

*Independence*

*trustworthiness*

*accountability*

*vigilance*

*integrity*

Police Closure of Maces Road, Christchurch  
in February 2012

May 2014



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May 2014

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# Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. At about 7.00pm on Saturday 18 February 2012 a large number of vehicles gathered on Maces Road, Bromley, Christchurch. This event has been described by those attending as a charity cruise to gain donations for the earthquake appeal.
2. Police became aware of the event at the beginning of the weekend. Road Policing staff, accompanied by New Zealand Transport Agency (NZTA) vehicle inspectors, were undertaking a planned road policing operation that weekend. The operation targeted illegally modified vehicles, anticipated anti-social road use, and associated disorderly gatherings in advance of a *'Show and Shine'* event being held by 4 & Rotary Promotions on Sunday 19 February 2012.
3. As a result, the Road Policing staff involved in that operation undertook observations in the Bromley area which confirmed that there were a very large number of vehicles, and significant numbers of people, congregating on Maces Road. Police also observed some cars doing 'burn outs' and driving at high speeds.
4. A decision was taken to temporarily close Maces Road to enable Police to control the scene, check the vehicles and prevent disorder. At approximately 7.30pm Police vehicles blocked the road at two intersections. All vehicles were lined up and checked by Police and NZTA vehicle inspectors before being allowed to leave. There were over 200 vehicles and it took a considerable amount of time to process these. The road was not reopened until after 2.00am on Sunday 19 February 2012. The road was closed for almost seven hours.
5. The Authority received complaints from 31 individuals between 19 and 21 February 2012. The complaints received had common themes which in summary were related to the fact that they had been detained, the length of time of that detention, allegations about the attitude and behaviour of Police (including the fact that Police were in riot gear), being videoed and photographed without consent, and not being allowed access to food, water or toilet facilities.
6. The Independent Police Conduct Authority ('the Authority') notified Police of these complaints and initially asked Police to conduct an investigation which the Authority

would monitor and review. However in March 2013, due to concerns about the Police investigation and in particular delay, the Authority decided to independently investigate the matter. This report sets out the issues considered by the Authority, the results of the investigation and the Authority's findings and recommendations.



# Background

INDEPENDENT POLICE CONDUCT AUTHORITY

## ROAD POLICING AND ANTI-SOCIAL ROAD USE ('ASR')

7. Anti-social road users are colloquially referred to as 'boy racers'. The term 'anti-social road use' ('ASR') encompasses various types of activity undertaken by individuals or groups with vehicles including noise, sustained loss of traction, speeding, racing, illegal modification of vehicles, wilful damage, arson and general disorder.
8. In 2010 Police in the Canterbury District introduced an Anti-social Road User Team ('ARUT') to specifically target known offenders by using intelligence, local bylaws, new legislation and community support. At the time the reason for introducing the ARUT was explained by the Canterbury District Road Policing Manager, who stated that anti-social road users caused serious nuisance to Canterbury residents. He explained that anti-social road users had been responsible for physical attacks on Police and members of the public, and posed a real risk to other road users.
9. Traditionally Police responded to reports of particular ASR. However, by the time Police attended such incidents the key offenders had usually left the scene. The ARUT moved away from a reactive only response and became proactive. The team sought to obtain local intelligence to target known offenders and anticipate where illegal gatherings may be held.
10. Partner agencies and business were canvassed by Police to see what solutions they could offer. This resulted in the introduction of local bylaws to govern the use of roads as well as targeting certain industrial areas which had previously been popular spots for gatherings.
11. Over the weekend of Friday 17 February 2012 to Sunday 19 February 2012, Canterbury Police had a planned road policing operation. A similar operation had been undertaken over the same weekend in previous years, prior to a regular 4 & Rotary Promotions event.
12. As in previous years, Police anticipated there would be an influx of car enthusiasts and anti-social road users in Christchurch prior to the 'Show and Shine' event on Sunday 19 February 2012. From experience gained from earlier years Police believed the influx could

result in incidents of ASR and associated disorderly gatherings which would adversely affect the quality of life of Christchurch residents and motorists. In addition Police believed a significant proportion of vehicles were likely to be modified, in many cases illegally, and could pose a risk to the occupants and other road users.

13. The Canterbury ARUT had experienced a couple of incidents shortly before this weekend where members of an ASR gathering had been observed with weapons (a stun gun and a firearm) or threatened violence to Police or other members of the gathering. Police were acutely conscious of the potential risks posed to other road users and Police staff by large groups of people gathering in such situations when violence can quickly erupt.

#### SUMMARY OF EVENTS ON 18-19 FEBRUARY 2012

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14. The planned road policing operation involved the Canterbury Road Policing Group, Christchurch general duties officers and New Zealand Transport Agency ('NZTA') staff, who accompanied Police in order to inspect the vehicles for vehicle compliance offences. There were 23 Police officers and 3 NZTA staff scheduled to be deployed on this operation which ran overnight from 7.00pm until 5.00am on both the Friday and Saturday nights. The overall purpose of the operation was to enforce the provisions of the Land Transport Act 1998 and target ASR gatherings.
15. Police became aware of the possibility of a 'cruise' late on 17 February 2012. From information received on 17 and 18 February 2012, Police were concerned there would be illegal street racing in the vicinity of Maces Road, Bromley, Christchurch and that a large number of vehicles and people might attend. Police were also concerned that there might be violence from some members of the group and that the violence might be targeted at Police.
16. Maces Road, Bromley is in a mainly light industrial area of Christchurch with small industrial units along it such as car repairers/dismantlers, an engineering unit, a sheet metal business, a boat builder's yard and a tattoo business. The area is popular with car enthusiasts and anti-social road users.
17. Officer A, a sergeant from the ARUT, part of the Canterbury Road Policing Group, was the officer in charge of the planned operation on the Saturday night. Due to the information received Officer A contacted Officer B, the sergeant in charge of the Police Support Unit ('PSU'), to alert him that assistance might be required from PSU. At the outset of the shift at 7.00pm on Saturday 18 February 2012, Officer A directed Officer C, a constable from his Road Policing team, to observe the activity at Maces Road from a safe distance and report back. Officer C reported that there were an extremely large number of vehicles (over 200) and a significant number of people in attendance. Officer C observed cars performing burnouts. Officer C stated that there were vehicles and people everywhere,

all over the road, and it was impossible for anyone to use the road. Officer C also reported that disorder was occurring.

18. As a result of this information, and due to the large number of vehicles and people present, Officer A discussed the situation with Officer B. These two officers agreed a plan to deal with the presenting situation. The plan was to close the road by placing Police vehicles at two intersections. The PSU unit would block off Maces Road at the intersection with Bromley Road, while the ARUT vehicles would block off Maces Road further north, at the intersection with Ruru Road. Some officers would also be stationed at the intersection with Wickham Street to prevent vehicles departing without being checked. The diagram below shows the area.

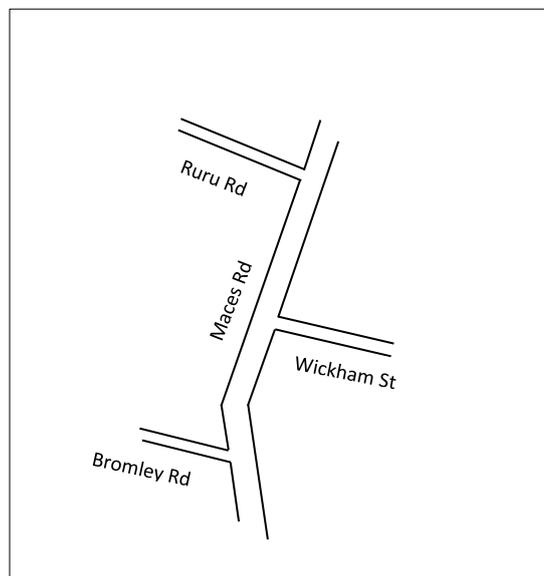


Diagram of Maces Road area

19. Police would establish a checkpoint, at the intersection of Maces Road and Ruru Road, which would include NZTA vehicle inspectors so that all cars could be inspected to ensure compliance with Land Transport regulations. In addition Police officers would check all drivers' details. PSU staff would maintain order by patrolling the area.
20. Police staff were briefed on this plan by Officer A at Christchurch Central Police station before deploying to the area. Eight PSU officers accompanied the officers already assigned to deal with the Road Policing operation. These PSU officers were wearing public order protective equipment which consisted of body protectors (foot, shin/knee, thigh, forearm/elbow, shoulder and groin), stab resistant body armour and protective helmets.
21. At approximately 7.30pm a section of Maces Road, between Bromley Road and Ruru Road, was closed by Police pursuant to section 35 of the Policing Act 2008 (see paragraph 28 below). This decision was taken due to the observed disorder and the significant number of vehicles and people present which posed a danger to the public. Police staff

present have indicated this was the largest gathering of such a type that they had ever encountered. Officer A confirmed to the Authority that he was surprised by the number of vehicles and people present and he had never seen so many vehicles together in one place before. As he drove onto Maces Road he saw smashed glass across the road in various areas, vehicles all over the road parked at odd angles and a large number of people milling around these vehicles. There was still a lot of smoke in the air where people had been doing burnouts.

22. Officer B and the PSU staff took the lead in controlling the situation. They used a loud hailer to instruct all drivers and passengers to get into their vehicles and remain inside. Police warned occupants that they would be arrested if they got out of their vehicles. Drivers were instructed to place their keys on the top of their vehicles. Officer B advised the Authority that he was concerned about risk to Police staff and the public, and took this action to restore order and keep the peace while the vehicles and occupants were organised to leave the area in a controlled manner. Police gradually got all the vehicles into a line facing the same direction, towards the intersection with Ruru Road. Each vehicle had to wait their turn until they reached the checkpoint so that the vehicle could be inspected and the driver's details checked before being able to leave the area.
23. Police estimate over 200 vehicles were present. This process took almost seven hours to complete, with Maces Road not being reopened until after 2.00am on Sunday 19 February 2012.
24. Once the scene was under control Officer B used a video recorder to record the vehicles and occupants. Officer B has advised the Authority he did this to ensure there was an accurate record of events and also to calm the situation, as from his experience recording people has a calming effect and prevents any disorder occurring. Officer B has also advised the Authority that it was standard practice for PSU in Christchurch to video record events if they occurred in a public place.
25. This video taken by Police and the recordings made by occupants present verify the above description of events. These recordings have also assisted the Authority when considering the complaints made.

#### COMPLAINTS RECEIVED FOLLOWING EVENTS ON 18-19 FEBRUARY 2012

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26. The Authority received complaints from 31 individuals who were at Maces Road that evening. While the complaints centre on each individual's specific experiences there are common issues that arise from these complaints as follows:
  - 26.1 Being detained and the length of time they were detained
  - 26.2 The lack of access to toilet facilities, food and water
  - 26.3 Police videoing them without consent
  - 26.4 Police being dressed in riot gear and the attitude of officers who were, in some instances, rude, threatening and intimidating
27. The general issues outlined above will be addressed in this report.





# Applicable Laws and Policies

INDEPENDENT POLICE CONDUCT AUTHORITY

## LAW

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### Temporary closing of roads

28. Pursuant to section 35 of the Policing Act 2008 (as it was at the time of this incident) a constable may temporarily close to traffic any road, or part of a road, leading to or from or in the vicinity of a place, if the constable has reasonable cause to believe that:
- a) public disorder exists or is imminent at or near that place; or
  - b) danger to a member of the public exists or may reasonably be expected at or near that place; or
  - c) an indictable offence not triable summarily under section 6 of the Summary Proceedings Act 1957 has been committed or discovered at or near that place.
29. Temporarily means for a period that is reasonably necessary in the circumstance.
30. This provision does not give Police any power to detain the drivers or passengers of any vehicles trying to use the road.

### Enforcement of traffic provisions

31. Section 113 of the Land Transport Act 1998 provides for enforcement officers to be able to enforce transport legislation, which includes inspecting, testing and examining any part of a vehicle on a road. In addition this section gives an enforcement officer the power to forbid an unlicensed driver to drive and to direct a driver to remove their vehicle from the road if it causes an obstruction, or its removal is desirable in the interests of road safety.
32. Section 114 of the Land Transport Act 1998 gives an enforcement officer the power to require a driver to stop and give specified particulars such as name, address, date of birth, occupation and telephone number. If a vehicle is stopped under this provision the enforcement officer may require a driver to remain stopped on a road for as long as is

reasonably necessary to enable the officer to establish the identity of the driver, but not for longer than 15 minutes. This provision applies only to the driver of the vehicle and not to any passengers.

33. Sections 96 and 115 of the Land Transport Act 1998 give powers to an enforcement officer to prohibit the driving of a vehicle if he or she believes on reasonable grounds that a vehicle does not comply with the provisions of the regulations or rules, or that a vehicle was operated with unnecessary exhibition of speed or acceleration or sustained loss of traction.

### **Breach of the peace**

34. Under the Crimes Act 1961, every one can interfere to prevent a breach of the peace if they witness such breach. Section 42 (1) of the Crimes Act 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.”*

35. There is a breach of the peace whenever harm is actually done or is likely to be done to a person or in their presence to their property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.
36. 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.

### **Bill of Rights**

37. The New Zealand Bill of Rights Act 1990 sets out a number of rights and freedoms afforded to individuals.
38. Section 18 states that everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand.
39. Section 22 states that everyone has the right not to be arbitrarily arrested or detained. Section 23 then goes on to state that everyone who is arrested or who is detained under any enactment:

- a) shall be informed at the time of the arrest or detention of the reason for it; and
- b) shall have the right to consult and instruct a lawyer without delay and to be informed of that right; and
- c) shall have the right to have the validity of the arrest or detention determined without delay by way of habeas corpus and to be released if the arrest or detention is not lawful.

40. Under section 23(5) everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.

## POLICY

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### Perimeter control

41. This chapter in the Police Manual outlines Police powers to close roads. It repeats the provisions of section 35 of the Policing Act 2008 (see paragraph 28 above). The policy then states:

*“These powers should be invoked only in appropriate circumstances. The legislation is intended to cover such emergency situations as:*

- *unlawful assemblies, gang confrontations and serious public disorder*
- *armed offender incidents, IED reports and dangerous goods accidents such as LPG or petrol spills*
- *crimes such as homicide, aggravated robbery and rape”.*

42. The policy also outlines Police powers to stop vehicles to maintain traffic safety or enforce traffic legislation as follows:

*“A constable can stop any person who is using a vehicle and ask for:*

- *their name and address; and*
- *whether they own the vehicle; and*
- *if not, the name and address of the owner, or any particulars within the user’s knowledge that may lead to the owner’s identification”.*

43. The policy goes on to outline that the person must remain stopped for as long as is reasonably necessary for the constable to exercise any power conferred on them under the Land Transport Act 1998. The policy states:

*“You **cannot** and **must not** stop a vehicle in order to:*

- *harass the person*
- *unlawfully detain the person while general enquiries regarding the criminal offence are made*
- *make a general search of the vehicle without a person’s consent”.*

### **Arrest and detention**

44. This chapter in the Police Manual explains arrest and detention. It explains that some legislation allows Police to detain a person without arresting them in order to exercise a statutory power. Examples of such powers are given as follows:

- *“the purpose of searching under section 18 Misuse of Drugs Act 1975*
- *breath-alcohol and blood-alcohol testing under Part 6 Land Transport Act 1998*
- *care and protection while they are intoxicated and when care cannot be provided by taking the person to their place of residence or a temporary shelter (s36 Policing Act 2008)”.*

45. The manual then goes on to explain arbitrary detention and defines it as follows:

*“Arbitrary detention is when you arrest or detain a person and:*

- *you do not have a statutory power to arrest or detain that person (an exception may be a detention essential for the person’s personal safety)*
- *the arrest or detention is unreasonable or unnecessary in the particular case.*

*Everyone has the right not to be arbitrarily arrested or detained (s22, NZ Bill of Rights Act 1990)”.*

46. The instructions provide examples of legislation allowing people to be stopped and/or required to give particulars or information in limited situations. One such example is that a vehicle’s driver may be required to give their name, address and date of birth and say whether they own the vehicle if they are stopped under section 114 of the Land Transport Act 1998 ( see paragraph 32 above).

47. The manual sets out the consequences of arbitrary detention:

*“Arbitrarily detaining a person may result in these consequences:*

- *Statements made by the person may be inadmissible in court*
- *The case against the person could be dismissed*
- *The arresting or detaining officer may be liable to civil litigation resulting in punitive damages”.*

### **Public order protective equipment**

48. At the time of this incident a Commissioner of Police Circular was in place governing the circumstances when public order protective equipment could be worn. This required the officer in charge of the scene to assess the risks prior to seeking authorisation for the deployment of any protective equipment and for notes of the assessment to be recorded in writing as soon as practicable. The circular provided:

*“The overriding consideration should be whether constables are likely to incur serious harm if protective equipment is not used in situations of actual or anticipated riot or serious disorder”.*

49. In this instance the use of the protective equipment had to be authorised by an Inspector (or higher level of position). This was to ensure that the equipment was not routinely used in non-riotous/disorder situations. In the event that an Inspector was unavailable, authorisation had to be obtained from a sergeant or senior sergeant on duty in the district. The circular stated that before authorising the use the authorising officer must be satisfied that:

49.1 *“A riot or incident of serious disorder exists or a real and serious threat that a riot or incident of serious disorder is likely to occur*

49.2 *Immediate action must be taken at the scene*

49.3 *The protective equipment is necessary to protect constables from injury”.*

50. On every occasion where protective equipment was deployed there was a requirement to report this to the District Commander and set out the situation which led to the use of the equipment, the amount and type of equipment involved, the attitude of the crowds and bystanders to the equipment, offences committed and arrests made, the name and rank of the member who authorised use of the equipment and injuries sustained by Police. A Tactical Options Report was also to be submitted listing all constables at the scene who were deployed in the equipment.





# The Authority's Investigation

INDEPENDENT POLICE CONDUCT AUTHORITY

## THE AUTHORITY'S ROLE

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51. Under the Independent Police Conduct Authority Act 1988, 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.
52. 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'S INVESTIGATION

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53. The Authority received complaints from 31 individuals between 19 and 21 February 2012. As required under section 16 of the Independent Police Conduct Authority Act 1988 ('the Act'), the Authority notified Police of these complaints. Initially the Authority requested that Police investigate these complaints, on the basis that the Authority would independently oversee and review the Police investigation. However in March 2013, due to concerns about the Police investigation and in particular delay, the Authority decided to independently investigate the matter pursuant to section 17(1)(a) of the Act, and confirmed this to Police and the complainants.
54. The Authority assigned an investigator and a reviewing officer (a qualified lawyer) to independently investigate the incident.
55. The Authority's investigation included:
- a visit to the scene at Maces Road;

- interviews with Police staff who were directly or indirectly involved with the incident;
- interviews with NZTA staff who attended the incident;
- liaison with the complainants;
- consideration of the Police and complainant recordings of events; and
- independent examination and analysis of all evidence in the Police investigation file.

#### ISSUES CONSIDERED

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

- 56.1 Was Police's initial decision to close Maces Road lawful and reasonable?
- 56.2 Was the deployment of PSU members in public order protective equipment reasonable and in accordance with policy?
- 56.3 Were Police's actions in detaining people lawful and reasonable?
- 56.4 Were Police's actions during the detention fair, reasonable and in accordance with law and policy?



# The Authority's Findings

INDEPENDENT POLICE CONDUCT AUTHORITY

## ISSUE 1: WAS POLICE'S INITIAL DECISION TO CLOSE MACES ROAD LAWFUL AND REASONABLE?

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57. The planned road policing operation being conducted over the weekend of 17-19 February 2012 did not contain any specific provision or direction to close any road. During the weekend the ARUT became aware of the possibility of a cruise late on 17 February 2012 and were concerned there would be illegal street racing in the vicinity of Maces Road and that a large number of vehicles and people might attend. Due to recent incidents and experience, Police were also concerned that there might be violence from some members of the group and that the violence might be targeted at Police.
58. Both Officer A and Officer B have confirmed to the Authority that they took the decision to close Maces Road due to the situation they faced that evening. They were each aware of the provisions of section 35 of the Policing Act 2008 (see paragraph 28 above). In their assessment there was public disorder as well as danger to members of the public. The assessment was based on the activity at the scene observed by Officer C as well as information received over the weekend.
59. Given the significant number of vehicles and people present, observed burnouts and risk of injury to the public from vehicles being driven in a dangerous manner, the initial decision to temporarily close Maces Road was a reasonable and logical decision in accordance with section 35 of the Policing Act 2008.

### FINDING

Officer A and Officer B had good reason to close Maces Road on 18 February 2012 at approximately 7.30pm. This decision was lawful and reasonable in the circumstances.

## ISSUE 2: WAS THE DEPLOYMENT OF PSU MEMBERS IN PUBLIC ORDER PROTECTIVE EQUIPMENT REASONABLE AND IN ACCORDANCE WITH POLICY?

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60. Officer A alerted Officer B on 18 February 2012 to the possibility of PSU assistance being required at Maces Road to assist with an ASR incident. Once Officer C had reported back it became clear that the volume of vehicles and people necessitated a significant Police response. Officer A's decision to request assistance from PSU was reasonable in the circumstances.
61. PSU attended the incident in public order protective equipment as explained in paragraph 20 above. Officer B did not seek authority from an Inspector to deploy in that equipment as required by policy (see paragraph 49 above). Officer B has explained that the ability to authorise wearing protective equipment was delegated to him and that he prepared a weekly report outlining PSU activities which covered instances when protective equipment was used. Police policy applicable at the time did not specifically allow for such authorisation to be delegated to a sergeant as a normal practice. The policy specifically makes provision as to what is to occur if an Inspector is not available. There is no evidence that any formal risk assessment was undertaken by Officer B or that he considered a graduated response with PSU initially attending without public order protective equipment. The other Police officers who attended were not wearing any protective equipment but were in their normal uniform with fluorescent jackets.
62. However the Authority accepts that, if the circumstances facing Police had been outlined to an Inspector and authorisation sought, it is likely that such authorisation would have been given. There were a significant number of vehicles and people present and disorder had been observed. Officer B had determined there was potential danger to the public and Police and immediate action was required. In such circumstances the wearing of public order protective equipment was appropriate.
63. The information contained in Officer B's weekly report does not meet the reporting requirements set out in policy (see paragraph 50 above). That report is not addressed to the District Commander. It makes no reference to the attitude of the crowd or bystanders to the equipment. It does not outline in enough detail the situation that gave rise to the use of the equipment. No tactical options report was submitted listing all the officers at the scene who were deployed in the equipment as was required by policy.
64. In this instance one of the general themes in the complaints received by the Authority concerned Police being dressed in 'riot gear'. Some complainants felt this added to the intimidating nature of Police on the evening. The purpose of the Police policy is to ensure proper risk assessments are undertaken and that such equipment is not routinely worn. While the Authority is of the opinion that the wearing of public order protective equipment was justified in these particular circumstances, the Authority's investigation

revealed that there did not appear to be any understanding or awareness of the Commissioner of Police's circular on this issue by Officer B.

#### FINDINGS

Officer A's decision to request assistance from PSU was sensible and reasonable.

The routine delegation to Officer B of the power to authorise PSU staff to deploy in public order protective equipment was not in accordance with policy. Such authorisation for this specific incident should have been considered by an Inspector.

In these particular circumstances deployment of PSU in public order protective equipment was likely to have been authorised, although consideration should have been given to a graduated response.

The reporting requirements outlined in policy were not complied with.

#### ISSUE 3: WERE POLICE'S ACTIONS IN DETAINING PEOPLE LAWFUL AND REASONABLE?

65. As outlined in paragraphs 21 to 23 above, a section of Maces Road was closed for more than 6 hours, from approximately 7.30pm on Saturday 18 February 2012 until after 2.00am on Sunday 19 February 2012. Initially, upon the road being closed, the vehicles were organised into a queue and gradually moved to the checkpoint at the intersection of Maces Road and Ruru Road. Vehicles were allowed to leave the area once the driver details had been checked and the vehicle inspected.
66. The Authority has found that Police had the power to temporarily close the road under section 35 of the Policing Act 2008. That does not give Police the power to detain vehicles or people.
67. The enforcement provisions in the Land Transport Act 1998, which are outlined at paragraphs 31 to 33 above, enable Police and NZTA vehicle inspectors to inspect vehicles and obtain particulars from drivers. There are limitations on the length of time that drivers are required to remain. Section 114 of the Land Transport Act 1998 provides that if a vehicle is stopped under this provision the enforcement officer may require a driver to remain stopped on a road for as long as is reasonably necessary to enable the officer to establish the identity of the driver, but not for longer than 15 minutes. This provision applies only to the driver of the vehicle and not to any passengers.
68. It is accepted by Officer B that, upon arrival at Maces Road at approximately 7.30pm, all people present at Maces Road were instructed to get back into their vehicles and place the keys on the roof of the vehicle, and warned that they would be arrested if they got

out of their vehicles. The complaints made to the Authority outline that this situation prevailed for a number of hours.

69. As indicated at paragraph 24 above Officer B recorded the cars and occupants by video once the scene was under control. In that recording Police were heard instructing people to remain in their vehicles and warned that they would be arrested if they got out. As Officer B filmed the vehicles he was asked on occasions why Police were keeping people there and what authority they had to do so. Officer B advised that Police have the power under section 113 of the Land Transport Act.
70. The provisions in section 113 are outlined in paragraph 31 above. These relate to inspecting, testing and examining any part of a vehicle on a road. In addition this section gives an enforcement officer the power to forbid an unlicensed driver to drive and to direct a driver to remove the vehicle from the road if it causes an obstruction, or its removal is desirable in the interests of road safety. There is no explicit power to detain people while a vehicle is inspected but it would be normal for people to remain with a vehicle while such an inspection occurs. There is a general obligation on Police not to detain a person unnecessarily or unreasonably.
71. There is no doubt that Police detained a significant number of people, both drivers of vehicles and passengers. Both Officer A and Officer B accept that Police actions that night amounted to detention. The way the operation was conducted contributed to the delay in people and vehicles being allowed to leave the area. Every vehicle was inspected. There were only three NZTA vehicle inspectors present. In addition Police staff were checking every driver's and car details. This process took at least 10 minutes for each vehicle.
72. Officer A was the officer in charge of the operation on that night. He was stationed at the vehicle checkpoint at the intersection of Maces Road and Ruru Road for a large part of the time. There should have been a Senior Sergeant in overall command and indeed a Senior Sergeant had been on duty the previous evening. It would have been beneficial for a Senior Sergeant or Inspector to have taken command and overseen the operation when the nature of the situation became apparent.
73. The NZTA inspectors present have advised the Authority that it would have been better practice for an initial cursory inspection to have been undertaken of all the vehicles in the queue. They would have been able to quickly identify those vehicles which required a closer, more thorough examination. The remaining vehicles could have been separated and quickly released.
74. Under section 114 of the Land Transport Act 1998 drivers may be required to remain for a period not exceeding 15 minutes so that their details could be obtained. After that time Police have no specific power to detain drivers. It is clear from evidence given to the

Authority and the Police video recording, which lasts more than an hour, that all drivers were detained for longer than 15 minutes. Police had no power to detain passengers at all.

75. The Authority has attempted to obtain a definitive number of vehicles, drivers and passengers detained by Police on Maces Road. Unfortunately, that has not proved possible due to the lack of comprehensive records.
76. NZTA state they checked 246 vehicles but an analysis of those records shows that 10 records were duplicated and there are 12 instances where no registration details were recorded. The Authority therefore concludes that at least 224 vehicles were inspected. There are no records of all the drivers or passengers and so the Authority is unable to provide a definitive number of drivers and passengers detained at the incident.
77. The detention of drivers and passengers by Police in the circumstances outlined above amounted to arbitrary detention, breached the New Zealand Bill of Rights Act 1990 and was unlawful.

#### FINDINGS

Officer B had no power to instruct drivers and passengers to remain in their vehicles and warn them that they would be arrested if they got out.

Police had no power to detain passengers.

Police's detention of all the drivers was for longer than 15 minutes and in the circumstances was unlawful and unreasonable.

#### ISSUE 4: WERE POLICE'S ACTIONS DURING THE DETENTION FAIR, REASONABLE AND IN ACCORDANCE WITH LAW AND POLICY?

78. As outlined at paragraph 26 above, the Authority received complaints from 31 individuals who were at Maces Road that evening. These complaints had common issues. One of these was the detention by Police and the length of that detention. That issue has been addressed above at paragraph 65 onwards. Another issue was that Police were dressed in riot gear. That issue has been addressed above at paragraph 60 onwards. The remaining common issues raised are as follows:

78.1 The lack of access to toilet facilities, food and water.

78.2 Police videoing them without consent.

78.3 The attitude of officers who in some instances were rude, threatening and intimidating.

#### **Lack of access to basic necessities**

79. This issue was specifically raised in 27 of the 31 complaints. The complainants provide accounts of being forced to remain in their cars for hours and asking on multiple occasions to be allowed to get out in order to use a toilet. They complain about being told by Police to urinate in plastic bottles inside the car and the fact that no arrangements had been made for toilet facilities during the many hours of detention. After about two hours people were allowed to leave their cars to go to the toilet, but people complain that there were inadequate facilities and that they were escorted by Police during this time. They also complain about not being allowed food or water, sometimes when it was simply in the car boot.
80. The situation faced by Officers A and B was not planned. They accept that no arrangements were made in advance for appropriate toilet or other facilities to be made available during the time that the road was closed. They did not anticipate it would take in excess of six hours to check all the cars and drivers and reopen the road.
81. Officer B explained to the Authority that at some point, he believed about half an hour after the road was closed, one of the PSU team made arrangements with the owner of a tattoo business for people to be able to use the toilet in the business unit. People were escorted by Police and the numbers allowed to leave their cars were restricted at any given time. Officer B explained that he felt this was necessary to prevent disorder or violence erupting.
82. Police accept that for some indeterminate time people were instructed to remain in their cars and if they did not comply they would be arrested. Officers A and B both advised the Authority that at some point passengers were allowed to leave the area. However neither officer can say who made that decision or when it was taken, and more importantly how it was communicated to the people there.
83. It was reasonable for occupants of the cars to assume that they could not get out. They had been warned that they would be arrested if they did, and had not been advised otherwise.
84. The details given by the complainants are consistent with the recordings viewed by the Authority. As outlined at paragraph 40 above, under section 23(5) of the New Zealand Bill of Rights Act 1990, everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the person.
85. Police unlawfully detained people in their cars and restricted their movement, in many cases for a number of hours. The recording taken by Police confirms that people in their

cars were complaining about not being allowed to get out and that they needed to use a toilet. Police are heard replying by asking if they have a bottle and to use that. This was said by Police to male and female occupants, and even to a female who advised that she was pregnant. This manner of treatment by Police to these unlawfully detained people was degrading. It did not comply with Police's obligation to treat these individuals with humanity and with respect and accordingly breached their human rights.

#### FINDING

Police's treatment of those detained at Maces Road by depriving them access to basic necessities was disrespectful and degrading.

#### Police videoing occupants

86. This issue was specifically raised in seven of the 31 complaints. These complainants objected to Police videoing them and on occasions challenged Officer B's power to do so.
87. Arguably Police may have an inherent power to take photographs as part of their mandate to keep the peace and to uphold the law, as has been recognised in a number of other jurisdictions. This common law power to photograph citizens is, however, subject to strict limits. In particular, photographs can only be taken by Police for proper law enforcement purposes, such as the prevention and detection of crime, the investigation of alleged offences and the apprehension of suspects or persons unlawfully at large.
88. Under the Land Transport Act Police can require drivers and passengers to provide particulars, which includes a photograph. Officer B has confirmed to the Authority that he used a video recorder to record the vehicles and occupants. He explained he did so to ensure there was an accurate record of events and also to calm down the situation, as from his experience recording people has a calming effect and prevents any disorder occurring. Officer B has also advised the Authority that it was standard practice for PSU in Christchurch to video record events if they occurred in a public place. Officer B did not say that he was making the video recording for Land Transport Act purposes.
89. Officer B is heard saying he can record people as they are in a public place. In this instance the vehicles, drivers and passengers were initially in Maces Road of their own volition and this is a public place.
90. However the Authority has found that Police arbitrarily detained these people. The video recording was not taken until after people were unlawfully detained and so at the time of the recording they were not free to leave.

**FINDING**

Officer B should not have video recorded the drivers and passengers who were being detained unlawfully by Police.

**Attitude of officers**

91. This issue was raised in 25 of the 31 complaints. In general the complaints were about the attitude of the PSU officers. Complainants felt that they were aggressive and intimidating, partly due to the way that they were dressed in 'riot gear' but also due to their manner and language.
92. The role of PSU is to assist general duties Police. They are specially trained to deal with public order policing. There were eight PSU officers going into the area to control over 200 vehicles. Officer B was mindful that violence and disorder could quickly erupt and the scene needed to be quickly controlled. The Authority accepts that officers have a duty to protect themselves from injury and harm. PSU officers had a responsibility to act appropriately and professionally. They were firm and direct in their initial instructions and did quickly control the scene.
93. However PSU officers also need to be aware of the impact their presence in public order protective equipment ('riot gear') can have on members of the public. In this instance the only loudhailer announcement made was to stay in the vehicle or they would be arrested. There was no explanation given as to why Police were there, their legal authority and what would be happening.
94. The Authority has already found that Police should not have detained the drivers and passengers in the way they did. Also, depriving them access to basic necessities was disrespectful and degrading. The attitude of certain PSU officers when dealing with these issues was, on some occasions, not professional and led complainants to feel that they were being humiliated and treated as criminals.
95. The Authority has not interviewed all PSU officers who attended the incident at Maces Road and has not felt it necessary to do so in light of the other available information, in particular the Police video recording. The Authority is satisfied from all of the evidence it has received that the manner in which PSU officers treated people was not respectful at times, particularly in refusing access to toilet facilities. It is understandable that people (male and female) felt upset and humiliated by being refused access to a toilet, food and water, being told to urinate in a bottle and being advised they should not have come to such an event if they were pregnant or had a particular medical condition requiring specific attention.

**FINDING**

The attitude of PSU officers was not respectful at times.





# Subsequent Police Action

INDEPENDENT POLICE CONDUCT AUTHORITY

## ROAD POLICING OPERATION ORDERS

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96. Following this incident the Road Policing Group in Christchurch reconsidered the content of the Operation Order. Subsequent orders now include more information particularly around the legal powers to close a road and the relating powers, duties and responsibilities of officers when checking drivers' details and vehicles as well as the limitations on detention.

## POLICE POLICY

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97. A new chapter in the Police Manual has been introduced concerning road blocks and stopping vehicles for search purposes. Within that there is a section on taking photographs of people at road blocks which outlines when photographs/particulars can be taken. It also outlines the Privacy Principles in the Privacy Act 1993 and what Police need to do in order to comply with those principles. The guidance is very general in nature and restricted to road blocks.
98. In December 2013 Police updated the instructions in relation to Public Order. A new chapter dealing with public order personal protective equipment was introduced which sets out the risk assessment that must be undertaken by the senior officer at the scene before seeking authorisation to deploy in such equipment. An Inspector (or above) must authorise deployment of the equipment *"to ensure that the equipment is not routinely used in non-riotous/disorder situations"*. The instructions set out the steps that must be taken if an Inspector is unavailable.





# Conclusions

INDEPENDENT POLICE CONDUCT AUTHORITY

99. Police have to conduct a balancing exercise when dealing with differing expectations from the community. At about 7.00pm on Saturday 18 February 2012 more than 200 vehicles gathered on Maces Road, Bromley, Christchurch. The car enthusiasts who were present wanted to be allowed to go on a charity cruise whereas other sections of the community expected Police to break up the gathering or at least check all vehicles and ensure they were roadworthy and that no offences were being committed.
100. As a result of observations undertaken by Police a decision was taken to temporarily close Maces Road to enable Police to control the scene, check the vehicles and prevent disorder.
101. There were limited Police resources to deal with the number of vehicles and people present. There was no senior sergeant on duty that night to take overall strategic command.
102. Officers A and B did not understand the extent, and limitations, of their powers. Maces Road was closed for more than six hours. During that road closure drivers and passengers were arbitrarily detained, some for significant periods of time. In addition their human rights were not met in that they were refused access to toilets in circumstances which were disrespectful and degrading. PSU officers in public order protective equipment ensured that the scene was under control but did so in a manner which many complainants found threatening and intimidating.

## Section 27 opinion

103. 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 the subject-matter of an investigation was contrary to law, unreasonable, unjustified, unfair or undesirable.
104. The Authority has formed the opinion, pursuant to section 27(1) of the Act, that the following actions were contrary to law:
  - i) the detention of all passengers by Police during the closure of Maces Road;

- ii) the detention of all drivers by Police for longer than 15 minutes and in the circumstances of this incident;
  - iii) the treatment of people by Police in depriving them access to basic necessities;
  - iv) Officer B's instruction for people to remain in their vehicles or they would be arrested.
105. The Authority has formed the opinion, pursuant to section 27(1) of the Act, that the following actions were unreasonable:
- i) Officer B video recording the drivers and passengers;
  - ii) PSU officers' disrespectful treatment of people.
106. The Authority has also formed the opinion, pursuant to section 27(1) of the Act, that the following actions or omissions were undesirable:
- i) Police's routine delegation to Officer B allowing him to authorise PSU staff to deploy in public order protective equipment;
  - ii) Police's failure to comply with the reporting requirements set out in policy concerning the use of public order protective equipment.

# Recommendations

INDEPENDENT POLICE CONDUCT AUTHORITY

107. The Authority notes that Police have already made some changes to practice and policy as outlined in paragraphs 96 to 98 above.
108. Current policy in relation to photographing people is very general in nature and restricted to road blocks. Accordingly, pursuant to section 27(2) of the Act, the Authority recommends that the New Zealand Police review their policy in relation to photographing or recording people and provide more detailed guidance to Police staff.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

8 May 2014

# About the Authority

## WHO 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 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 has highly experienced staff who have worked in a range of law enforcement 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;
- 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 determine whether any Police actions were contrary to law, unreasonable, unjustified, unfair, or undesirable. The Authority can make recommendations to the Commissioner.





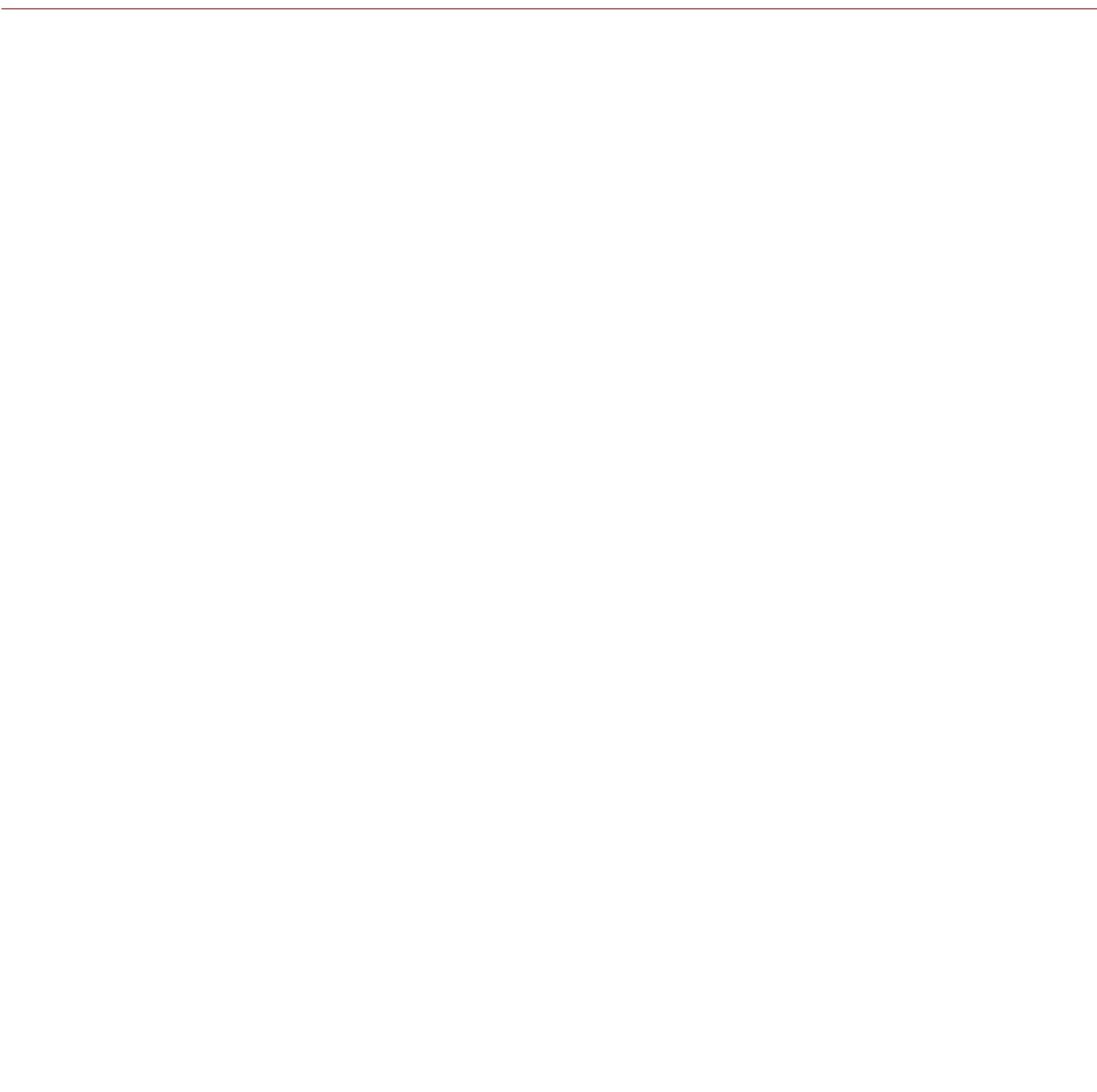
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