for entering the property was to close the party down. It was not to prevent a breach of the peace, to arrest a specific person or to prevent the commission of an offence.

#### FINDINGS

TPU actions in entering onto the property and entering the house at 70 Homebush Road were contrary to law and unjustified.

The decision of OC Sergeant TPU to instruct TPU officers to take such action was unjustified and unreasonable.

#### ISSUE 2: WAS THE USE OF FORCE BY TPU OFFICERS TO EJECT PARTYGOERS LAWFUL AND JUSTIFIED?

151. Prior to entering the house OC Sergeant TPU instructed the other TPU officers to draw batons in the circumstances outlined in paragraphs 41 and 42 above. This was for protection purposes. While the instruction to draw batons in itself was not unjustified, it did create the potential for batons to be used accidentally or otherwise.
152. As outlined above Police had no lawful basis to forcibly enter the house. They had no right to eject partygoers from a private property, with or without force.
153. The Authority has received accounts from partygoers who allege they were struck with a baton, saw others being struck with a baton and were pushed, shoved and manhandled

by TPU officers while being ejected from the house (see paragraph 51 onwards for further details).

154. The Authority has received 10 formal complaints about Police actions on the night (see paragraph 76 above).

### **Use of force to Partygoer 3**

155. The allegation by Partygoer 3 has been the main focus of the Police investigation due to the serious injury sustained. The Authority has interviewed Partygoer 3 (on 15 September 2009 and 11 June 2010) and other partygoers who were in the vicinity and corroborate the events outlined by Partygoer 3. The Authority has interviewed the doctor who saw Partygoer 3 the following day when his injury was initially diagnosed. The Authority has additionally interviewed the Consultant Orthopaedic Surgeon responsible for Partygoer 3's treatment. The Authority is aware that Police investigators have not interviewed these doctors during the course of their investigation.
156. Partygoer 3 was diagnosed on Saturday 5 September 2009 as having sustained a fracture of the spinous process of the C7 vertebrae which was displaced. This is commonly called '*clay-shoveler's fracture*.' It is often caused by muscles in the back contracting when undertaking heavy lifting which causes the vertebrae to break. However it can also be caused by a direct blow to that area. With a direct blow there may be bruising caused but this does not always occur. The doctor who examined Partygoer 3 on 5 September 2009 confirmed that his account of how and when the injury occurred was consistent with the injury sustained.
157. Four TPU officers acknowledge using their batons on five males (see paragraph 54 above). None of these accounts relates to the baton strike to Partygoer 3. None of the TPU officers accept using their batons in the manner described by Partygoer 3. Partygoer 3 was struck in the hall. While two male TPU officers were stationed in that immediate area, most of the other TPU officers went past that point at some time while they were in the property.
158. As no TPU officer accepts using force against Partygoer 3, no justification has been provided by any of the TPU officers, such as acting in self-defence. No Tactical Options Report has been submitted in respect of this specific use of force.
159. The Authority concludes that, on the balance of probabilities, the injury sustained was caused by a baton strike during the clearance of 70 Homebush Road on 5 September 2009. There has been no justification provided for this use of force. Accordingly the Authority is of the opinion this amounts to an excessive use of force which is contrary to law.

160. Partygoer 3 alleges he was struck by a male officer. In January 2010 Partygoer 3 identified an officer as being the person who struck him, when he saw this officer elsewhere. That particular officer had not been in attendance at the incident at Homebush Road and so could not have inflicted the baton strike. This calls into question Partygoer 3's ability to be able to positively identify the TPU officer.
161. The Authority's investigation concludes, on the balance of probabilities, that a male TPU officer caused the injury to Partygoer 3 by striking him with a baton. It is not though possible for the Authority to make an unequivocal finding as to which male TPU officer caused the injury. The Authority accepts that, in such circumstances, there is insufficient evidence to meet the threshold for a criminal prosecution.

**FINDING**

A male TPU officer caused the injury sustained by Partygoer 3 by striking him with a baton. That use of force was excessive and contrary to law. It is not though possible for the Authority to make an unequivocal finding as to which male TPU officer used excessive force.

**Manner of ejecting partygoers from the property**

162. A further 10 partygoers have provided accounts to the Authority describing how they were hit by TPU officers with a baton. These accounts are set out in paragraph 51 above.
163. The accounts provided by partygoers to the Authority are consistent. Partygoers describe TPU officers with batons swinging them around and feeling threatened and shocked by the actions of TPU officers. They describe being shoved, pushed and manhandled during the clearance of the house. The Authority's findings are based on the consistency of the accounts and the preponderance of evidence. The Authority interviewed significant number of partygoers and questioned them at length.
164. As explained in paragraph 54 above TPU officers acknowledge that five males were struck and have explained those circumstances. TPU officers have described to the Authority that they acted in accordance with their training in relation to public disorder incidents. They entered the house under instructions to clear it. They were shouting instructions and being firm, demanding that people leave quickly.
165. The TPU officers explain they had their arms out to their sides, palms facing forwards and were herding people, gesturing for them to leave. They had their batons drawn along the underside of their dominant hand, either right or left. As they were clearing the house it is accepted by these TPU officers that they are likely to have made contact with individual partygoers. All the TPU officers state there was no intention to assault these partygoers in any manner.

166. The Authority has concluded that Partygoer 5 was struck by OC Sergeant TPU. There are conflicting accounts of this incident. OC Sergeant TPU has explained he executed a short end jab as Partygoer 5 had grabbed him by his shoulder and he feared being pulled down. Partygoer 5 states he was heading to the door and struck with a baton for no reason. Four other partygoers who the Authority interviewed witnessed this incident. All say Partygoer 5 did not act in a manner that would give OC Sergeant TPU any reason to strike him. Due to the conflicting accounts the Authority is unable to make an unequivocal finding on whether this use of force was justified and proportionate.
167. No TPU officer accepts carrying out the baton strikes in relation to the other nine specific accounts provided to the Authority.
168. The Authority's investigation has carefully considered all of the nine incidents as well as the accounts of being shoved, pushed and manhandled. The Authority has interviewed various partygoers to corroborate accounts provided.
169. It is not necessary for the Authority to reach a definitive conclusion on each specific incident as the fact remains that all of the force used by the TPU officers, other than force to defend themselves, was unlawful. This encompasses general force or use of a baton. The fact that batons were drawn aggravated the unlawfulness but does not change the essential finding which is that there was no power to forcibly eject partygoers from the house. Any such use of force was unlawful and unjustified.

#### FINDINGS

OC Sergeant TPU struck Partygoer 5 with a baton. Due to the conflicting accounts the Authority is unable to make an unequivocal finding on whether this use of force was justified and proportionate.

TPU officers' use of force by using batons, pushing and manhandling partygoers to eject them from the house was contrary to law and unjustified.

### ISSUE 3: WERE POLICE JUSTIFIED IN WARNING THE PARTYGOERS FOR DISORDERLY ASSEMBLY AND SUBSEQUENTLY CHARGING SOME INDIVIDUALS?

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170. Disorderly assembly is defined in section 5A(1) of the Summary Offences Act 1981 (see paragraph 242).
171. Once TPU officers had cleared the house a number of partygoers did not leave the area but remained on the street. The circumstances are explained in paragraph 55 onwards.
172. Some of the partygoers were reluctant or slow to leave. Accounts provided to the Authority show that this was because essential items, such as keys, purses and wallets had been left in the house and people needed to obtain these before being able to leave. This is borne out by requests made to other Police officers present at the scene.
173. Some of the partygoers on the street were abusive to the TPU officers and other Police officers present, shouting out rude and derogatory comments.
174. There were more than three partygoers on the street, and some of those partygoers were being abusive towards Police. Accordingly it could be argued that the definition of a disorderly assembly was met and OC Sergeant TPU was justified in providing the warning to disperse.
175. However while some partygoers were abusive to Police there is no evidence to suggest that these partygoers would use violence to persons or property, or indeed cause a member of the public to fear such violence. As such there was no justification for OC Sergeant TPU to warn the crowd for disorderly assembly.
176. Partygoers 9, 16, 17 and 18 were arrested and charged with disorderly assembly. Partygoers 2, 13 and 15 were arrested and charged with disorderly behaviour. The specific circumstances are set out at paragraph 70 above.
177. The offence of disorderly behaviour is set out in section 3 of the Summary Offences Act (see paragraph 244) and involves a person in a public place behaving in a riotous, offensive, threatening, insulting, or disorderly manner that is likely to cause violence against persons or property to start or continue.
178. Five of these seven charges were withdrawn as Police reviewed the details of the arrests and concluded that the components of the charges were not evidentially met. An important consideration in that review was that the individuals were only in a public place as a result of the actions of Police in closing down the party.

179. The charge of disorderly behaviour by Partygoer 13 went to a hearing on 30 October 2009. It was dealt with by formal proof and he received a fine. Partygoer 17 received diversion for a charge of disorderly assembly in October 2009.
180. As the charges against five partygoers were withdrawn for lack of evidence to sustain the charges it is inconsistent and unfair for the other two partygoers to have received different outcomes for similar matters when arguably the evidential test was also not met in those cases.

#### FINDINGS

OC Sergeant TPU's actions in warning the crowd for disorderly assembly were unjustified.

The evidential test for charges in respect of disorderly assembly and disorderly behaviour were not met and Police withdrew five of those charges. Police's failure to deal with the other two charges in a similar manner was unfair.

#### ISSUE 4: DID POLICE LEAK THEIR PRELIMINARY REPORT TO THE MEDIA WITH A VIEW TO DISCREDITING PARTYGOER 3?

181. The Police investigation into the unauthorised disclosure of the preliminary report of Officer J is dealt with starting at paragraph 84 above. The Authority conducted a separate independent investigation into this matter.
182. The Authority interviewed the Police office administrator in July 2010. He confirmed that he was employed by Police on a fixed term contract for six months. He admitted copying the preliminary report and posting a copy to The Dominion Post from Police National Headquarters. The Authority is satisfied from its inquiries that nobody else was involved, and that it was not done for any individual gain or benefit. The office administrator was not instructed to disclose the report. He expressed remorse for his actions. He was aware at the time what he was doing was wrong and did attempt to prevent publication by contacting The Dominion Post and asking them not to print the story.
183. It is clear that the office administrator's personal intention had been to discredit Partygoer 3. The office administrator had already left his employment with Police when his role in this matter was discovered. As such no further action was taken by Police.

#### FINDING

An office administrator working at Police National Headquarters sent a copy of the preliminary report to the media in October 2009, with a view to discrediting Partygoer 3. He took these actions alone and Police were not involved in the unauthorised disclosure.

#### ISSUE 5: DID TPU OFFICERS LIE OR MAKE FALSE DECLARATIONS IN THEIR JOBSHEETS OR BRIEFS OF EVIDENCE?

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184. Partygoer 1 made a separate complaint that OC Sergeant TPU, Sergeant TPU and TPU Constable C either lied in their Briefs of Evidence or made false declarations in their jobsheets about the events that occurred at 70 Homebush Road, Khandallah, Wellington.
185. She alleges that the TPU officers have *“made false declarations.... To paint a picture of an escalating out of control situation with bottles being thrown and police being physically threatened to justify their actions”*.
186. The Authority has interviewed Partygoer 1 and the three TPU officers during its investigation. The Authority is satisfied that both Partygoer 1 and the TPU officers were recording matters to be best of their knowledge and from their own perspectives. Frequently people recollect matters differently.
187. The Authority has been able to interview the three officers and seek clarification on information contained in their written documents. The information provided has been used by the Authority when forming its conclusions.

#### FINDINGS

OC Sergeant TPU, Sergeant TPU and TPU Constable C did not deliberately lie or make false declarations in their job sheets and Briefs of Evidence.

#### ISSUE 6: WAS POLICE’S INVESTIGATION INTO THE COMPLAINTS CONDUCTED IN A FAIR, TIMELY AND EFFECTIVE MANNER, IN ACCORDANCE WITH POLICY?

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188. The Police investigation into these complaints took over three years to complete, with the complainants being notified of the outcome on 21 December 2012. The details of the Police investigation are provided at paragraphs 79 onwards. Police policy regarding investigation of complaints is set out at paragraph 260 onwards.
189. The main principle in Police policy is that investigations are to be conducted thoroughly and in an unbiased manner to ensure the public has confidence in the ability of Police to impartially conduct internal investigations. This means that Police should use the same skills and diligence in a complaint investigation as would be used in any criminal investigation.
190. The Authority has interviewed nine officers who investigated or oversaw the Police investigation into the complaints. It is apparent that there was never an investigation

plan prepared, which in turn has led to a lack of direction and an inability to properly oversee the investigation into the complaints.

191. In this case there were two main investigating officers with different line reporting structures. Coupled with the changes of managers, Area Commanders and District Commanders this led to inordinate delays and an unstructured approach.
192. In the early stages the Police investigation concentrated on interviewing certain main complainants. The investigating officers were hindered by some lack of cooperation, the breakdown of trust and confidence as a result of the preliminary report being leaked to the media, the reluctance or refusal of a number of partygoers to speak to Police either alone or at all, and the fact that Mr Morrison was the sole contact point for the partygoers.
193. The approach taken by Police in this investigation appears to have been that, unless and until they had a specific allegation against an identified officer, they would not interview Police staff. The two main investigating officers maintained this stance. The Authority does not accept this explanation. It fails to appreciate that Police officers do not have to be interviewed under caution as potential subjects of the complaint, but can be interviewed as witnesses to an incident for their perspective and as part of an information gathering exercise. Police would not take the same view of any incident involving an allegation against a member of the public whose identity was not known.
194. This has meant that Police have only interviewed four of the 11 TPU officers who entered the property about Police actions and events on the night. One additional officer has been interviewed about the separate complaint by Partygoer 1 concerning the allegation of lying in his jobsheet. One further TPU officer had some written questions put to him for him to respond in writing.
195. Until the involvement of Officer L and his team in March 2012 the investigation had no focus or impetus. His team contacted 46 individuals over a period of approximately 4 weeks. Even so the focus of his assigned task was to contact the partygoers and not Police officers. The majority of the partygoers were speaking to Police for the first time, some 2½ years after the incident.
196. The Authority is concerned that this approach does not mirror the Police policy's principle of undertaking a thorough and unbiased investigation. While Police assert in their final letters to the complainants that they have carried out a thorough and robust investigation the Authority takes a contrary view.
197. The Authority finds that the Police investigation into these complaints breached applicable Police policy, and were unreasonable and unfair, due to the following:
  - a) There was no investigation plan.

- b) There were no conflict of interest declaration forms completed or evidence of perceived conflict of interests being monitored, considered and managed.
  - c) There were inadequate resources for an investigation of this size.
  - d) The investigation was not conducted as a standard criminal investigation would have been.
  - e) There was no proactive supervision of the investigation.
  - f) The investigation was subject to inordinate delays. Although there were external factors (including actions by the Authority) the delays nevertheless remain primarily with Police.
  - g) The lack of early interviewing of witnesses could have impacted on the ability to bring a criminal charge.
  - h) Not all relevant Police officers were interviewed about the incident.
198. The final letters were to the complainants were inaccurate in two respects. The Police investigation concluded that TPU's entry onto the property was unlawful and yet none of the complainants were informed of that fact in the final letters. The Authority considers this omission to be misleading and unfair, as it is the starting point for assessing all other action taken by Police on the night.
199. Secondly Partygoer 3 was informed that all the Police officers who attended had now been spoken to by Police when that is simply not the case.
200. Only one complaint was upheld by Police. This was the complaint by Partygoer 12. Police upheld the complaint that he was hit over the head with a baton but concluded that the contact would have been inadvertent and not deliberate in the circumstances. As a result no further action was taken concerning the matter.
201. It is inconsistent for Police to uphold this one complaint and not others, when Police themselves accept there was pushing, shoving and batons making contact with some individuals during the course of ejecting partygoers from the house.
202. Police justified the delays in some part on the basis of the need to conduct a thorough and robust investigation. The Authority finds that the Police investigation was neither thorough nor robust. Police did not interview the TPU officers concerned or the medics who treated Partygoer 3. There were insufficient resources allocated at the outset.
203. The Authority acknowledges that the investigating officers experienced difficulties in arranging interviews with complainants and reluctance from some individuals to cooperate. Nevertheless, as already outlined the Authority interviewed 36 partygoers

between September 2009 and September 2010. The Authority allocated two investigators, two analysts and a legal adviser to work on this investigation and ensure it was adequately resourced. The Authority did not experience any difficulties in interviewing the partygoers.

204. When Police assigned Officer L and a team of detectives to the case it is noticeable that a large number of partygoers were able to be located and interviewed. While District Commander S is to be commended for being proactive and ensuring the matter was progressed and adequate resources allocated, it is unfortunate this was not undertaken until 2012. The delay would have affected memories of witnesses and impacted on evidential sufficiency.
205. In addition although Officer L and his team were tasked to contact and interview partygoers in 2012, this still did not amount to a thorough and complete investigation. Not all officers who attended were interviewed nor were the medics who first saw and treated Partygoer 3. This was exactly the type of case that required firm supervision and a proactive, timely investigation from the outset. Not only have the complainants had to wait over three years but the TPU officers involved have also had this matter outstanding for the same amount of time which has affected them personally and in some cases professionally. Such a delay is inexcusable.

#### FINDINGS

Police's failure to conduct a robust, thorough and timely investigation was unjustified, unreasonable and unfair.



# Subsequent Police Action

INDEPENDENT POLICE CONDUCT AUTHORITY

## TPU CHANGE OF PRACTICE

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206. During the Authority's investigation OC Sergeant TPU advised the Authority that TPU had changed their practice after this incident. Both OC Sergeant TPU and Sergeant TPU advised the Authority that there is very little training provided to officers about their legal powers when dealing with incidents such as these.
207. It is apparent that these officers did not appreciate and understand the extent (or lack) of their powers under breach of the peace legislation. The Authority accepts that OC Sergeant TPU believed he had the power to enter a private property, by force if necessary, to close down a party using breach of the peace legislation. In fact he did not.
208. Since this incident and an explanation of the legal position OC Sergeant TPU advises that his unit does not enter a property without the consent of the owner.

## PUBLIC ORDER POLICING

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209. As a result of this incident, and others reported to the Authority concerning Police actions when dealing with parties on private property, the Authority considers that the policy in relation to public order policing needs to be urgently reviewed, so that the manner in which the Police should deal with private parties considered to be out of control, and the powers available to them to do so, are specifically addressed.
210. Police acknowledge that their legal powers when dealing with parties on private properties are complicated and not understood by all officers. The Public Order Policy does not currently address these matters. The Authority has started to engage in discussions with Police around these issues and Police are in the process of drafting policy to comprehensively address these matters.





# Conclusions

INDEPENDENT POLICE CONDUCT AUTHORITY

211. Police decided after attending 70 Homebush Road, Khandallah, Wellington on 5 September 2009 that the party occurring in the house had become out of control and needed to be closed down. The TPU officers forcibly entered the house and cleared the property in a matter of minutes.
212. The OC Sergeant TPU believed at the time he had the legal power to take this action under breach of the peace legislation. The Authority has determined that there was no breach of the peace witnessed or occurring either in the street or the house. Even if there had been that legislation did not allow Police to take the actions they did.
213. The entry onto the property and into the house by TPU officers was unlawful. The use of force to eject partygoers was also generally excessive and a number of partygoers were struck by batons held by TPU officers during this process.
214. The investigation conducted by Police into the ensuing complaints was not robust, thorough or timely. There was no investigation plan, no consideration or management of possible conflicts of interest and no robust proactive supervision of the investigation. It took Police over three years to conclude its investigation and report to the complainants. Those letters to the complainants were not accurate or detailed.

## Section 27 opinion

215. Section 27(1) of the Independent Police Conduct Authority Act 1988 (the Act), requires the Authority to form an opinion as to whether or not any act, omission, conduct, policy, practice or procedure which was the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
216. Pursuant to section 27(1) of the Act, the Authority has formed the opinion that:
  - 216.1 TPU actions in entering onto the property and entering the house at 70 Homebush Road were contrary to law and unjustified.

- 216.2 The decision of OC Sergeant TPU to instruct TPU officers to take such action was unjustified and unreasonable.
- 216.3 A male TPU officer caused the injury sustained by Partygoer 3 by striking him with a baton. That use of force was excessive and contrary to law. It is not though possible for the Authority to make an unequivocal finding as to which male TPU officer used excessive force.
- 216.4 OC Sergeant TPU struck Partygoer 5 with a baton. Due to the conflicting accounts the Authority is unable to make an unequivocal finding on whether this use of force was justified and proportionate.
- 216.5 TPU officers' use of force by using batons, pushing and manhandling partygoers to eject them from the house was contrary to law and unjustified.
- 216.6 OC Sergeant TPU's actions in warning the crowd for disorderly assembly were unjustified.
- 216.7 The evidential test for charges in respect of disorderly assembly and disorderly behaviour were not met and Police withdrew five of those charges. Police's failure to deal with the other two charges in a similar manner was unfair.
- 216.8 An office administrator working at Police National Headquarters sent a copy of the preliminary report to the media in October 2009, with a view to discrediting Partygoer 3. He took these actions alone and Police were not involved in the unauthorised disclosure.
- 216.9 OC Sergeant TPU, Sergeant TPU and TPU Constable C did not deliberately lie or make false declarations in their job sheets and Briefs of Evidence.
- 216.10 Police's failure to conduct a robust, thorough and timely investigation was unjustified, unreasonable and unfair.

# Recommendations

INDEPENDENT POLICE CONDUCT AUTHORITY

217. It appears that Wellington Tactical Policing Unit decided to change their practice after this incident and not enter a private property where there was a party without the owner's consent. The Authority has made a recommendation to Police on two previous occasions about the need for the introduction of a national public disorder policing policy which covers out-of-control parties. Such a policy is in the process of being developed and will then need to be implemented by Police.
218. A national policy needs to provide clear instruction and guidance to officers faced with private party situations as to their legal powers, the remedies and tactics available to them and also the preventative steps that could be taken in advance of such situations arising.
219. Pursuant to section 27(2) of the Act, the Authority recommends that the New Zealand Police:
- a) Urgently develop and implement a national policy for dealing with disorder situations such as out-of-control parties on private property.
  - b) Ensure that training occurs in respect of such a policy which contains clear instruction on the legal powers Police have in such situations.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

17 October 2013





# Appendix: Applicable Laws and Policies

INDEPENDENT POLICE CONDUCT AUTHORITY

## INTRODUCTION TO LEGAL AND POLICY ISSUES

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220. Police are often called to deal with ‘out of control’ parties taking place on private premises. These events inevitably cause tensions and dilemmas for Police. On the one hand the partygoers want and expect to be able to continue the party, while often members of the community expect Police to act and close down the party. Often Police are outnumbered, partygoers can be affected by alcohol or drugs and sometimes matters can escalate and violence can erupt either between partygoers, against members of the public or against Police. The Authority accepts that Police regularly face such events.
221. It is routine Police practice to enter private property to close a party down when the Police reach the view that the party is out of control, namely when violence or disorder has occurred or is likely to erupt in the area.
222. The most straightforward way in which the Police may lawfully enter is to obtain the consent of the owner or occupier of the property. Unless that consent extends to the removal of those in the house (who have not complied with a request to leave voluntarily, and as such are trespassers), this does not in itself give the Police the power to close down the party.
223. In the absence of consent, the available powers that are generally relied upon are threefold:
- 223.1 to accompany enforcement officers when they are seizing stereo equipment in accordance with powers under the Resource Management Act 1991;
  - 223.2 to prevent a breach of the peace pursuant to sections 42 of the Crimes Act 1961; or
  - 223.3 to enter a property to arrest an offender or prevent the commission of an offence. At the time of the incident section 317 of the Crimes Act 1961 was in force. This has since been replaced by sections 8 and 14 of the Search and Surveillance Act 2012.

224. This section will consider the legal position as it was in September 2009 as well as the position now.

#### SECTION 328 OF THE RESOURCE MANAGEMENT ACT 1991

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225. This provision was in force in 2009 and is still applicable now. Under section 328 of the Resource Management Act 1991, every person who is given an excessive noise direction must immediately comply with the direction. If they fail to comply section 328 (3) states:

*“an enforcement officer (accompanied by a constable), or a constable may enter the place without further notice and -*

*(a) seize and remove from the place; or*

*(b) render inoperable by the removal of any part from; or*

*(c) lock or seal so as to make unusable*

*any instrument, appliance, vehicle, aircraft, train, or machine that is producing or contributing to the excessive noise.”*

226. This section places a requirement on enforcement officers or constables who enter a place to leave a written notice setting out specific matters. Section 328(7) allows a constable *“to use such force as is reasonable in the circumstances”* when exercising any power under this section.

#### SECTION 42 OF THE CRIMES ACT 1961

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227. This provision was in force in 2009 and is still applicable now. Under section 42 of the Crimes Act 1961, every one can interfere to prevent a breach of the peace if they witness such breach. Section 42 (1) states:

*“Every one who witnesses a breach of the peace is justified in interfering to prevent its continuance or renewal, and may detain any person committing it, in order to give him into the custody of a constable:*

*provided that the person interfering shall use no more force than is reasonably necessary for preventing the continuance or renewal of the breach of the peace, or than is reasonably proportionate to the danger to be apprehended from its continuance or renewal.”*

228. There is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his or her presence to his or her property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.

229. Police may arrest any person without a warrant who is found disturbing the public peace or who Police have good cause to suspect of having committed a breach of the peace. Such arrest is pursuant to section 315(2) of the Crimes Act.
230. If there is a breach of the peace on a private property section 42 alone would not operate to bring Police within the scope of section 317 because breach of the peace is not an offence punishable by imprisonment.

#### SECTION 317 OF THE CRIMES ACT 1961

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231. This provision was in force in 2009 but has since been repealed by the introduction of the Search and Surveillance Act 2012.
232. Police had the power to enter a property and to use force in order to arrest an offender or prevent an offence. Section 317 (1) of the Crimes Act codified the law and set out the circumstances when Police may enter premises. It stated:

*“Where any constable is authorised by this Act or by any other enactment to arrest any person without warrant, that constable, and all persons whom he calls to his assistance, may enter on any premises, by force of necessary, to arrest that person if the constable-*

*(a) has found that person committing any offence punishable by imprisonment and is freshly pursuing that person; or*

*(b) has good cause to suspect that that person has committed any offence on those premises.”*

233. This provision required the Police officer to find a specific individual committing an offence and to be freshly pursuing that person for the purpose of arresting them. It did not permit the Police officer to enter premises in order to discover who amongst the group had committed an offence.
234. There was also power under section 317(2) of the Crimes Act for Police to enter a property, by force if necessary, to prevent the commission of any offence that would be likely to cause immediate and serious injury to any person or property. This implicitly gave a power to close a party and eject people from the house, but only if this was reasonably necessary to prevent the commission of the offence.

## SECTIONS 8 AND 14 OF THE SEARCH AND SURVEILLANCE ACT 2012

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235. This Act came into force on 1 October 2012 and is applicable now.

236. Section 8 of the Search and Surveillance Act 2012 provides that officers may enter a place without a warrant and search for and arrest a person that the officer suspects has committed the offence if they have reasonable grounds

*“to suspect that the person has committed an offence that is punishable by imprisonment and for which he or she may be arrested without warrant; and to believe that the person is there; and to believe that, if entry is not effected immediately, either or both of the following may occur:*

- (i) the person will leave there to avoid arrest:*
- (ii) evidential material relating to the offence for which the person is to be arrested will be destroyed, concealed, altered, or damaged”.*

237. Section 14 provides a warrantless power of entry to officers if they have reasonable grounds to suspect that

*“an offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or loss of, any property and/or there is risk to the life or safety of any person that requires an emergency response”.*

## OTHER CRIMES ACT PROVISIONS

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238. The following provisions were in force in September 2009 and continue to apply.

239. Police are not permitted to use excessive force. Section 62 of the Crimes Act states:

*“Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess.”*

240. Police officers, as with every individual, are entitled to defend themselves. Section 48 of the Crimes Act states:

*“Every one is justified in using, in the defence of himself or another, such force as, in the circumstances as he believes them to be, it is reasonable to use.”*

## UNLAWFUL ASSEMBLY

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241. Unlawful assembly is an offence carrying a penalty of imprisonment for a term not exceeding one year. Section 86 (1) of the Crimes Act defines an unlawful assembly as:

*“an assembly of 3 or more persons who, with intent to carry out any common purpose, assemble in such a manner, or so conduct themselves when assembled, as to cause persons in the neighbourhood of the assembly to fear, on reasonable grounds, that the persons so assembled-*

*(a) will use violence against persons or property in that neighbourhood or elsewhere; or*

*(b) will, by that assembly, needlessly and without reasonable cause provoke other persons to use violence against persons or property in that neighbourhood:*

*provided that no one shall be deemed to provoke other persons needlessly and without reasonable cause by doing or saying anything that he is lawfully entitled to do or say.”*

## SUMMARY OFFENCES ACT 1981

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242. Section 5A(1) of the Summary Offences Act 1981 defines a disorderly assembly as:

*“an assembly of 3 or more persons who, in any public place, assemble in such a manner, or so conduct themselves when assembled, as to cause a person in the immediate vicinity of the assembly to fear on reasonable grounds that the persons so assembled-*

*(a) will use violence against persons or property; or*

*(b) will commit an offence against section 3 (disorderly behaviour)-  
in that vicinity.”*

243. Section 5A(2) of the Summary Offences Act makes it a summary offence liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2000, if Police warn participants in a disorderly assembly to disperse or otherwise desist from such an assembly and they, without reasonable excuse:

*(a) “continues to participate in the disorderly assembly; or*

*(b) having desisted from that disorderly assembly, participates in another disorderly assembly in circumstances in which it is*

*reasonable to deem the warning to have applied to the new assembly as well as the original one.”*

244. Section 3 of the Summary Offences Act makes it a summary offence for any person in or within view of any public place to behave, or incite or encourage “*any person to behave, in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue*”.

## POLICE POLICIES

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### Public disorder and breach of the peace

245. In September 2009 Police had a chapter in the Police Manual headed “*Unlawful Assembly*”. The chapter explained the ingredients of unlawful assembly and the offences commonly associated with it. This chapter also described the powers and procedures Police could use.

246. The Police Manual also had a chapter headed “*Trespass*”. This stated:

*“Police officers are subject to the same laws on trespass as any other citizen unless they have legal authority under section 41<sup>2</sup> or section 317 of the Crimes Act 1961. They can enter a property and knock on the door but if the occupier, expressly or by implication, asks them to leave, they must do so. If, however, before being asked to leave, an officer tells the occupier that he or she is under arrest, the officer can stay for the purpose of taking the occupier into custody.”*

247. The chapter on “*Noise Control*” explained the provisions in the Resource Management Act 1991 which give enforcement officers power to control unreasonable and excessive noise. The chapter clarified that the role of Police is limited to supporting local and national government officers in enforcing those provisions. Specifically, if requested, Police can assist when enforcement officers are entering premises and seizing equipment.
248. The chapter in the Police Manual headed “*Arrest and Detention*” applicable in September 2009 set out that Police could only arrest without a warrant pursuant to the provisions in the Crimes Act 1961 or an express power on another enactment. It stated in relation to breaching public peace:

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<sup>2</sup> This section allows anybody to use such force as may be reasonably necessary to prevent the commission of suicide or the commission of an offence which would be likely to cause immediate and serious injury to person or property.

*“Breaches of peace occur when these events are taking place or being threatened:*

- *serious disturbances or other forms of violence*
- *serious damage to property.*

*You can arrest someone under section 315(2) Crimes Act who you witness breaching the public peace and the breach is continuing or you think it is likely to be renewed.*

*However, as there is no specific offence for disturbing or breaching the peace, once you have arrested the person you need to determine what other charges, if any, should be laid against the person.”*

249. The Police Manual chapter headed *“Behaviour offences”* covered breach of the peace, litter offences and public disorder offences. The introduction stated:

*“All offences in this chapter are minor and should be dealt with quickly and with a minimum of fuss. The power to arrest without warrant should be exercised with discretion. Use it only if the behaviour is violent or likely to precipitate violence, and the suspect does not stop the behaviour when directed.”*

250. This chapter went on to define a breach of the peace as follows:

*“A breach of the peace occurs when there is an actual assault, or where public alarm and excitement are caused by a person’s wrongful act. Mere annoyance and disturbance or insult to a person or abusive language of great heat and fury without personal violence are not generally sufficient – Luxford’s Police Law in New Zealand, 4<sup>th</sup> ed, p69.*

*Breach of the peace occurs when an assault or a person’s wrongful act causes the public a fair degree of alarm and excitement - Halsbury’s Laws of England, 4<sup>th</sup> ed, para 108.*

*In practice, the wrongful act will usually consist of an assault, fighting, or noisy damage of property; or a serious threat of any of these.*

*The actions must produce alarm – not necessarily personal fear, but alarm that what is taking place will cause real disturbance to the community and the breaking-up of the peace of the neighbourhood – Ferguson v Carnochan (1889) 2 White 278.*

*Mere annoyance or insult to a person, or great heat and fury, without personal violence or threat of violence would not be enough to constitute breach of the peace unless such behaviour attracted a crowd,*

*interfered with public convenience and was inflammatory – Cohen v Huskisson (1837) 2 M & W 477. ”*

251. Police powers and duties in respect of a breach of the peace stated:

*“If you are at the scene when a breach of the peace is being committed, or if you have good cause to suspect that a breach has been committed, you, or anyone lawfully assisting you, can arrest...You cannot arrest if you merely anticipate a breach.”*

### **Use of force**

252. In September 2009 Police had a chapter in the Police Manual headed “*Use of Force*”. This summarised the legislation on the use of force, described various Police methods where force was applied and explained the requirement to complete a report whenever a certain level of force was used.

253. The section in this chapter concerning forced entry stated that the senior member present had the final responsibility for deciding whether force was used. Before any forced entry was made Police had to establish that the legislation did in fact authorise the use of force to effect entry. It also set out the common law requirements before an announced forced entry was undertaken, namely to:

- *“Announce your presence (for example, by knocking on the door).*
- *Produce identification.*
- *State the purpose and authority for entry.”*

254. There was a requirement for a use of force report to be submitted by each individual officer to the relevant supervisor “*at the first opportunity*” when force was used unless:

- *“the force used was trifling; or*
- *The force was used to arrest, search or otherwise deal with a prisoner, provided that the force was no more than moderate and that the prisoner suffered no personal injury”.*

255. If more than one officer was involved in the use of force, each officer had to submit an individual report from his or her own perspective. Additionally, if it was likely that an incident would result in a complaint the officer had to inform the supervisor, “*regardless of the extent of the force used*”. The supervisor would then decide whether use of force reports needed to be completed.

256. At the time of this incident in 2009 all Police officers received Staff Safety Tactical Training in accordance with the *“Tactical Options Framework and Theory.”* The two overriding principles encapsulated in the framework and theory were:

- *“the use of minimum force to achieve an objective; and*
- *reduction of risk to staff and maximisation of their safety in achieving objectives”.*

257. The Tactical Options Framework sets out a range of options available to Police in responding to a situation, depending on the actions of the offender. Officers may engage the offender or disengage, as appropriate in the circumstances. If the offender is engaged, options range from *“communication”* to *“empty hand”* tactics (such as physically escorting or distracting the offender, and techniques such as kicking or punching) to *“intermediate options”* (that is using equipment unlikely to cause death or grievous bodily harm, but required to establish control of an incident. Examples include OC spray or baton). The final option available to Police would be to use *“lethal force”* which refers to the use of a technique or equipment that may reasonably have the potential to cause grievous bodily harm or death (including firearms, baton strikes to head or neck, and intentional dislocations and breaks).

258. The officer makes a *“perceived cumulative assessment”* of the situation and subject behaviour. This is an assessment from the particular officer’s viewpoint and informs the officer’s response and type of tactical option that may be appropriate. The officer assesses whether the behaviour encountered is:

- Cooperative – where there is a willing, cooperative response to an officer’s lawful request or direction.
- Passive Resistance – where the subject refuses, with little or no physical action, to cooperate with the officer’s lawful direction. This could be verbal refusal or physical inactivity.
- Active Resistance – where there is an intensity of resistance beyond simple verbal defiance. This could be pulling away, pushing away or running away.
- Assaultive – where there is actively hostile behaviour accompanied by physical actions, or intent to cause physical harm. This includes kicking, punching or aggressive body language.
- Death or Grievous Bodily Harm – where there are actions intended to, or likely, to cause such harm or death. This includes assault with a knife, blunt instrument or firearm.

259. The framework is to assist officers when making decisions about use of force and emphasises that any use of force must be “*reasonable, proportionate and necessary.*” An officer’s actions must though be supported by legal authority to act. The training provided to officers states:

*“Officers need to understand that their actions must be sanctioned in law. The Framework is based on the law and will not support any actions outside of the law.”*

### **Investigation of complaints**

260. The investigation of the complaints by the partygoers has spanned more than three years. During that time there have been two different documents governing the way Police should undertake the investigation of the complaints.

261. Between September 2009 and June 2010 General Instructions IA100-IA123 prescribed the actions to be taken in response to complaints against Police. These set out the investigator’s responsibilities which included the following requirements:

- investigations to be conducted thoroughly and in an unbiased manner to ensure the public’s confidence in the ability of Police to impartially conduct internal investigations;
- investigations to address not only the substance of the complaint but also any incidental and material matters arising during the course of the investigation;
- before commencing an investigation, unless there is good reason to the contrary, to personally visit the complainant or contact the complainant by telephone to:
  - confirm the circumstances of the complaint;
  - obtain any additional information;
  - clarify the actual grievance;
  - explore the possibility of immediate conciliation;
  - explain how the complaint will be investigated;
  - explain the functions of the Authority;
- to use the same skills and diligence in a complaint investigation as would be used in any criminal investigation;
- to maintain effective liaison with complainants or their solicitors; and

- to provide progress reports at four-weekly intervals to the National Manager: Professional Standards which indicate the state of the investigation, the inquiries yet to be conducted, and the likely completion date.

262. In June 2010 the General Instructions were replaced by the Police Manual chapter headed *“Police Investigations of complaints and notifiable incidents.”* This chapter sets out the key principles underpinning the Police complaints processes as:

- *“To ensure that complaints are investigated in a fair, timely, and effective manner.*
- *To ensure that all reasonable steps are taken to investigate complaints and notifiable incidents.*
- *To ensure that complaints and notifiable incidents are investigated within the guidelines of good practice, without bias or conflict of interest.*
- *All employees have the right to be advised of any allegations against them and the right to respond to those allegations.”*

263. The investigation requirements are set out. In relation to these complaints the applicable requirements were:

- *“an investigation plan*
- *agreed Terms of Reference between the investigator and the District Commander*
- *regular liaison with the complainant/victims in accordance with the Victims Rights Act 2002*
- *regular liaison with the IPCA investigators including supply of information...*
- *consultation with the National Manager: Professional Standards or delegate*
- *a declaration of Conflict of Interest under the Independence of Investigations (Safe Processes) chapter*
- *notification of employee(s) as to the nature of the complaint or notifiable incident unless it is inappropriate to do so*
- *notification of employees involved of the result of the investigation.”*

264. District Commanders are responsible for actively managing the investigations under notice to their command *“to ensure that effective updates are provided to the National Manager: Professional Standards on a monthly basis on all investigations into alleged misconduct by Police employees assigned to their area. The update must provide the status of the investigation, any significant development in the investigation, the expected*

*timeline to complete and specify any outstanding tasks associated with that investigation.”*

# About the Authority

## WHAT IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

It is not part of the New Zealand Police – the law requires it to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Sir David J. Carruthers.

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

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

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

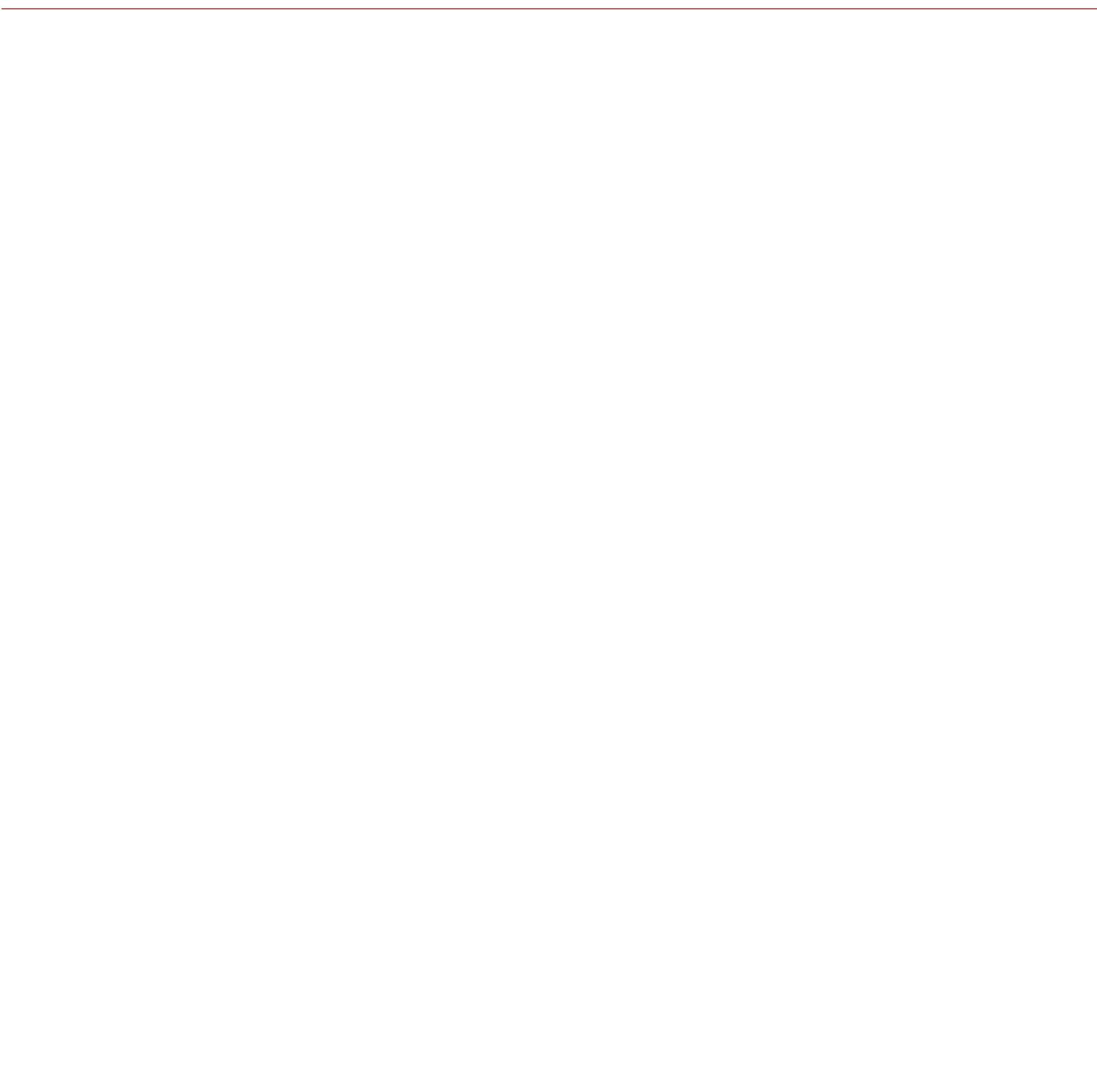
On completion of an investigation, the Authority must form an opinion on whether any Police conduct, policy, practice or procedure (which was the subject of the complaint) was contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority may make recommendations to the Commissioner.



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