

Independent Police Conduct Authority



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INTRODUCTION

About the Authority

1. The Authority is established under the Independent Police Conduct Authority Act 1988. It is an Independent Crown Entity. Under the Act, its purposes are to:
 - receive complaints (i) alleging misconduct or neglect of duty by any Police employee or (ii) concerning any Police practice, policy or procedure affecting a complainant; or
 - investigate incidents in which a Police employee (acting in the execution of his or her duty) causes or appears to have caused death or serious bodily harm.
2. The Authority also has a Memorandum of Understanding with the Police, signed in 1994. The MoU covers instances of serious misconduct or serious neglect of duty which put at risk the reputation of the Police and which are internally reported within the Police.
3. Under the MoU, cases are referred by Police to the Authority even though there may not be a complaint from a member of the public, or there may not have been a death or serious bodily harm. During 2010/11 the Authority received 23 MoU notifications classified as Category 1, thus requiring investigation by the Authority; and 60 notifications classified as Category 2, thus requiring review by the Authority.
4. Under section 17 of the IPCA Act, when the Authority receives a complaint it can investigate the complaint itself, or refer it to the Police for investigation under the Authority's oversight (which may include direction of the Police investigation, oversight, or review/audit upon completion of the Police investigation); or defer action or take no action.
5. Current practice now is for the majority of complaints to be referred for Police investigation, while the most serious are retained for investigation by the Authority. The Authority has criteria – based on factors such as seriousness and public interest in the incident – to guide decisions on how a complaint should be handled. (see paragraph 8) Often, there will be simultaneous Authority and Police investigations, with the Police investigations covering criminal and/or Police Code of Conduct matters.
6. On completion of an investigation by the Authority or the Police, the Authority will determine whether there was any breach of practice, policy or procedure, and whether any Police act or omission was contrary to law, unreasonable, unjustified, unfair, or undesirable (sections 27 and 28 of the Act).

7. The Authority can make recommendations, including recommendations for disciplinary or criminal proceedings, and the Commissioner must notify the Authority of any action taken to implement the recommendation or give reasons if the recommendation is not being implemented. Most recommendations relate to improvements in policy or practice. The Authority is also required to notify the Attorney General and the Minister of Police if the Commissioner of Police takes no adequate or appropriate action in response to an Authority recommendation.

8. The Authority receives approximately 2,000 complaints and incident notifications every year, and in order to allocate resources most effectively, it categorises them by level of seriousness. The categories are as follows:

- **Category 1:** IPCA investigation or oversight. This category covers all instances of death or serious bodily harm associated with Police actions, and serious complaints with high public interest. The Authority's investigators will independently investigate or actively oversee Police investigations in this category. Approximately seven percent of files are in this category.
- **Category 2:** Serious – Police investigation. This covers incidents that may lead to prosecution of Police officers, for example allegations of assault. The Authority will review Police handling of all Category 2 complaints. Approximately seven percent of files are in this category.
- **Category 3:** Significant or substantial complaints. These could include, minor or non-injury assaults, property damage, serious traffic matters, or a failure to report significant matters. Approximately 14 percent of files are in this category.
- **Category 4:** Conciliation. Complaints in this category are defined as those most appropriate for conciliation. They include, for example, excessive delay, inappropriate racial comments, and inappropriate use of any Police information system not amounting to corruption. Approximately 24 percent of files are in this category.
- **Category 5:** No further action. Complaints are defined as minor, or older than 12 months at the time of reporting, or complaints that have been declined by the Authority but may still be of interest to the Police. These minor complaints require no action by the Authority. Approximately 48 percent of files are in this category.

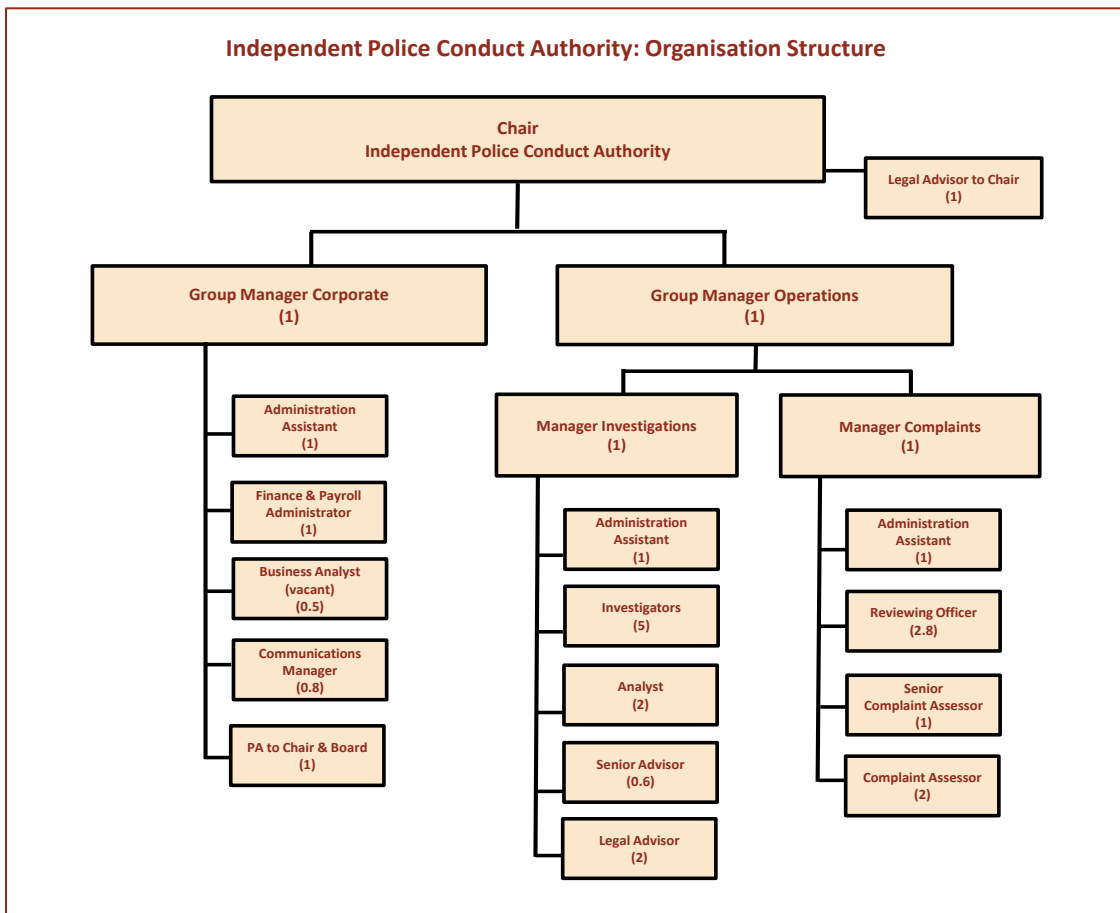
'OPCAT' function – Optional Protocol to the Convention Against Torture

9. The Authority has domestic and international responsibilities under the Crimes of Torture Act 1989 to carry out preventive work by the regular monitoring of places of Police detention, such as cells and vehicles, to ensure they are safe and humane and meet international standards.
10. An amendment to the Crimes of Torture Act in 2006 enabled the New Zealand Government to ratify the Optional Protocol to the Convention Against Torture (OPCAT), part of a United Nations human rights treaty, in March 2007. New Zealand is currently one of 61 states which are parties to the OPCAT.
11. The Crimes of Torture Act designates the Authority as a National Preventive Mechanism (NPM) with powers to regularly conduct announced and unannounced visits to places of detention and to make recommendations. This is distinct from the Authority's role in handling complaints about Police conduct, and has more of an emphasis on preventive and educative measures.
12. The Authority reports annually to the Central NPM, the Human Rights Commission (HRC). The HRC collates the Authority's report with those of other NPMs including the Office of the Ombudsmen; the Office of the Children's Commissioner; and the Inspector of Service Penal Establishments (NZ Defence Force) and formally presents it to Parliament and to the office of the United Nations High Commissioner for Human Rights in Geneva. The other NPMs have oversight of facilities including prisons; psychiatric hospitals, youth justice residences; and immigration detention centres.
13. In addition, ratification of OPCAT makes New Zealand subject to the oversight of the Geneva-based United Nations Subcommittee on Prevention of Torture (SPT). The SPT conducts in-country visits to member states to inspect places of detention and scrutinise the performance and operations of each National Preventive Mechanism. New Zealand has not yet hosted a visit by the SPT but can realistically expect one to occur in the near future.

People/structure

14. The Authority is governed by a Board which may comprise up to five people including the Chair.
15. The Authority's operations are structured into a Corporate Group and an Operations Group. The Operations Group is composed of an Investigations team and a Complaints Management team. The organisational structure is pictured on the following page.
16. The Authority's Board recently oversaw a process of organisational change during the year. The Board was concerned to address the Authority's strategic direction, including

opportunities and risks for the Authority to operate at full potential. The Board concluded that a more robust organisation design was required to realise strategic direction. The emphasis on efficiency suggests an organisation structure that enables focused filtering and prioritisation in the complaints management process. This focus will also provide the opportunity for the development of more effective communication with complainants. In the short to medium term the Board is also focused on applying appropriate resources to the independent and transparent investigation of serious complaints and incidents and to producing, in a timely manner, public reports of the highest quality.



LEGISLATIVE ISSUES AND PRIORITIES

Independent Police Conduct Authority Amendment Act 2007

17. The Independent Police Conduct Authority Amendment Act came into effect in November 2007. It made a number of changes to implement the recommendations of the Commission of Inquiry into Police Conduct (COIPC), which had reported that year:

- The Authority's name was changed from Police Complaints Authority to Independent Police Conduct Authority to better reflect its independence and its full range of functions, which includes the investigation of Police conduct that result in death or serious bodily harm (matters that do not involve complaints); and to provide a clear response to public demand for independent and robust oversight of Police.
- The Authority changed from a person to a Chair and a Board of up to five members (including the Chair, who must be a Judge.).
- The Authority was given specific power to refer complaints to Police for investigation, and to take no action on minor complaints for which there is another remedy. This amendment allows for less serious complaints to be referred to Police for resolution and thus results in a more effective use of the Authority's resources.
- The Authority was provided with the procedural powers of a Commission of Inquiry in order to facilitate the conduct of inquiries in which evidence is taken on oath.

18. In addition, the 2007 amendment imposed a statutory deadline on Police for the referral of complaints to the Authority, clarified that the Authority can hear complaints about historic incidents (before its establishment in 1989), and required the Authority to inform the Minister of Police and the Attorney General if Police do not respond satisfactorily to the Authority's recommendations.

Proposed legislative changes

19. The secrecy and privilege provisions in the Independent Police Conduct Authority Act prevent information gathered in the course of an investigation by the Authority from being used in any Court or in any inquiry or proceedings.

20. In the course of the COIPC, the restraints imposed by the secrecy provisions (which inhibit the Authority's ability to investigate serious incidents and complaints that may result in criminal or disciplinary proceedings against officers) were examined at some length.

21. As a result, the COIPC recommended (R30) that the Ministry of Justice review the secrecy provisions in the Act, to ensure that they do not inappropriately prevent the Authority from investigating such complaints.

22. In December 2007, following the review, Cabinet approved a number of proposals intended to enhance the role of the Authority. Draft legislation was prepared but was not introduced.

23. The proposed changes were to:

- Amend the current secrecy and privilege provisions so that information gathered during the Authority's investigations can be used in subsequent proceedings, in particular the prosecution of Police officers;
- Allow the Authority to undertake its own investigations, exclusive of Police, in defined circumstances. Essentially, the defined circumstances encompass the most serious incidents and complaints. Less serious matters would continue to be investigated by the Police under the Authority's oversight;
- Allow the Authority to conduct own motion investigations into serious incidents or matters of significant public interest. The Authority's ability to do so at present is limited;
- Give Authority investigators additional powers in order to carry out their enhanced investigatory role. The powers envisaged, but not confirmed, are similar to those exercised by Police officers in respect of search and seizure, the interception of communications, tracking, and possibly a power of arrest in tightly prescribed circumstances;
- Enable the Authority to decide whether there is sufficient evidence to instruct a Crown Solicitor to consider prosecution in certain circumstances – meaning, in essence, that the Authority would decide whether to prosecute on the basis of its own investigation;
- Allow the Official Information Act to apply to the Authority. The applicable rules for this were undecided. The Authority considered the application should be limited to cases likely to proceed to prosecution. (There is a tension between the rules of disclosure in criminal trials and the secrecy provision of s.32 of the Act, which exists to encourage the provision of sensitive information in confidence.)

24. The proposed changes would also deal with anomalies in the current Act, e.g. under section 12(1)(a)(i), the Authority may *receive* complaints alleging misconduct; and under section 12(2), it may *investigate* apparent misconduct. Yet, under sections 27(1) and 28(1), it is not explicitly authorised to *make a finding of* misconduct. Instead, it is limited to *forming an opinion* as to whether a matter is “contrary to law, unreasonable, unjustified, unfair, or undesirable.”

25. Since the above proposals were drafted, the Authority has learned a great deal more about comparable oversight bodies overseas. In the Authority's view the draft legislation should not be considered for introduction without a fresh assessment of its likely impact on the operations of the Police and the Authority.

26. In addition, it is desirable for aspects of the Authority's relationship with, and jurisdiction over, some Police matters to be formalised in statute. The principal example is the Memorandum of Understanding with Police, signed in 1994. This requires updating to take account of the Policing Act 2008, changes to the Police disciplinary processes, and to the manner in which the Authority now operates and interacts with Police.

OPERATIONAL MATTERS AND PRIORITIES

27. In addition to the legislative proposals identified above, a number of operational matters have been prioritised by the Authority.

28. As discussed in the Authority's Annual Report published on 17 November 2011, the Authority issued a record number of public reports during the 2010/2011 year. Seventeen reports were issued, an average of one almost every three weeks.

29. However of possibly greater significance to the Authority and to the public is that of 24 recommendations made by the Authority during the 2010/2011 year, 15 were accepted and/or implemented by Police, and the others remain under active consideration. Most importantly, the outcome of some of those recommendations has resulted in measurable impacts. For example, in the critical area of child abuse investigations, all of the recommendations made by the Authority following its independent inquiry into Police's management of child abuse investigations were unreservedly accepted and implemented by Police, and the standardised management of these files has now become the 'gold standard' for the management of all Police investigation files. This must be having a positive impact on the quality of policing generally.

30. In the coming year, the Investigations Team is focusing on a number of complex and resource-intensive cases. The Complaints Management Team is concentrating on improving the management of complaint files and dealing with a high volume of complaints. The small team with oversight of places of Police detention under the OPCAT framework is undertaking a number of initiatives in order to enhance the monitoring, education, and harm-prevention programmes required by this international protocol.

Investigations Team

31. The Authority's Investigations Team is composed of five investigators and a number of other staff such as analysts and legal advisors. The Investigations Team deals with the most serious incidents, those classified as category 1 (see paragraph 8).

32. The Investigations Team is currently investigating the circumstances surrounding 12 deaths: two fatal Police shootings; seven fatal Police pursuits; and three deaths following Police contact (two suicides and one homicide).

33. It is investigating two further shootings (non-fatal); and four serious injury pursuits (non-fatal).

34. Other resource-intensive investigations involve cases of alleged corruption during criminal trials; unlawful use of force; and failure to investigate or respond adequately to serious incidents.

35. At 06 December 2011 the Investigations Team had 50 active (open) investigations, and another 14 investigations in the process of being concluded and reported to the Commissioner of Police (in the 'dispositive queue'). The 14 investigations in the dispositive queue include one fatal shooting and three fatal pursuits.

Complaints Management and Reviewing Team

36. The Complaints Management staff handle incoming complaints. They also manage the relationships with complainants and the Police when a complaint is referred to Police for investigation, and manage the reviewing and auditing of the Police handling of such cases.

37. At 1 July 2011 the Complaints Management Team (CMT) had 584 open files. At 15 November 2011 the Authority had received a further 767 complaints/referrals, and had closed 983 files. The CMT had 368 open files on 15 November.

38. There are 79 aged files, that is, older than 12 months. Seventy-seven of the aged files are awaiting further Police information or action. Fifty-three of the aged files are up to 18 months old; 18 files are aged 19-24 months; and eight files are aged at least 25 months.

39. In addition to the complaint files referred to above, the CMT handled 695 phone enquiries not directly related to a complaint file and responded to a further 117 items of written correspondence recorded as 'miscellaneous' (not able to be categorised as a complaint), between 1 July and 15 November.

Places of Police Detention (OPCAT)

40. The background to New Zealand's obligations under the United Nations OPCAT treaty is discussed in paragraphs 9 to 13. The OPCAT emphasises prevention and education, rather than punitive measures after the fact. The 61 OPCAT member states have adopted a collaborative approach across jurisdictions, with much sharing and exchange of information and best practice. It is a system that operates well on principles of international partnership, rather than international pressure.

41. March 2012 marks the fifth anniversary of New Zealand's ratification of OPCAT. The Authority and other NPMs have worked with the Ministry of Justice to produce a stocktake of how OPCAT has been implemented in the New Zealand setting. The stocktake also provides room to explore whether there is scope for enhanced performance through increased collaboration between the NPMs. Thirdly, the stocktake addresses the potential areas of risk for a number of New Zealand agencies which are subject to oversight by both the NPMs and by international bodies, including the United Nations.

42. Only one other 'western' nation, Sweden, has been visited by the United Nations oversight agency, the Subcommittee on Prevention of Torture. After that visit in 2008 the SPT was critical of a number of aspects of the Swedish system, including the expertise of officials in NPMs; the lack of ring-fencing for OPCAT budgets within NPMs; and the work programme and frequency of NPM visits to places of detention.

43. In addition, three other United Nations treaty bodies will call New Zealand to account over its broader human rights record in the next two to three years:

- The Universal Periodic Review (New Zealand's 2nd report is due in February 2013);
- The Convention Against Torture (New Zealand's 6th report is due in May 2013); and
- The International Covenant on Civil and Political Rights (its 'list of issues' for New Zealand will be released in March 2014)

44. The U.S. State Department Bureau of Democracy, Human Rights and Labor also produces an annual report on human rights conditions in New Zealand. The report is submitted to the Speaker of the U.S. House of Representatives and to the Senate Committee on Foreign Relations. U.S. legislation "requires that U.S. foreign and trade policy take into account countries' human rights" and the report is also used "for shaping policy, conducting diplomacy, and making assistance, training, and other resource allocations."¹

45. The most recent State Department report on New Zealand (April 2011) devotes its first three pages to questions of torture and other cruel, inhuman, or degrading treatment or punishment by government officials; conditions in prisons and detention centres; and Police treatment of arrested and detained persons.² It also included the general comment on page 7: "*A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were cooperative and responsive to their views.*"

46. There are at least 371 Police Stations and 66 District Courts in New Zealand. Each year, more than 150,000 detained people are managed in Police custody, and an estimated "70 to 80% have medical and/or psychological issues, including alcohol and drug dependencies".³ This presents unique challenges for both Police and for the Authority's site visit team that is required, as per the OPCAT, to conduct regular and thorough visits to all places of detention. The sites cover rural and urban centres and are geographically dispersed. While other NPMs have significant portfolios in terms of numbers of detainees, they have comparatively fewer sites to visit. The Authority's OPCAT team members are also responsible for delivering on other

¹ US Department of State, 2010 Human Rights Report: Overview and Acknowledgements, 8 April 2011, www.state.gov/g/drl/rls/hrrpt/2010/frontmatter/154328.htm

² US Department of State, 2010 Human Rights Report: New Zealand, 8 April 2011, www.state.gov/g/drl/rls/hrrpt/2010/eap/154396.htm

³ NZ Police Acting Assistant Commissioner Gary Knowles, media statement "Response to IPCA report on death in custody", 1 July 2011, www.police.govt.nz/news/release/28589.html

projects as part of the Authority's role as an investigation and oversight body. No full time resource is possible with the current budget allocation.

47. The number of site visits per annum provides one measure of the discharge of OPCAT responsibilities by the IPCA. Given the focus on prevention and education, it is also necessary to consider the Authority's wider impact on Police policies, practices and procedures.

48. The following table collates information from NZ Police Annual Reports for the years 2007 to 2011.

Table 1: Deaths and Attempted Suicides in Police Custody 2006/07-2010/11

	2006/07	2007/08	2008/09	2009/10	2010/11
Deaths in Custody	One	One	Nil	Nil	Nil
Attempted Suicides in Custody	Not reported	Not reported	Not reported	14	15

A "nil" outcome for deaths in Police custody is a significant and tangible achievement given the risks posed by the annual throughput of detainees. It highlights the importance of the preventive and educational approach under the OPCAT mandate. The cost of investigations following a death in Police custody or a death following Police contact can run into hundreds of thousands of dollars. Investigations are required by Police (criminal and disciplinary); by the Authority; and by the Coroner.

49. In the Authority's view, it would be appropriate for Ministry of Justice officials to now work in partnership with New Zealand NPMs to evaluate the Government's intention and requirements for OPCAT. The fifth anniversary of New Zealand's ratification of OPCAT provides a timely opportunity to undertake a review of achievements to date, including a comparative capability analysis of New Zealand NPMs, and to establish recommendations for OPCAT's future development.

CONCLUSION

50. Through impartial and independent oversight, the Authority provides reassurance for the public and the Government that New Zealand policing standards are of the highest calibre.
51. Any issues for Police, or members of the public in their interaction with Police, will be carefully and independently examined and constructively reported on. Reassurance around this is in the best interests of Police and the public. In endeavouring to achieve these goals the Authority has worked to utilise its modest resources to best advantage.
52. Legislative change first proposed in late 2007 has not proceeded further. The Authority is able to contribute to any possible future review of the statutory framework for Police oversight.
53. While the Authority's OPCAT and complaints roles are necessarily conducted independently of each other, the Authority's OPCAT work strengthens and informs its human rights focus when conducting independent investigations, and can lead to positive impacts on conditions and treatment for detainees.
54. The Authority looks forward to furthering its positive impact on Police conduct, practices, policies and procedures, as part of the wider Justice sector.

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