



**IPCA**

Independent Police  
Conduct Authority

Mana Whanonga Pirihihi Mana Motuhake

# Paul Tainui released at Police checkpoint, before going on to kill Nicole Tuxford

## Outline of Events

1. On the evening of 6 April 2018, Paul Tainui (originally named Paul Wilson) was stopped at a Police drink drive checkpoint, where he was found to be over the legal alcohol limit.
2. Officer A checked Mr Tainui's details on the Police database and noted he had an alert for a murder committed in 1994. He processed Mr Tainui and summonsed him to appear in court for the drink driving charge. Mr Tainui was forbidden to drive for 12 hours and his car keys were confiscated.
3. Mr Tainui told the officer he had knives in his car. Officer A accepted his reason for having the knives and requested he leave them in his locked car boot, which he did. Mr Tainui then left on foot.
4. Mr Tainui caught a taxi to Ms Tuxford's home, where he lay in wait for her for about 8 hours. When she returned home, he raped and then murdered her, using her kitchen knives to do so.
5. Mr Tainui had received a mandatory life sentence in 1996 when convicted of the 1994 murder. After serving time in prison, he was released on parole with conditions imposed for the rest of his life. As a life parolee, he was managed by the Probation Service. He was subject to recall to prison if he posed an undue risk to others, breached the conditions of his parole, or committed an offence punishable by imprisonment.
6. The parents of Ms Tuxford asked the Authority to investigate whether Mr Tainui should have been released by Police at the checkpoint.

## The Authority's Investigation

7. The Authority reviewed all relevant documents and interviewed six officers.

8. The following issues were identified and considered:
  - 1) Did Officer A respond appropriately after noting Mr Tainui had a previous conviction for murder and should Mr Tainui have been arrested once the officer knew he had knives in his car?
  - 2) Did Police have appropriate mechanisms and training in place for staff to manage incidents involving life parolees?

## The Authority's Findings

### ISSUE 1: DID OFFICER A RESPOND APPROPRIATELY AFTER NOTING MR TAINUI HAD A PREVIOUS CONVICTION FOR MURDER?

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9. Officer A was the sergeant in charge of the Police compulsory breath test checkpoint in Bealey Avenue, Christchurch. He and his team set up the checkpoint between Madras Street and Manchester Street at about 9.45pm.
10. At about 10pm, Officer A saw a car stop at the red traffic lights at the Madras Street intersection. It started to reverse against the traffic and pulled into a parking spot on the side of the road, about 20-30 metres away from the checkpoint. Officer A went to speak to the driver. The driver initially gave the impression he did not want to look at the officer, but then wound the window down to talk. He gave his name as Paul Tainui.
11. Officer A said he could smell alcohol on Mr Tainui, but it was not particularly strong. Mr Tainui admitted he had been at a pub and had drunk a couple of drinks. He said he was heading to a friend's place on Manchester Street. Officer A did a roadside breath screening test, which showed him to have over 400 micrograms of alcohol per litre of breath.
12. Mr Tainui gave Officer A his car keys and driver's licence when asked and he matched the photo on the licence. He was taken to the booze bus which was parked nearby.<sup>1</sup> Officer A said drivers are often reluctant or argumentative when told to go to the booze bus, but Mr Tainui was compliant and co-operative throughout the entire exchange.
13. Mr Tainui told him the car belonged to his friend and gave the friend's name. Officer A checked the vehicle on the Police database (NIA) and saw it was registered to the person Mr Tainui had named.<sup>2</sup> Officer A recalled being satisfied with this and that there was nothing about the vehicle that gave him cause for concern.
14. Officer A checked Mr Tainui's identity on NIA as part of the drink drive process. He saw an alert which said: "*Murderer... convicted of murder in 1996*". There was no mention on NIA of him being a life parolee. While preparing Mr Tainui's summons, Officer A checked his criminal history on NIA. He noted the previous murder had been committed with a "*stabbing/cutting weapon*".

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<sup>1</sup> A booze bus is a police vehicle containing equipment for breath testing motorists.

<sup>2</sup> The National Intelligence Application (NIA) is a Police database which holds information about individuals.

15. Officer A checked Mr Tainui's release conditions to ensure he was not in breach of any of them. He determined that the conditions were not relevant to the drink driving situation. The Authority has seen the two release conditions Officer A would have seen that night, and agrees Mr Tainui was not breaching them.
16. While in the bus, every time Mr Tainui was asked to sign forms, he stood up to do it and then sat down again. Officer A recalled thinking this was unusual, but it did not concern him.
17. The formal evidential breath test found Mr Tainui to have 614 micrograms of alcohol per litre of breath, which was 364 micrograms over the legal limit (250 micrograms).<sup>3</sup>
18. Towards the end of the drink drive procedure, Mr Tainui asked about the penalties for drink driving. When told he could receive a 6-month disqualification of his licence and a fine, he said his boss would be "*pissed off*" and it was lucky he did not have work the next day.
19. Officer A told Mr Tainui Police would keep his keys until he came to collect them from Christchurch Central Police station. They then had a general discussion where Mr Tainui said: "*I'm fucked. That was dumb.*" Officer A said he did not think much of it at the time, but in hindsight this was the only time Mr Tainui swore.
20. Officer B was the only other officer who had any interaction with Mr Tainui at the checkpoint. He was processing another driver in the booze bus when Officer A and Mr Tainui came in. Officer B finished with his driver and then took Mr Tainui's photo and fingerprints while Officer A completed Mr Tainui's paperwork. Officer B did not recall anything unusual about the exchange. He described Mr Tainui as being compliant and "*polite and chatty*" with Officer A. He said Mr Tainui was steady on his feet, was not slurring his words, and did not smell strongly of alcohol.

### Should Officer A have arrested Mr Tainui for driving over the legal limit of alcohol?

21. Under the Land Transport Act 1998 it is an offence to drive a motor vehicle on a road while the proportion of alcohol in the person's breath, as ascertained by an evidential breath test subsequently undergone by the person under section 69, exceeds 400 micrograms of alcohol per litre of breath. Police can arrest a driver if they refuse to accompany them to a place where there is an evidential test machine. They can also be arrested if they then refuse to be tested. Therefore, when a driver complies with an officer's requests then they are not under arrest during the testing procedure.
22. Once it has been established that a driver is over the legal limit then Police do have a power to arrest the driver, as drink driving is an offence which is punishable by a term of imprisonment. However, officers have the discretion whether to arrest a driver and take them back to the station to charge them with the offence or to issue a summons requiring them to appear in Court
23. The Police policy on Alcohol and Drug Impaired Driving gives officers guidance in this regard. Normal practice at a checkpoint is to conduct a breath screening test. If a driver fails this, they

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<sup>3</sup> It is an infringement offence to drive with an excess of 250 micrograms of alcohol per litre of breath, and an offence to exceed 400 micrograms.

must accompany the officer to the booze bus “*without delay*” to do an evidential breath test and to have their driver’s licence status checked on NIA. The booze bus contains an evidential breath testing machine as well as everything needed for officers to process a driver without the need to take them to a Police station.

24. If a driver has over 400 micrograms of alcohol per litre of breath, normal practice is that they are issued with a summons to Court and forbidden to drive for up to 12 hours. As part of the process, officers must also conduct a NIA check, particularly looking for any drink driving convictions against them in the last four years. If the driver has one or more convictions, they are forbidden to drive for up to 28 days. If they have two or more convictions, their vehicle is also impounded for 28 days.<sup>4</sup>
25. Indeed, Officer A said in over three years with the Traffic Alcohol team, he did not recall ever arresting someone and taking them into custody for drink-driving alone. He explained Police generally make an arrest during a checkpoint only if there are outstanding arrest warrants, or the person has breached a condition of bail, or has committed another offence alongside the drink driving which would require them to be taken into custody. He said if someone whose only offence is drink driving ends up being arrested, it is usually because of their behaviour.
26. Police keeps statistics on the number of people who are prosecuted for drink driving offences, and out of this, how many are dealt with by being summonsed. For a 12-month period from May 2017 to April 2018, 88.7% of people charged with a drink driving offence were issued a summons to Court and 11.2% were arrested.
27. Officer A described Mr Tainui as being co-operative, polite, and “*easy to get along with, quite personable.*”
28. Officer A was focused on road policing and was dealing with a large number of cars coming through the checkpoint, in a ‘production line’ type situation. His primary focus was to identify impaired drivers. He detained Mr Tainui for the purposes of conducting the breath test.
29. Officer A explained that, subsequent to a positive breath screening test, he would usually look for ‘triggers’ indicating a need for further immediate action. When dealing with Mr Tainui, nothing “*triggered [his] thought process*” to do anything other than treat it like a drink driving offence. Apart from the fact that Mr Tainui had a previous conviction for murder, there were no alerts about him and no other information to raise concerns about him. His drink driving offence was not related to his murder conviction, so Officer A saw “*no necessity to arrest*” him or to vary his normal practice.
30. The Authority is satisfied that Officer A followed the process correctly and that there was nothing in the circumstances that should have prompted him to take Mr Tainui into custody for exceeding the breath alcohol limit.

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<sup>4</sup> See paragraphs 64 to 70 for relevant law relating to drink driving offences.

## Should Officer A have arrested Mr Tainui once he knew he had knives in his car?

31. Under section 202A of the Crimes Act 1961, a person commits an offence if they have a knife in a public place without lawful authority or reasonable excuse.<sup>5</sup>
32. Just before Mr Tainui was about to leave, he asked Officer A if he could get some items from his car: his jacket, cell phone, a can of petrol, and two knives. Officer A said: “... upon hearing [Mr] Tainui mention knives I became concerned. I explained to him that it was an offence to carry knives in public places.”
33. Officer B also recalled:

*“Towards the end of the procedure I overheard Tainui state that he did not want to shock us, but he had knives in his vehicle that he had parked on Bealey Avenue. This comment came quite out of the blue. It was not in response to any specific question from [Officer A].”*

34. Officer A asked Mr Tainui why he had the knives in the car. Mr Tainui told him he worked for a scrap metal dealer and that he was allowed to take or buy items from there. He said he was taking the knives home to sharpen them, and he was going to use them for work. Officer A believed his explanation. He said: “... [Mr Tainui] gave justification, ‘I got these at work, I’m taking them home’.” He told the Authority: “... there was really nothing at that stage that set alarm bells for me in terms of he’s going to use them for an untoward reason....” Officer A said he believed it was no different from somebody buying a kitchen knife in a shop and taking it home. (Following Ms Tuxford’s murder, Police made enquiries at Mr Tainui’s place of work and confirmed he did have cause to use knives at work.)
35. Officer A told the Authority he was trying to be “very ethical, professional and to do the right thing”. He told Mr Tainui, “Considering your criminal history, that is not a good idea”.
36. Officer A escorted Mr Tainui to the car and supervised him while he collected his possessions. Mr Tainui went to the passenger’s side door and leant into the car. Officer A told him that he would prefer him to leave the knives in the car, which Mr Tainui accepted. Officer A said: “At this point I became anxious. I recall thinking that I needed to exercise caution.” He told the Authority even though Mr Tainui’s behaviour or demeanour did not lead him to believe he posed a threat, he still assessed the risk. He decided it was best to keep Mr Tainui in front of him at all times so he could see what he was doing in the car and react if necessary: “In my opinion he was in my control.”
37. Officer A shone his torch into the car to see what Mr Tainui was doing with his hands. He told Police: “I recall thinking that [Mr] Tainui appeared to be fairly secretive or sketchy in what he was doing”. He took some time and looked like he was trying to conceal medication and a cell phone by rolling them up in his puffer jacket. Officer A told the Authority:

*“There was definitely no more knives in the jacket at that stage and... that was my concern. Because of his history and what he’d said I... kept an eye on him and*

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<sup>5</sup> See paragraphs 71 and 72 for relevant law relating to carrying a knife. Note: The Summary Offences Act 1981 provides a definition of ‘public place’, which includes being in a vehicle in a public place.

*I could see that he had nothing else... My anxiousness was just around one, him having the knives and getting them secured, and I just thought it was weird, what he was doing. I could see what he was wrapping up but it wasn't any other weapons and at that stage I had no grounds to do anything else...."*

38. Officer A said he saw Mr Tainui pick up the two knives which had possibly been beneath the jacket. Mr Tainui held the knives up to show him, saying: *"This is them."* One was a butcher's knife like one the officer had at home. It did not appear to be very new. The other was a kitchen knife, and nothing stood out about it. Both blades were approximately the length of the handles.
39. Officer A noticed as Mr Tainui walked to the boot of the car, he changed his grip on the knives so the blades ran along the inside of his forearm. Officer A recalled thinking he may have repositioned them so other road users could not see the knives.
40. The knives were put into the car boot, then Officer A ensured the car was locked. Officer A told him he was free to go. Mr Tainui walked away on foot, carrying the bundled-up jacket and a bag he had retrieved from the boot which contained a petrol container.
41. Officer B recalled that while they were packing up the booze bus, Officer A told him that Mr Tainui had been convicted in 1996 for a 1996 murder on the West Coast. He said: *"We didn't know any details about his murder, just that it existed."*
42. Apart from Mr Tainui's original offence, there was nothing in his behaviour or on his NIA record to indicate that he was high risk or intended to use the knives for a criminal purpose. Mr Tainui:
  - had co-operated with Police and did not make any threats of violence;
  - told Officer A he intended to head home;
  - volunteered to Officer A that he had two knives he wanted to take with him; and
  - complied, when challenged about the knives, leaving them in the boot of the car.
43. Although Officer A knew Mr Tainui had committed a murder in 1996 with a stabbing/cutting weapon, there were no other alerts or release conditions saying he could not possess knives or that he had committed any recent offences involving a knife.
44. The Authority accepts Officer A did not have any reason to arrest Mr Tainui for having knives in the car as he did not believe Mr Tainui was committing an offence. Mr Tainui provided him with a reasonable excuse for having two knives in his car and Officer A accepted the explanation. Officer A acted appropriately in the circumstances. He reasonably used his discretion, making a decision based on the information he had available, as is expected of officers.

**Should Officer A have taken Mr Tainui into custody so that an application for his recall could be made?**

45. A person who is on parole can be recalled to prison by the Parole Board to continue serving their sentence. In the case of a life parolee, such a recall would result in further indefinite detention.

46. The primary responsibility for making an application for recall rests with the Department of Corrections. The grounds for making an application, which are set out in section 60 of the Parole Act 2002, are broad in their scope and include the fact that the parolee has committed another offence punishable by imprisonment.
47. The Police also have the ability to make a recall application, but only if *“the offender poses an undue risk to the safety of the community or any person or class of persons.”*
48. As noted above, Officer A did not have reasonable grounds to suspect that Mr Tainui was unlawfully in possession of the knives, and there was no other information in NIA that would have justified the conclusion that he was an undue risk.<sup>6</sup> There was therefore no basis for Officer A to conclude that the Police should make a recall application.
49. Of course, Police could have contacted a Corrections probation officer so that they could decide whether to make a recall application. However, Officer A could not recall ever having received training or input about life parolees and could not recall ever having knowingly dealt with a life parolee during his 19 years of service in the Police. Despite holding a variety of roles, Officer A admitted life parolees were not *“within his knowledge or practice”* and he did not know the process for recalling any sort of parolee to prison.<sup>7</sup> He had not dealt with a similar situation before and had no reason to believe there was any reason to act differently. There was no instruction to contact Corrections on NIA. It should also be noted that, even if the matter had been referred to Corrections, this would not in itself have justified a decision to keep Mr Tainui in detention. A person can be held in custody pending the determination of an application for recall only if the application has already been lodged and the Parole Board has made an interim recall order. Even if Corrections had regarded the circumstances to be sufficiently alarming to make an urgent application and request an interim recall order, it is doubtful whether this would have been done before a decision whether or not to release Mr Tainui from custody had to be made.
50. If Mr Tainui had been arrested for the drink driving offence, therefore, he would probably have had to be released on Police bail after processing; none of the grounds under the Bail Act 2000 for continuing to detain him until his Court appearance would have been made out.<sup>8</sup>
51. Officer A said if he is unsure of a situation, he usually makes further enquiries. However, there was nothing during his encounter with Mr Tainui that caused him to believe further enquiries were necessary. If Officer A had called a Criminal Investigations supervisor, they would not have had access to further information about the previous murder other than the basic details already available to Officer A on NIA.
52. The Authority accepts Officer A’s assessment of the situation was reasonable. There were also no clear processes in place for him to follow in respect of parolees and nothing in the law to require that they be arrested when found committing an imprisonable offence. His decision-making was accordingly entirely appropriate.

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<sup>6</sup> Due to the year the previous murder occurred the file was a hard copy. Very limited information was available on NIA.

<sup>7</sup> See paragraphs 74 to 96 for relevant law and policy about parolees.

<sup>8</sup> See paragraph 73 for law relating to bail.

## FINDINGS ON ISSUE 1

Officer A's decision not to arrest Mr Tainui for his drink driving offence was in keeping with standard Police practice.

Officer A was justified in not detaining or arresting Mr Tainui once he knew he had knives in his car, as he believed his explanation for having them was reasonable.

Officer A's assessment of the situation was appropriate and it was reasonable for him to take no further action.

## ISSUE 2: DID POLICE HAVE APPROPRIATE MECHANISMS AND TRAINING IN PLACE FOR STAFF TO MANAGE INCIDENTS INVOLVING PAROLEES?

53. As already described, the Department of Corrections is responsible for managing parolees. Corrections uses probation officers to supervise and maintain regular contact with them. Probation have the best overall picture of the risk factors relating to individual parolees and are best placed to make decisions regarding the need to make an application to recall them to prison. Police officers do not know what the risks are or how they should be responded to. While Police staff may attend incidents involving parolees, the fact they are a parolee is rarely the focus of the incident.
54. This gives rise to two problems. First, it is apparent that officers receive no specific training about the legislation governing parolees and parole conditions, and have very limited knowledge about the processes governing recall. The Authority investigator spoke to a number of officers about this and found overall knowledge levels to be low.
55. Secondly, Corrections hold the current information about parolees and in particular the factors that might trigger further offending or indicate the existence of an undue risk. In the case of Mr Tainui, Police looked at his full probation files after Ms Tuxford was killed and noted that his behaviour tended to become worse when he drank alcohol. However, none of this information relevant to an assessment of his risk was on NIA. Such information could have been identified and included in an alert, if a system had been in place where the information could have been transferred to Police.
56. It is vital frontline officers have access to up-to-date information on NIA that alerts them to any conditions or further actions that need to be taken, and to enable them to conduct thorough risk assessments and make informed decisions. This relies on robust processes being in place so Corrections can share relevant information with Police.
57. The Department of Corrections and Police do not have the same system for storing information. At the time of this incident, Police did not have the ability to capture the information and provide it to frontline officers to use in order to make a decision about whether to arrest a parolee.



## FINDING ON ISSUE 2

Police did not have adequate mechanisms or training in place to identify when a parolee needed to be arrested and urgent consideration given to an application for their recall to prison. They have since worked with the Department of Corrections to address this.

## Subsequent Police Action

58. Since this incident, Police and the Department of Corrections have been working together to develop new practices to support frontline Police in their decision-making when they interact with life parolees.
59. When an officer encounters a life parolee, NIA alerts now provide relevant information. Officers are directed to arrest a life parolee if they have committed any offence punishable by imprisonment, and to make contact with Corrections via a 24/7 Incident Line. Corrections let Police know if they will make an application to recall the life parolee to prison. If they decide not to make an application, Police are to use their discretion and release the parolee on bail if they are eligible.
60. Police and Corrections are looking at extending the notifications process to include other risk offenders such as those who are on home detention, child sex offenders, and other parolees.
61. The Authority accepts the steps taken by Police to set up a better system are an improvement. However, Police need to prioritise extending the notifications beyond life parolees so they are in place as soon as possible.
62. The Authority must emphasise that, even if this system had been in place the time of Ms Tuxford's death, it is by no means certain (for the reasons already set out in paragraphs 45-52) that her tragic death would have been averted. Ultimately, officers must exercise their discretion whether or not to hold a person in custody, and must make that decision in accordance with the law. Officer A did so in this case and cannot be criticised for the actions he took.

## Conclusions

63. The Authority concluded that:

- a) Officer A's decision not to arrest Mr Tainui for his drink driving offence was in keeping with standard practice.
- b) Officer A was justified in not detaining or arresting Mr Tainui once he knew he had knives in his car, as he believed his explanation for having them was reasonable.
- c) Officer A's assessment of the situation was appropriate and it was reasonable for him to take no further action.
- d) Police did not have adequate mechanisms or training in place to identify when a parolee needed to be arrested and urgent consideration given to an application for their recall to prison. They have since worked with the Department of Corrections to address this.



**Judge Colin Doherty**

Chair

Independent Police Conduct Authority

22 October 2020

**IPCA: 18-2188 and 18-2335**

## Appendix – Laws and Policies

### LAW

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#### Arrest

64. Section 32 of the Crimes Act 1961 gives Police officers the power to arrest someone without a warrant if they believe “*on reasonable and probable grounds*” they have committed an offence.
65. According to section 315 of the Crimes Act 1961, an officer may arrest and take into custody, without a warrant, someone who they have good cause to suspect has committed an offence that is punishable by imprisonment.

#### Drink Driving Offences

66. Section 56 of the Land Transport Act 1998 states a person commits an offence if they drive or attempt to drive a motor vehicle on the road with an alcohol level of more than 400 micrograms per litre of breath, as ascertained by an evidential breath test.
67. If a person is convicted of a first or second drink driving offence, they may be imprisoned for up to 3 months or fined up to \$4,500. The court must order them to be disqualified from driving or getting a driver’s licence for 6 months or more.
68. If a person is convicted three or more times, they may be imprisoned for up to 2 years and fined up to \$6,000 and disqualified from driving or getting a driver’s licence for more than 1 year.
69. Section 95 of the Land Transport Act 1988 states a person must receive a 28-day suspension of their driver’s licence if they have been found to have over 400 micrograms of alcohol per litre of breath and have been previously convicted of a drink driving offence within the last four years.
70. Section 96 of the Act instructs officers to seize and impound vehicles for 28 days if someone is found to have over 400 micrograms of alcohol per litre of breath and has been convicted of two or more drink driving offences within the last four years.

#### Carrying a knife in public

71. Section 202A of the Crimes Act 1961 says a person may be imprisoned for up to 3 years if:
  - they have “*any knife or offensive weapon or disabling substance*” with them in a public place without lawful authority or reasonable excuse; or
  - they have in their possession, in any place, “*any offensive weapon or disabling substance in circumstances that prima facie show an intention to use it to commit an offence involving bodily injury or the threat or fear of violence.*”
72. Section 13A of the Summary Offences Act 1981 specifically addresses people in possession of knives. It states a person is able to be imprisoned for up to 3 months or be fined up to \$2,000 if

they have a knife in their possession in a public place *“without reasonable excuse”*. The Act considers a person to be in a public place if they are in a vehicle which is in a public place.

### Police Bail

73. Section 21 of the Bail Act 2000 states: *“Any Police employee may, if he or she considers it prudent to do so, grant bail (Police bail) to a defendant who is charged with an offence and has been arrested without a warrant.”*

### Parole

74. According to the Parole Act 2002, offenders who have served long term prison sentences may be granted parole, being released into the community before their sentence ends, at the discretion of the New Zealand Parole Board (NZPB).

75. Special conditions can be set by the NZPB to:

- reduce the risk of the person reoffending;
- facilitate or promote rehabilitation and reintegration; and
- provide for reasonable concerns of the offender’s victims.

76. A range of conditions may be imposed, such as banning the person from consuming alcohol, for associating with certain people, or from being in certain areas.

77. Police must be notified when an offender is about to be released on parole and told what their release conditions are.

78. An application to recall a parolee back to prison can be made by the chief executive of the Department of Corrections, a Corrections probation officer, or the Commissioner of Police. When a recall application is made, the chairperson of the NZPB or a panel convenor will make an interim recall order if they are satisfied there are reasonable grounds to do so. When an interim recall order is made, the offender must be detained in custody until the Parole Board makes a decision whether a final recall order will be given, where the offender is returned to prison.

79. Section 61 of the Act states grounds for recalling an offender back to prison. The chief executive of the Department of Corrections may make a recall for reasons which include if:

- a) *“the offender poses an undue risk to the safety of the community or any person or class of persons; or*
- b) *the offender has breached his or her release conditions; or*
- c) *the offender has committed an offence punishable by imprisonment, whether or not this has resulted in a conviction.”*

80. The Commissioner of Police may make a recall application only if the offender *“poses an undue risk to the safety of the community or any person or class of persons”*.
81. Under section 73 of the Act, Police can arrest, without warrant, a parolee if they believe they are unlawfully at large or in breach of their conditions.

## POLICY

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### **‘Parole and other community based sentences and orders’ policy**

82. The Department of Corrections, Community Corrections (CCS) is responsible for managing offenders in the community who are subject to sentences and orders. Parole Officers manage the offenders to ensure they comply with their conditions.
83. Police must advise CCS if they have any involvement or concerns about someone who is serving a sentence or is subject to an order in the community.
84. A ‘Parolee’ is someone who is on a determinate sentence (fixed term sentence). A ‘Life Parolee’ is someone who is on an indeterminate sentence (life imprisonment or preventative detention).
85. If the NZPB grant an interim recall order, a warrant to arrest the offender is issued. Police must locate the offender, arrest them, and deliver them into the custody of the prison manager.
86. The policy (updated after this case) says Police should arrest life parolees who have committed any offence punishable by imprisonment, *“unless there are compelling reasons not to”*.
87. Police determine whether to arrest in the first instance. *“Corrections are best placed to make prisoner recall applications”*.
88. If the decision maker at Corrections decides a recall application will be made, the arrested person must be held in custody until the NZPB decides on the application. This is either before the next available court appearance *“under urgency”*, or an opposition to bail application is made which indicates a recall application is being made.
89. Officers are now instructed to do the following:
  - 1) *“You should always arrest and take into custody any offender who is subject to life parole and who has been found committing an offence punishable by imprisonment or suspected of committing an offence punishable by imprisonment (s315 crimes Act) and or Breaching their conditions (s73 Parole Act).*
  - 2) *Advise the Custody supervisor that the prisoner is subject to life parole.*
  - 3) *Once the officer and offender are safe, as soon as practicable, the officer must contact the Corrections Incident Line... and advise of the arrest and provide details. These details will be passed to a Corrections decision maker.*

- 4) *The Corrections decision maker will make contact with the arresting officer or custody supervisor and advise whether a recall application is going to be made.*
  - 5) *If a recall application is going to be made the prisoner must be held in custody until the result of application is determined.*
  - 6) *If no recall application will be made, the usual bail considerations apply.”*
90. The Corrections decision maker will make contact with either the arresting officer or custody supervisor *“usually within 60 – 90 minutes”* to advise them whether a recall application will be made.
  91. Police are able to apply for an application for recall if they deem it necessary, even if contrary to the decision of Corrections.
  92. When a life parolee is arrested, they may only be released on Police bail if they are eligible and if the arresting officer believes it prudent to do so, and if they have first sought the view of Corrections regarding any matters that may be relevant to exercise discretion. *“The test of prudence includes a consideration of public safety and the risk to public safety (if any) posed by the person’s release on Police bail.”*
  93. If an officer has reason to believe a life parolee poses an undue risk to the community, they must advise Corrections immediately on the Corrections Incident Line, even if the parolee has not committed any offence. This information is passed on to the Corrections decision maker.
  94. If an officer has any interaction with or is aware of any information regarding a life parolee, but they have no reason to arrest them, they are instructed to enter a note on NIA outlining the circumstances and forward a note to Corrections using email.
  95. The above process only applies to parolees on ‘life imprisonment’ or ‘preventative detention’ sentences at this stage, however it may include other parolees in the future. *“Where staff have evidence-based concerns about community safety or the safety of a particular person in respect of a determinate sentence parolee, and it is not possible to arrest the offender at the time, action to recall must be taken and you should seek the advice of your supervisor.”*
  96. If a non-life parolee is arrested for an offence and Police have concerns about their continued parole, they should be held in custody and Corrections should be contacted in the first available business hours.

# 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 Colin Doherty.

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 about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

## THIS REPORT

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This report is the result of the work of a multi-disciplinary team of investigators, report writers and managers. At significant points in the investigation itself and in the preparation of the report, the Authority conducted audits of both process and content.



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