



# Independent Police Conduct Authority

Memorandum of Understanding between the **Independent Police Conduct Authority** and the **New Zealand Police**

## Parties

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

## Introduction

2. This MOU sets out the principles and processes through which the Parties will work together to ensure effective independent oversight of Police conduct.

3. The IPCA is established and regulated by the Independent Police Conduct Authority Act 1988 (the IPCA Act).

4. The Police is established under and regulated by the Policing Act 2008.

## Principles

5. This MOU is based on the following principles:

5.1 That effective, efficient and independent policing services are a cornerstone of a free and democratic society under the rule of law.

5.2 That effective policing relies on a wide measure of public support and confidence.

5.3 That public confidence in the performance and integrity of Police is enhanced through robust and independent oversight of Police conduct.

5.4 That close cooperation and coordination between the Parties will help to ensure effective and efficient oversight of Police conduct, and to reassure the public and the Government that New Zealand policing standards are of the highest calibre.

## Interpretation

6. For the purpose of this MOU:

6.1 The 'Authority' means the Chairperson of the IPCA.

6.2 The 'Commissioner' means the Commissioner of New Zealand Police.

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

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

6.5 'Senior Representatives' shall be:

Group Manager: Operations  
Independent Police Conduct Authority  
PO Box 5025 | Wellington 6145  
<http://www.ipca.govt.nz>



National Manager: Police Professional Conduct  
Police National Headquarters  
180 Molesworth Street  
P O Box 3017 / Wellington 6011

### **Practice Notes**

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

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

### **Complaints and Notifiable Incidents**

9. It is the function of the IPCA to:

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

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

9.3 Oversee or review Police investigations of complaints or notifiable incidents.

9.4 Take such action in respect of complaints, incidents and other matters as is contemplated by the IPCA Act.

### **Reporting Complaints and Other Matters**

10. In addition to the statutory notification requirements under section 13 and section 15 of the IPCA Act, the Commissioner may notify the Authority of any matter involving criminal offending or serious misconduct by a Police employee, where that matter is of such significance or public interest that it places or is likely to place the Police reputation at risk. The Authority may act on these notifications in the same manner as a complaint notified under section 15 of the IPCA Act.

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

### **Correspondence and Liaison Between the Parties**

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

12.1 Significant issues that need to be brought to the attention of the other party

12.2 Communication strategies

12.3 Issues and trends in case management and investigations

12.4 Prevention strategies.

13. All correspondence and communications referred to in the Practice Notes attached to the MOU addressed to the Commissioner will also be sent to the National Manager: Police Professional Conduct.



### **Legal Advice on Police Investigations**

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

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

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

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

### **Conditions and Costs**

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

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

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

### **Review, Variation and Revocation**

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

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

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

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

25. All previous understandings, arrangements and protocols are revoked by this MOU.

Dated at Wellington this 16<sup>th</sup> day of June 2014

Signed by:

Signature  
Mike Bush MNZM  
Commissioner  
New Zealand Police

Signed by:

Signature  
The Honourable Sir David Carruthers KNZM  
Chairperson  
Independent Police Conduct Authority



## **Schedule 1 – Practice Note: One**

### **Categorisation of Complaints by the Authority**

#### **Categorisation of complaints and incident notifications**

1. Categorisation of complaints by the Authority and incident notifications is agreed to by the parties as an appropriate means of developing a mutual understanding of the standards and expectations surrounding the management, investigation and resolution of all such matters.

2. Categorisation will be completed by the Authority in respect of:

- Matters involving death or serious bodily harm notified by Police in accordance with section 13, Independent Police Conduct Authority Act 1988.
- Notifications made in accordance with this Memorandum of Understanding by the Commissioner of matters as described in point 10. 'Reporting complaints and Other matters'.

3. The Authority will independently consider the material and information provided by the complainant and Police and following this will determine the appropriate resolution of the complaint by categorisation into the following five categories:

- Category 1: independent investigation by the Authority.
- Category 2: proactive oversight by the Authority of a Police investigation.
- Category 3: review by the Authority of the Police investigation at its conclusion.
- Category 4: referral to the Police for conciliation with the complainant and investigation by Police as necessary.
- Category 5: no further action by the Authority.

4. Police may, at their discretion, choose to make any recommendation regarding categorisation of any matter. However, the Authority will make its decision independently of that recommendation.

5. The Authority will notify Police of its decision in writing. Management or investigation of the complaint will then be conducted in accordance with the principles outlined in the attached Practice Notes.

#### **Requests for Information**

6. Upon receipt of a complaint or notification and prior to any categorisation taking place, the Authority may also, at its discretion, request further information from Police or any other person on the subject matter to which the complaint relates. The purpose of the additional information is to provide the Authority with more accurate background information in order that an informed and accurate decision can be made on the appropriate manner in which the complaint should be treated.

7. Where such information is requested from Police, the parties agree that the provision of this information will be conducted in a timely fashion. To this end the use of electronic systems, including emails and attachments is considered an acceptable means of communicating both the request to Police and the response to the Authority.

8. Police will either provide the Authority with the requested information within 14 days or seek, with reasons, an extension of the time period and a timeframe for completion.

9. Whether or not such information is provided, the Authority may at any time choose to categorise the complaint in one of the five categories on the basis of the information held by it and notify Police, in writing, of its decision.

#### **Re-categorisation of complaint or incident inquiry**

10. Any categorised matter may be subject to re-categorisation by the Authority at any time, based upon further information received. Where this occurs, Police will be notified

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The controlled document can be found in the Police Instructions site which is accessible via the New Zealand Police Intranet.



in writing of the Authority's decision and the reasons for that decision at the earliest opportunity.

### **Discontinued involvement by the Authority**

11. Where it considers that its continued involvement in an inquiry relating to a complaint or incident is unnecessary, the Authority may at any time exercise its discretion under section 18(2) of the Act, whether or not Police have concluded their investigation. Where this occurs, the Authority will notify the affected parties in writing of its decision.

12. Where the Authority closes its file under section 18(2), it may also, at its discretion, ask to be notified of the outcome of the Police investigation at the conclusion of it.

### **Re-opening of complaint or incident inquiry**

13. The Authority may, at any time, re-open any previously closed inquiry, either at its own discretion on the basis of further information received, or following an expression of dissatisfaction from the complainant, or at the request of Police.

14. Where a file is re-opened, Police will be advised in writing of this fact, the reasons for it, the new category assigned to it and the proposed further action required to resolve the matter.



## **Schedule 2 – Practice Note Two: Categories 1 - 5**

### **Category 1 (Authority Investigation)**

1. Category 1 matters typically include incidents involving death or serious injury and complaints of conduct likely to cause the greatest level of public concern or have serious implications for the reputation of Police. The Authority will independently investigate a Category 1 matter.

2. The Authority will confirm to Police that it is independently investigating the matter pursuant to section 17(1)(a) or in accordance with section 12(1)(c) of the IPCA Act and confirm the name of the investigator or contact point.

3. The Authority's investigation will be conducted by a project team, subject to a project plan and in accordance with investigative best practice.

4. The Authority's investigator will make contact with the Police investigating officer to discuss the case and make arrangements for ongoing disclosure of documents and information to the Authority. This disclosure can be via Blueteam where practicable. Police Professional Conduct at Police National Headquarters (PNHQ) will be copied in to formal requests for documents as and when this arises.

5. Police will disclose all documents and information requested by the Authority to further its investigation in accordance with section 21 of the IPCA Act.

6. At appropriate stages in the investigation the Authority's investigator and Police investigating officer may exchange views on the issues arising in the case and the manner in which these issues will be addressed.

7. Any issues identified regarding Police policy, practice or procedure, that need to be addressed will also be brought to the attention of the National Manager: Police Professional Conduct by the Authority as soon as practicable.

8. The Authority and Police will set a proposed timetable subject to investigative requirements and any Terms of Reference imposed for their respective investigations in consultation with each other. If there is a significant difference between these timetables this will be discussed and considered by the Authority's managers and Police Professional Conduct at PNHQ.

9. In a potential criminal investigation the Authority accepts that Police should have the opportunity to interview officers before the Authority does so, unless there is unacceptable delay in which case the Authority will contact the National Manager: Police Professional Conduct or the lead investigator to discuss their intention to conduct interviews and provide a timeframe for this.

10. At the conclusion of the Authority's investigation the final opinions of the Authority will be conveyed to the Commissioner together with any recommendations, by way of either a report or letter.

### **Anonymity of Police staff in Serious Harm Incidents**

11. Where the Police investigation has determined that there is need for the Police staff to be anonymous, Police will provide the Authority with a schedule of the staff involved including their real names and the unique identifier that has been attached to them for the purposes of the investigation (eg, Officer A). Thereafter, all documentation will be provided using the unique identifier.





### **Category 2 (Proactive Oversight of the Police Investigation)**

1. Category 2 matters are serious/significant matters where the Authority proactively oversees and reviews the Police investigation.
2. The Authority will refer such matters to Police for investigation pursuant to section 17 (1)(ab) or in accordance with section 12(1)(c) of the IPCA Act and confirm the name of the person holding the file on behalf of the Authority.
3. Police will confirm the name of the investigating officer and the Authority will make contact with that person to discuss the case and make arrangements for on-going disclosure of documents and information to be provided as it becomes available. Police Professional Conduct at PNHQ will be copied in to formal requests for documents as and when this arises.
4. Police will conduct an investigation in a timely manner and set a timetable for their investigation subject to investigative requirements and any Terms of Reference imposed. The Authority will be informed of that timetable once determined. If there is any significant departure from that timetable the Police investigating officer will notify the Authority of the reasons for that and the new time frame.
5. Regular discussions will take place between Police and the Authority concerning the progress of the Police investigation. Police will regularly keep the Authority updated either by way of conversations or written updates. The Authority may also periodically review progress through Blueteam.
6. Any issues identified regarding Police policy, practice or procedure, that need to be addressed will also be brought to the attention of the National Manager: Police Professional Conduct by the Authority as soon as practicable.
7. At the conclusion of the Police investigation the full Police file will be provided to the Authority. The Authority will then undertake a review of the Police file.
8. The final opinions of the Authority will be conveyed to the Commissioner together with any recommendations, by way of either report or letter.

### **Category 3 (Review of the Police Investigation)**

1. Category 3 files are matters accepted by the Authority and referred to Police in terms of section 17 of the IPCA Act, for an investigation of the complaint by Police.
2. Police will conduct an investigation in a timely manner and set a timetable for their investigation subject to investigative requirements and any Terms of Reference imposed. The Authority will be informed of that timeframe once determined. If there is any significant departure from that timeframe the Police investigating officer will notify the Authority of the reasons for that and the new time frame.
3. At the conclusion of the investigation Police will write to the complainant, if applicable, to advise the outcome of the investigation into the complaint. This advice will contain the following statement: 'If you are dissatisfied with the outcome you can advise the Independent Police Conduct Authority the reasons for this by either of the following methods: by letter to the Independent Police Conduct Authority, P O Box 5025, Lambton Quay, Wellington 6145, or by email to [complaint.management@ipca.govt.nz](mailto:complaint.management@ipca.govt.nz)'
4. Police will provide the Authority with a summary report, outlining the facts and the outcome of the investigation. The report should also indicate the basis of any dissatisfaction that may already have been expressed by the complainant.



5. The Authority will undertake a review of the investigation on the basis of the report and the Blueteam file. If the Police file is closed on Blueteam, Police will provide access to the Authority so that it may continue with its review. The Authority will notify Police in writing of its finding in accordance with the IPCA Act.

6. The Authority may also conduct further reviews of the complaint investigation on the basis of an expression of dissatisfaction or on the basis of further information, however arising. The Authority may take further action or request Police to take further action in accordance with the provisions of the IPCA Act.

7. In the event of any further action and review, the Authority will, in accordance with the provisions of the IPCA Act, notify its finding in writing, following a final review of matters undertaken.

#### **Category 4 (Cases referred to Police for conciliation and Police Investigation as necessary)**

1. Category 4 cases are matters that are deemed by the Authority as suitable for 'conciliation' in terms of section 17(3) of the IPCA Act.

2. It is intended that such cases be completed without the need for formal investigation, but by early engagement and negotiation with the affected parties. The focus of conciliation lies in resolving the complaint through mutual agreement, acceptance and understanding.

3. Where complaints are unable to be resolved in this manner, some inquiry may then be necessary to determine whether the complaint issue(s) should be 'upheld' or 'not upheld' as the case may be.

4. At the conclusion of the conciliation or inquiry Police will write to the complainant to advise the outcome. The advice will contain the following statement: "If you are dissatisfied with the outcome you can advise the Independent Police Conduct Authority the reasons for this by either of the following methods: by letter to the Independent Police Conduct Authority, P O Box 5025, Lambton Quay, Wellington 6145, or by email to [complaint.management@ipca.govt.nz](mailto:complaint.management@ipca.govt.nz)".

5. Police will also provide the Authority with a summary report, in the agreed format, outlining the facts and the outcome of the conciliation or inquiry. The report should indicate the basis of any dissatisfaction that may have been already expressed by the complainant.

6. Where the matter has not been resolved by conciliation and there has been an inquiry, the Authority may undertake a review of that inquiry. If it intends to do so, it will advise the Police, and may at its discretion seek further information or review the file on Blueteam. If the Police file is closed on Blueteam, Police will provide access to the Authority so that it may continue with its review. The Authority will notify Police in writing of the outcome of its review in accordance with the IPCA Act.

7. The Authority may also conduct further reviews of the complaint inquiry on the basis of an expression of dissatisfaction or on the basis of further information, however arising. The Authority may take further action or request Police to take further action in accordance with the provisions of the IPCA Act.

8. In the event of any further action and review, the Authority will, in accordance with the provisions of the IPCA Act, notify Police of its finding in writing.





### **Category 5 (Cases declined by the Authority)**

1. The Authority may, at its discretion and in accordance with the provisions of section 18 of the IPCA Act decline to take further action on any complaint it receives. Where this occurs Police will be advised and provided with a copy of the complaint and a copy of the Authority's letter to the complainant outlining the reasons for its decision not to take further action on the matter.

2. A decision by the Authority to take no further action does not preclude the Police from taking any action on the matter that they think fit.



## **Schedule 3 – Practice Note Three: IPCA Reports/Findings**

### **Section 31 Process (Adverse Comment)**

1. In accordance with the provisions of section 31 of the IPCA Act, the Authority will not make comment in a final report or letter that is adverse to any person, unless that person has been given a reasonable opportunity to be heard.
2. Where the report or letter contains adverse comment of individual Police employees, the Authority will contact the Police employees involved to advise that it has been prepared and that it contains adverse comment.
3. Where the report or letter contains adverse comment relating to Police practice, procedure or policy, the Commissioner and the National Manager: Police Professional Conduct will be advised that it has been prepared and that it contains adverse comment.
4. In either case, the Authority will email a numbered draft copy of the report or letter to the Commissioner, the National Manager: Police Professional Conduct, and where relevant the affected individual Police employee, together with a covering email setting out an explanation of the section 31 process.
5. The Police employee will confirm by email to the Authority that they have received the email and the attachment document(s).
6. The Police employee will generally have 14 days to provide their submissions to the Authority (unless otherwise specified).
7. The Commissioner will generally have 21 days to provide their submissions to the Authority (unless otherwise specified).
8. Draft documents sent to a Police employee and any person they seek advice or counsel from (such as a friend, colleague, legal advisor or employee of the Police Association or Police Managers' Guild acting in an official capacity) are to be treated as confidential.
9. The Police employee will advise the Authority should they wish to seek advice from the Police Association or Police Managers' Guild, and the Authority will provide the nominated advisor with a separate Confidential draft copy of the report.
10. The Police employee and the Commissioner will respond in writing or by email with any submissions by the due date or any agreed extension. If the Police employee or the Commissioner does not wish to make submissions, they will confirm this to the Authority by the specified date.
11. The Police employee, the Commissioner and the National Manager: Police Professional Conduct will confirm by email that they have deleted the electronic version of the draft report / letters and any hard copies they have printed.
12. In the rare case that, as a result of submissions received, the Authority intends to make additional criticism and/or findings and/or recommendations, the Authority will communicate with the Police employees and the Commissioner and send a second draft version of the report or letter to them, highlighting any new sections and the process to be followed regarding any further submissions.



13. The Authority will, in the case of a file involving letters rather than a public report, advise the Police employees involved that the final letters have been sent to the Commissioner and the complainant and that they can request a copy of the letter to the Commissioner from Police via the National Manager: Police Professional Conduct.

### **Public report release / publication schedule**

1. In advance of the release of a public report, the Authority will determine the method of distribution to affected Police employees (i.e. hand delivery, courier or electronic) and the timing of that distribution.

2. Once the method and timing of release has been determined, the Authority will communicate its decision to the National Manager: Police Professional Conduct and the Police employees in advance of the report's release.

3. Prior to release (at times to be determined on a case-by-case basis):

- The Authority will send an electronic copy of the embargoed public report to the Commissioner, the National Manager: Police Professional Conduct and the relevant District Commander.
- The Authority will determine who else in the Police Executive should receive an advance copy, send an electronic copy to them and advise the National Manager: Police Professional Conduct accordingly.
- The Authority will send a draft media statement, accompanied by an electronic copy of the embargoed public report, to the Police Senior Media Advisor for his/her comment. A turnaround time for any feedback will be stated in this email.
- Where the Authority intends providing additional media comment (if requested by media) or holding a media conference, the Authority will inform the Police Senior Media Advisor of this.
- The Police Senior Media Advisor will send the Authority a copy of any Police Media Statement.
- The Authority will consider any comments made by the Police Senior Media Advisor. The Authority will then send the Police Executive an embargoed copy of the final media statement.
- The Authority will send the Police employees involved in the incident an embargoed copy of the public report. Police employees will receive individual emails identifying their role and how they have been referred to in the public report, for example "Officer A".

4. On the day of release (at times to be determined on a case by case basis):

- The Authority will send an electronic version of the public report and media statement to the Police Senior Media Advisor at the same time it is sent to national media.
- Post release the Authority will send hard copies of the public report to the Commissioner of Police and the District Commander.
- Where the Authority is also sending a final reporting letter to the Commissioner of Police, this letter will be sent at the same time as the hard copy of the public report.



## **Schedule 4 – Practice Note Four: IPCA Recommendations Development and implementation of recommendations for changes to policy, practices and procedure**

1. Issues relating to Police policy, practice and procedure that are identified by the Authority during the course of an investigation or a review of a Police file are to be raised as soon as practicable with the National Manager: Police Professional Conduct.
2. Where an issue is systemic in nature or arising in a significant number of cases, the Authority will be given an opportunity to raise and discuss that issue at a meeting of the Police Operational Advisory Committee.
3. When issues relating to Police policy, practice and procedure are raised, the Police and the Authority agree to discuss them on a cooperative basis and attempt to reach agreement on the appropriate recommendation for change to address them. The Authority recognises that the Police own their policy and it is for them to determine whether it should change, and if so how. The Police recognise that, if agreement on a change to policy is not reached, the Authority is free to publicly express an independent view of the change that is required.
4. All recommendations by the Authority for changes to Police policy, practice and procedure are to be entered into a spreadsheet template that is common to both the Police and the Authority. All changes to the spreadsheet by either the Police or the Authority are to be undertaken in accordance with an agreed document control system.
5. Progress on the implementation of recommendations made by the Authority is to be regularly reviewed by the Police and discussed with the Authority on a quarterly basis.