

*Independence*

*trustworthiness*

*accountability*

*vigilance*

*integrity*

## Police Handling of 'Out of Control' Parties

August 2014



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# Introduction

INDEPENDENT POLICE CONDUCT AUTHORITY

1. In recent years the Independent Police Conduct Authority has received complaints involving incidents where Police have closed down private parties or gatherings which they considered to be 'out of control'.
2. The Authority decided to conduct a review of these types of incidents in order to identify any recurring issues. Eight cases from a five-year period (July 2009 – June 2014) were examined, five of which occurred in 2013.
3. The scope of the review was limited to issues relating to the Police's legal powers and their methods of closing down parties. Specific allegations that Police used excessive force in each case are not examined in detail in this review. The Authority investigated the use of force aspect of the complaints separately and has written to each of the complainants to explain its findings.
4. This report sets out the findings of the Authority's review and describes recent changes the Police have made to their public order policing policies.

## Glossary of terms

Abbreviation/term	Explanation
OC spray	Oleoresin capsicum spray – a tactical option for Police which may only be used when a person is actively resisting and the situation cannot be resolved using less forceful means.
PSU	Police Support Unit – a public order policing unit. Previously known as TPU, i.e. 'Team Policing Unit' or 'Tactical Policing Unit'. <b>For ease of reference, throughout this report the Authority has referred to all the public order policing units involved as PSU, though some were actually called TPU at the time.</b>
Skirmish line	A line of officers standing side by side across a given space to hold back a crowd or to hold ground. When Police are dispersing a crowd, the skirmish line advances while the officers issue commands and signal people to move along.



# Background

INDEPENDENT POLICE CONDUCT AUTHORITY

5. Police may consider a party to be 'out of control' when violence or disorder has occurred or is thought to be likely to arise. In these circumstances Police have routinely entered private property in order to close parties down. Once the partygoers are removed from the house, Police generally disperse the crowd by marching them down the street.
6. However Police only have limited legal powers to enter a property, and there is no specific legal power to close down private parties (see paragraphs 67-101 for an explanation of the relevant law and policy). In many cases Police will need to obtain consent from the owner or occupier before they can lawfully remove people from the property.
7. The eight cases reviewed by the Authority are summarised below. The case summaries illustrate the different situations that Police may be confronted with when they are called to attend an 'out of control' party, and briefly describe the manner in which Police dealt with each incident.

## CASE SUMMARIES

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### **Case 1 – Wellington, September 2009**

8. This case involved a house-warming party in Wellington which was attended by about 60 people on a Friday evening. One of the partygoers called Police at around midnight, asking them to remove about 20 gatecrashers and deal with fighting that was occurring outside the property. The partygoer also reported that bottles were being thrown.
9. Police from the Police Support Unit (PSU) were dispatched to attend the incident and arrived eight minutes later; however, by that time there were no gatecrashers and the officers did not see any fighting. About 15-20 of the partygoers were outside on the street and the driveway, and there was loud music coming from the house.
10. The officers later said there was a tension palpable at the scene, and they feared that fighting would break out if Police left the area. They were of the view that the party was

out of control and asked one of the tenants to shut the party down. However, the tenant refused and told the Police to leave.

11. Police decided to close down the party by entering the property and ejecting all the partygoers. PSU officers armed with batons forced their way into the house and removed everybody from the property. Many partygoers later complained to the Authority that they were pushed, shoved, manhandled and struck by batons during this process.
12. After Police had cleared the property, some partygoers remained on the street outside. A number of them still had bags, keys and wallets inside the house. Police warned them for disorderly assembly and marched them down the road to disperse the crowd. Some of the partygoers were abusive towards Police and seven people were arrested for disorderly behaviour and disorderly assembly, but five of the charges were later withdrawn because elements of the charges were not met.
13. The Authority received 10 complaints about the actions of Police when they closed down the party, particularly the force used by PSU officers. On 17 October 2013 the Authority released a public report on its investigation of this incident, titled *“Police closure of a party at 70 Homebush Road, Khandallah on 5 September 2009”* – the report can be found on the Authority’s website: [www.ipca.govt.nz](http://www.ipca.govt.nz).

#### **Case 2 – Christchurch, August 2010**

14. A party at a house in Christchurch on a Saturday night was attended by about 100 people, mostly university students. At 11.43pm the Fire Service was called to extinguish a bonfire in the backyard of the property (a fire ban was in effect at the time), and about 10 minutes later the Fire Service requested Police assistance to manage the partygoers so that the Fire Service could deal with the bonfire.
15. Police arrived at the address and saw around 20 partygoers in the front yard and in the street. At 12.04am Police decided to block off the street. The PSU officers waited outside for more units to arrive and for personal protection equipment (such as helmets and shields) to be brought to the scene. Police did not attempt to engage with any of the partygoers or approach the dwelling to establish who was responsible for the property or the party.
16. Partygoers began to leave the house and about 50 of them gathered on the footpath and in the street. Some became verbally abusive towards the officers and Police retreated after a bottle was thrown at them.
17. PSU officers were instructed to put on full protection equipment and were given permission to use OC spray if required. The crowd became increasingly aggressive and advanced on Police, throwing bottles and other objects. Police repeatedly informed them



through a loud hailer that they risked being arrested for disorderly assembly if they did not disperse.

18. Police then formed a skirmish line and approached the property. PSU officers entered the address and moved down a path at the side of the house towards the bonfire in the backyard. Most people they encountered on the path and in the backyard obeyed their instructions to leave the property, but some fled into the house.
19. Police tried to enter the house but someone closed the door on them. The officers forced entry through the back door of the house and through some internal doors. Some of the occupiers verbally abused the officers and demanded that they leave. Police told the people in the house that the party was being closed down and instructed them to leave the property. OC spray was used on several people who refused to comply.
20. Once the house was cleared, the officers rejoined the skirmish line outside and directed the remaining crowd down the street, successfully dispersing it into smaller groups. OC spray was used in an attempt to move the crowd back, and specifically on some people who were throwing objects or charging at the Police line. Up to four people were arrested while Police were closing down the party but they were released at the scene without being charged.
21. The Authority received complaints from three people regarding Police actions in closing down the party. The complaints were that the Police had used excessive force (particularly OC spray), and that the Police's presence at the party had escalated the situation. One complainant (a neighbour) said that before the Police arrived, the party had been loud but was contained and non-threatening.

### **Case 3 – Christchurch, March 2012**

22. The third case reviewed by the Authority also involved a party at a house in Christchurch. This party was held on a Friday night and attended by approximately 200 people. The occupiers of the house called Police at 10.14pm to report that there were a large number of gatecrashers at the party who were refusing to leave.
23. At 10.17pm they called Police again, saying that it was not urgent but requesting assistance from the Police to remove the gatecrashers. At 10.51pm Police called the occupiers and were told that there were still about 150 people at the address, and that windows and other property had been damaged.
24. Initially a single Police unit arrived on the scene and observed a large, disorderly crowd in and around the property, which was located in a cul-de-sac. Some of the people in the street were drinking bottles of alcohol, in breach of a liquor ban in that area. Bottles were being smashed, a fence was kicked down and some people were trying to start a bonfire.

25. The officers were approached by two young women from the address, who told them that the party was out of control. The occupiers were advised to ask the partygoers to leave, and to go inside the house and lock the doors.
26. The Police Support Unit (PSU) arrived nearby at 11.00pm; they had been unable to attend earlier because they were dealing with other incidents. The officers put on personal protection equipment, including body armour, helmets and in some cases a shield and baton. The PSU sergeant's initial plan was to show a Police presence, assess the crowd's behaviour, and then disperse the crowd through the use of communication.
27. The partygoers showed no sign of leaving the area, so Police decided to approach the address and disperse the crowd. The officers formed a skirmish line across the road, and when the crowd noticed this they became aggressive and some yelled abuse at the officers. Using a loud hailer, the PSU sergeant warned the crowd: *"This is a disorderly assembly, leave the area or you will be arrested."* Police had blocked the exit to the cul-de-sac, but intended to move the crowd towards a reserve beside the house through which people could leave the area.
28. After giving the crowd an opportunity to begin leaving the area, Police advanced towards the house and some of the partygoers threw bottles at them. After several advances Police were able to drive the crowd into the reserve, and to clear the outside area of the property. Partygoers continued to throw bottles at the officers but eventually the crowd dispersed through the reserve. Police reported that two people were arrested for disorder offences and one aggressive person was sprayed with OC spray, but ran off into the crowd before he could be arrested.
29. The Authority received a complaint from one partygoer who was pushed over by an officer's shield when he tried to get through the skirmish line before Police advanced towards the property. The officer said that the complainant had refused to obey his instructions to leave the area through a different route, and that he had used the shield to *"redirect"* the complainant towards the reserve because he could not allow anyone to get through the skirmish line for safety reasons. The complainant said that he had not realised he could leave the area through the reserve.

#### **Case 4 – Counties-Manukau, February 2013**

30. This case involved an 18<sup>th</sup> birthday party in Counties-Manukau which was attended by around 150 people on a Saturday night. The party was supervised by four adults, including the parents of the young woman who was celebrating her birthday. The mother was the occupier of the house.
31. At 9.00pm a noise control officer arrived at the address and negotiated with the hosts of the party that the music could stay on but would not be turned up any higher. At around

10.30pm a Police unit drove past the house and noticed the party. The officers stopped and asked a man at the front gate of the property what was going on. He explained that it was his daughter's birthday party and the officers left.

32. At about 11.00pm the Northern Police Communications Centre (NorthComms) asked a sergeant to go and check on the party because someone had reported that it was spilling out onto the street. The sergeant arrived in the area at about 11.15pm and parked about 100 metres away from the house with his patrol car's lights off, to observe what was happening at the address. Within a few minutes partygoers noticed him, and some became abusive and began throwing bottles in his direction.
33. The sergeant radioed for more officers to attend the incident, and the crowd at the front of the property grew increasingly hostile as more Police arrived. A large number of bottles were thrown and further abuse was directed at Police.
34. A senior sergeant arrived on the scene at 11.35pm. He thought that Police being close to the address was making the situation worse, so he instructed the officers to move further up the street, away from the party. The senior sergeant also requested that the Police helicopter (Eagle) and the Auckland PSU attend. Eagle flew over the area and advised that there were around 150 people at the party.
35. The senior sergeant decided to close down the party because he believed the crowd posed a threat to Police and neighbouring properties, and needed to be brought under control. He relied on Police powers under section 14 of the Search and Surveillance Act 2012, which enables Police to enter a property without a warrant in order to prevent offences from occurring in some circumstances (see paragraphs 81-82).
36. Meanwhile another noise control officer visited the house and spoke to the father of the young woman who was holding the party. The music was turned off at that point, and the father then went to speak to the senior sergeant. The senior sergeant later told the Authority that the father had advised him things were getting out of hand and partygoers had refused his requests to leave the property, and suggested that this implied the father had given consent for Police to close down the party. However the father told the Authority that, when Police said they intended to go onto the property, he advised them there was no need because the party was finished. He also said that he did not give Police authority to enter the property (in any event, he was not the occupier). During his interview with the Authority, the senior sergeant agreed that the father never told him that he had the authority to enter the property.
37. Around this time Eagle advised that people were leaving the property and fights were breaking out in the nearby street. The PSU arrived at around midnight and Police prepared to enter the property. The plan was for three entry teams (with seven officers in

each team) to enter the address from the back gate, form into skirmish lines and move everybody towards the front gate and into the street, where another line of officers would be positioned. The officers would then move the crowd along the street to disperse it. The senior sergeant instructed the officers to wear helmets, and stated that their focus should be on moving partygoers from the property as efficiently as possible (rather than arresting them).

38. At 12.12am the occupier of the property called NorthComms. She later told the Authority that she wanted Police to: *“either come in or go away because standing there doing nothing was just making matters worse”*.
39. Shortly afterwards Police tried to enter the back gate of the address but found that it was blocked by a Port-a-loo. The officers managed to force the gate open far enough to gain entry by knocking the Port-a-loo over, which partially obstructed the entrance way and created a bottleneck. Consequently the entry teams became disorganised as they entered the property and the officers did not re-form into structured skirmish lines as they were supposed to. Some officers ran ahead and began pushing people towards the front of the house.
40. Once inside the backyard, Police found very few people remaining on the property (less than 20). They ordered those people to leave through the front entrance and then dispersed the partygoers by moving them along the street. About 15 calls were made to Police over the next two hours regarding incidents that occurred as the partygoers left the area.
41. The Authority received a complaint alleging that Police had used excessive force by pushing over a 15 year old girl while clearing partygoers from the backyard of the property. The girl advised the Authority that she had been leaving the property with her friends at the time (complying with Police instructions), and was pushed from behind by an officer and fell to the ground.

#### **Case 5 – Hamilton, March 2013**

42. Another case reviewed by the Authority involved an 18<sup>th</sup> birthday party at a house in Hamilton, which was attended by around 50 people on a Saturday night. Around 20 gatecrashers showed up and, just before midnight, Police received calls for assistance from members of the public who reported fighting and disorder in the street where the party was being held.
43. One Police unit was assigned to attend the incident and soon arrived at the address, which was located in a cul-de-sac. After bottles were thrown at the Police car by partygoers, the officer drove to the end of the street and waited for other units to arrive.

The PSU was also called to attend. Once more officers had arrived, Police decided to talk to the occupiers and give them time to close the party and ask the partygoers to leave.

44. Two officers entered the property and spoke to one of the occupiers. The occupier agreed that the party should be closed down because of the disorder that was occurring, and asked the people she wished to remain at the address to stay inside the house while Police cleared away the partygoers outside.
45. PSU officers then moved through the garden area of the property, instructing people that the party was over and everybody should leave. The partygoers left the address, and Police followed them out of the cul-de-sac onto adjoining roads in order to disperse the crowd. Some of the partygoers threw bottles, yelled abuse and fought with each other as they were moved down the street. Police reported that they arrested six people after the party was closed down.
46. The Authority received a complaint from a 16 year old girl, alleging that Police used excessive force when arresting her.

#### **Case 6 – Counties-Manukau, May 2013**

47. A party attended by up to 50 people was held at a house in Counties-Manukau on a Saturday night. The occupiers of the house were staying there with the permission of the owner, but held the party without her knowledge. The house was located in a cul-de-sac.
48. At around 2.00am Police received multiple calls from neighbours about disorder and fighting in the street outside the house where the party was being held. A Police unit soon arrived in the area, and spoke to a group of young people at the end of the cul-de-sac who reported that they were leaving the party because of the fighting that was going on. The two officers then drove closer to the address where the party was and heard loud aggressive voices and bottles smashing.
49. The officers decided to call for more units before they went any closer to the property, and retreated to the end of the street. A short time later a senior sergeant arrived and called for the PSU to attend the incident. The officers could still hear yelling and bottles smashing further down the road. A group of people came running towards them and said that people were fighting with knives and broken bottles. One of the young men had blood on his t-shirt and claimed there were 200 people at the party.
50. The PSU and several other officers arrived, and the senior sergeant decided that the PSU should approach the address and close down the party under breach of the peace provisions. Police did not attempt to locate the occupiers of the property before making this decision. The PSU officers put on helmets and shields and formed a skirmish line. They moved down the street towards the party, where they found people milling about

on the road and a “tense” atmosphere. By that time there were only about 20 people remaining at the address – much fewer than expected.<sup>1</sup> These people were mainly in the front garden and on the road outside the property, but some were in the garage.

51. The PSU sergeant later advised the Authority that at this stage he spoke with the occupier, who was highly intoxicated and agitated, and advised her that Police would be entering the property under the Search and Surveillance Act 2012 in order to make sure no one was injured and to close down the party. The PSU then entered the address from the back of the property and cleared out the partygoers by instructing them to leave and move down the driveway into the street. The PSU then formed a skirmish line behind the partygoers and began marching the crowd down the road in an attempt to disperse them.
52. During this time the crowd was hostile and aggressive towards Police and some partygoers verbally abused the officers. Bottles were also thrown at Police from neighbouring properties. Four people were arrested for disorderly behaviour and one woman was arrested after threatening an officer with a piece of fence paling. She was later charged with resisting arrest and possession of an offensive weapon. Several people attacked the two officers who were arresting the woman, injuring one of the officers and resulting in two further arrests for obstructing Police.
53. The Authority received a complaint of excessive force in relation to the Police’s arrest of the woman who threatened an officer with a fence paling.

#### **Case 7 – Rotorua, August 2013**

54. This case involved a 16<sup>th</sup> birthday party at a community hall in Rotorua on a Saturday night, which was attended by up to 250 people including some gatecrashers. During the course of the evening Police received about ten calls reporting fighting and disorder on the street outside the hall, and they attended the address on a couple of occasions.
55. At around 10.00pm an officer was directed to drive past the party and provide a situation report to his sergeant, in order to determine whether the party should be closed down. While the officer was en route to the party, Police received a call reporting that one of the party’s security guards had been run over and was in need of medical attention. Ambulance staff were on the way but required assistance from Police.
56. Police arrived at the party at 10.45pm and found 50-100 young people milling around outside the community hall. Some were drinking and some were yelling abuse at each other. Police dispersed the crowd by moving them along down the road.

<sup>1</sup> The Authority notes that some officers reported higher numbers of people remaining in the vicinity of the address (up to 80).

57. Two officers entered the hall but were unable to find the security guard, who had already left. A sergeant spoke to the organiser of the party, who told him she had already shut down the party because it got out of hand and people had been fighting with security staff. She said she wanted a group of about 20 of her friends and family to remain inside the hall, but that everyone else (approximately 10-20 people) could leave. The Police moved them outside and they left without incident.
58. The Authority received a complaint about the arrest of a 14 year old boy for disorderly behaviour while Police were dispersing the crowd outside the hall. The complainant alleged that Police used excessive force during the arrest.

### **Case 8 – Christchurch, August 2013**

59. The last case examined by the Authority for this review involved a birthday party that was held at a property in Christchurch on a Saturday evening. The property had been badly damaged in the February 2011 earthquake and a young man lived there rent-free with the permission of the owners. Police had previously attended out of control parties at the address and had closed down a party there two weeks earlier. This particular party was attended by around 150 young people.
60. Police were aware of the party because they had received calls from concerned neighbours. Officers visited the property at 8.30pm, and another unit drove past about an hour later, but Police action was not considered necessary at those times (apart from directing the occupier to extinguish an illegal fire in the backyard). Police then received further calls about disorder in the street nearby, and at 11.00pm a noise control officer called and requested Police assistance to enter the address and remove the stereo equipment. At around 11.10pm a sergeant at the scene requested PSU assistance; PSU officers arrived ten minutes later and went to a carpark behind the property where Police were gathering in preparation for dealing with the party. It appears that the officers who had earlier visited the property were not involved at this stage and had not passed on any information about the occupier.
61. The sergeant decided from his own observations of the party that the address needed to be cleared. There were a large number of intoxicated people in the house and on the street, and the officers could see a plume of smoke rising up from the property which suggested that there was a large bonfire in the backyard. A bottle was thrown at the officers which appeared to have come from the rear of the property and a window had been smashed. This group of officers understood that the property had been abandoned and was due to be demolished because of earthquake damage; when they later entered the house no one appeared to be living there and they were unable to identify any occupiers.

62. Police formed a plan to close down the party. They later cited a number of justifications for entering the property and removing partygoers, including (i) making the address safe for the noise control officer to enter and seize the stereo equipment; (ii) preventing damage to the property and acting to ensure that the partygoers were not at risk from the fire in the backyard (section 14 of the Search and Surveillance Act 2012); and (iii) preventing further breaches of the peace caused by the loud music and general disorder (section 42 of the Crimes Act 1961).
63. At around 11.45pm five officers (three PSU officers and 2 others) formed a line and entered the property. The PSU officers did not wear helmets because there had been no aggression from the crowd for a while and the non-PSU officers did not have helmets available to them. One of the PSU officers enquired about the occupiers but could not locate any. The officers instructed people to leave the address and most left without argument. However, some verbally abused Police.
64. Outside the property, more officers had formed a skirmish line to direct the partygoers down the street and away from a nearby shopping area (Police had previously encountered problems with the shops being damaged when parties were closed down). A Police van with its red and blue warning lights activated was parked behind the skirmish line, and an officer began warning the crowd through a loud hailer that they were part of a disorderly assembly and risked being arrested if they did not leave the area.
65. The skirmish line advanced down the road in order to disperse the crowd. Several bottles were thrown at Police at this time. Some partygoers were arguing with Police and attempting to get through the skirmish line, and Police arrested a number of people for disorderly behaviour. Police later said that the arrests needed to be made because people were slowing down the advancement of the skirmish line and preventing officers from dealing with disorder and damage occurring further up the road.
66. The Authority received complaints from two men who were pushed to the ground and handcuffed. The men denied that they were being disorderly and said they were following Police instructions at the time of their arrests. Both claimed that Police used excessive force.





# Applicable Laws and Policies

INDEPENDENT POLICE CONDUCT AUTHORITY

## LEGAL AUTHORITY FOR POLICE TO ENTER PROPERTY AND REMOVE PARTYGOERS

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67. It has been routine practice for Police to enter private property and close a party down when they reach the view that the party is out of control, namely when violence or disorder has occurred or is likely to erupt in the area.
68. The most straightforward way in which the Police may lawfully enter is to obtain the consent of the owner or occupier of the property. Unless that consent extends to the removal of those in the house (who have not complied with a request to leave voluntarily, and as such are trespassers), this does not in itself give the Police the power to close down the party by ejecting partygoers from the property.
69. In the absence of consent, Police may rely on the following available powers to enter the property.

### Noise Control

70. Under section 328 of the Resource Management Act 1991, every person who is given an excessive noise direction must immediately comply with the direction. If they fail to comply, section 328(3) states:

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

- a) seize and remove from the place; or*
- b) render inoperable by the removal of any part from; or*
- c) lock or seal so as to make unusable –*

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

71. Section 328(7) allows a constable *“to use such force as is reasonable in the circumstances”* when exercising any power under this section.

72. The legislation authorises Police to enter property and to disable or remove stereo equipment, but does not authorise them to eject all partygoers from a property.

### Assisting the Fire Service

73. Section 32 of the Fire Service Act 1975 states that Police must co-operate with the person in charge of a fire brigade when dealing with a fire or other emergency. Section 32(2) provides that Police:

*“... may, if called upon to do so by that member or that person, exercise any of the powers conferred on the person for the time being in charge of a fire brigade under section 28(4)”.*

74. Section 28(4) confers powers that are intended to enable the person in charge to safely extinguish the fire and to protect life and property, including powers to:

- enter property *“which may be on fire or otherwise endangered or which is in the near neighbourhood of the emergency”* in order to take *“any steps which he deems necessary in order to carry out his duties”*; and
- *“remove, using reasonable force if necessary, any person who, by his presence or otherwise, interferes with operations to deal with the fire or the emergency or who, in his opinion, is in danger ....”*

75. When there is a bonfire or other fire at a private party, Police assisting the Fire Service may have the power to enter the property and remove people – but only if Police genuinely believe that the fire poses a danger to them or they are obstructing staff from dealing with the fire.

### Entry in order to arrest an offender or prevent offending

#### *Section 317 of the Crimes Act 1961*

76. Section 317 of the Crimes Act 1961 was in force until it was repealed by the Search and Surveillance Act 2012. Police had the power to enter a property and use force in order to arrest an offender or prevent an offence. Section 317(1) of the Crimes Act codified the law and set out the circumstances when Police may enter premises:

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

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

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

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

#### *Sections 8 and 14 of the Search and Surveillance Act 2012*

79. The Search and Surveillance Act 2012 came into force on 1 October 2012 and is applicable now. Section 8 provides that officers may enter a place without a warrant in order to search for and arrest a person if they have reasonable grounds:

*“(a) to suspect that the person has committed an offence that is punishable by imprisonment and for which he or she may be arrested without warrant; and*

*(b) to believe that the person is there; and*

*(c) to believe that, if entry is not effected immediately, either or both of the following may occur:*

*(i) the person will leave there to avoid arrest:*

*(ii) evidential material relating to the offence for which the person is to be arrested will be destroyed, concealed, altered, or damaged.”*

80. Section 8 of the Act enables the Police to enter a property in search of a particular offender, but does not give them the power to eject all partygoers from a property.
81. Section 14 provides a warrantless power of entry to officers if they have reasonable grounds to suspect that:

*“(a) an offence is being committed, or is about to be committed, that would be likely to cause injury to any person, or serious damage to, or serious loss of, any property:*

*(b) there is risk to the life or safety of any person that requires an emergency response.”*

82. In either of the circumstances described above, an officer may “take any action that he or she has reasonable grounds to believe is necessary to prevent the offending from being committed or continuing, or to avert the emergency.” In the case of an ‘out of control’ party, this might include ejecting all partygoers from the property.

#### RELEVANT OFFENCES

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83. This section describes some of the offences that may be committed during an ‘out of control’ party. Police have the power to arrest people in various disorder situations on private or public property, but this power does not extend to closing the party down.

#### Breach of the peace

84. Under section 42 of the Crimes Act 1961, anyone can act to prevent a breach of the peace. Section 42(1) states:

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

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

85. The courts in New Zealand have not clearly defined the scope of breach of the peace. It is clear that it encompasses violence or disorder, and behaviour that provokes fear of violence or disorder, in a public place. It also appears to encompass behaviour in a private place if that causes a disturbance, or provokes fear of violence or disorder, in a public place. There is recent English case law to suggest that it may go further and capture some offending in a private place (for example, some types of domestic violence), although it is by no means clear whether, and to what extent, this applies in New Zealand.<sup>2</sup>
86. Section 315(2) of the Crimes Act provides that Police may arrest without a warrant any person who is found disturbing the public peace or who Police have good cause to suspect of having committed a breach of the peace.
87. However if there is a breach of the peace on a private property, section 42 alone does not operate to give Police a power to enter the property under section 8 of the Search and Surveillance Act 2012, because breach of the peace is not an offence punishable by imprisonment. In the past, there may have been a common law power of entry, but that

<sup>2</sup> Bruce Robertson (ed) *Adams on Criminal Law* (online looseleaf ed, Brookers) at [CA42].

has now been replaced by the statutory powers of entry set out in sections 8 and 14 of the Search and Surveillance Act (previously section 317 of the Crimes Act).<sup>3</sup>

### Disorderly behaviour

88. Section 3 of the Summary Offences Act 1981 makes it a summary offence, liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000, for any person in or within view of any public place to behave, or to incite or encourage any person to behave, *“in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue.”*

### Disorderly assembly

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

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

- a) will use violence against persons or property; or*
- b) will commit an offence against section 3 (disorderly behaviour) – in that vicinity.”*

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

- “(a) continues to participate in the disorderly assembly; or*
- (b) having desisted from that disorderly assembly, participates in another disorderly assembly in circumstances in which it is reasonable to deem the warning to have applied to the new assembly as well as the original one.”*

### Unlawful assembly

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

<sup>3</sup> Bruce Robertson (ed) *Adams on Criminal Law* (online looseleaf ed, Brookers) at [CA42].

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

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

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

## USE OF FORCE

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

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

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

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

## POLICE POLICIES

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94. This section describes the Police policies that were in force at the time the eight cases reviewed by the Authority took place. Police amended their public order policing policy in December 2013; the new policy is discussed below at paragraphs 146-154.

### **Public disorder and breach of the peace**

95. The Police Manual chapter headed *“Unlawful Assembly”* explained the ingredients of unlawful assembly and the offences commonly associated with it. This chapter also described the powers and procedures Police could use.
96. The Police Manual also had a chapter headed *“Trespass”*. This stated:

*“Police officers are subject to the same laws on trespass as any other citizen unless they have legal authority under section 41<sup>4</sup> or section 317 of the Crimes Act 1961. They can enter a property and knock on the door but if the occupier, expressly or by implication, asks them to leave, they must do so. If, however, before being asked to leave, an officer tells the occupier that he or she is under arrest, the officer can stay for the purpose of taking the occupier into custody.”*

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

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

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

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

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

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

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

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

<sup>4</sup> This section allows anybody to use such force as may be reasonably necessary to prevent the commission of suicide or the commission of an offence which would be likely to cause immediate and serious injury to person or property.

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

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

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

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

*Mere annoyance or insult to a person, or great heat and fury, without personal violence or threat of violence would not be enough to constitute breach of the peace unless such behaviour attracted a crowd, interfered with public convenience and was inflammatory – Cohen v Huskisson (1837) 2 M & W 477. ”*

101. The policy stated, in respect of Police powers and duties regarding a breach of the peace:

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





# Discussion of Issues

INDEPENDENT POLICE CONDUCT AUTHORITY

## ISSUES CONSIDERED

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102. Analysis of the eight cases examined by the Authority uncovered the following areas of discussion:

- 1) Police attendance at 'out of control' parties:
  - a) Why were Police called?
  - b) What was expected of Police?
  - c) What behaviour did Police officers encounter from partygoers?
- 2) The decision to close down a party:
  - a) Why did Police decide to close down parties?
  - b) Were Police officers turning their minds to the extent of their legal powers before acting to close down parties?
- 3) How Police closed down parties:
  - a) Why were public order policing units (PSU) used?
  - b) Was the force used by Police to clear partygoers from private property and the surrounding streets appropriate?
  - c) What other tactics should be considered?

## ISSUE 1: POLICE ATTENDANCE AT 'OUT OF CONTROL' PARTIES

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103. Throughout the country, Police are regularly called out to deal with incidents related to private parties. These parties are typically attended by large numbers of people, many of

whom are affected by alcohol, and it is common for fights to break out amongst the partygoers and for property damage to occur.

104. In the eight cases reviewed by the Authority:

- Police were called to five of the parties after neighbours reported fighting or disorder (Cases 4-8);
- the hosts of two of the parties called Police themselves due to problems caused by gatecrashers (Cases 1 and 3); and
- Police were called to one party by the Fire Service, because of a bonfire in the backyard (Case 2).

105. Gatecrashers were a problem in many of the reviewed cases. Police were called to the party in Case 1 to deal with fighting that occurred after gatecrashers turned up, but they had left by the time Police arrived. Case 3 involved a party that got out of control after a large number of gatecrashers showed up and refused to leave, and the parties in Cases 5 and 7 (and possibly Case 6) were disrupted by the arrival of gatecrashers and the subsequent fighting that arose.

106. Police face a difficult task when they are called to deal with disorder at a large party. There are competing interests and expectations to manage: those of the neighbours who expect Police to close down the party and remove the disturbance, and those of the partygoers who want to be able to continue the party. There might only be a small group of people causing the trouble, and the majority of partygoers would like to carry on enjoying the party without engaging in violence or property damage (for example, in Case 4 some of the partygoers tried to stop people outside the property from throwing bottles at Police).

107. Once disorder or fighting has occurred, however, Police have been inclined to close down the whole party rather than targeting specific offenders. This may happen because it is difficult for Police to identify particular offenders amongst a noisy crowd of people at a large party, or because it is considered too dangerous for Police officers to enter the crowd in order to arrest someone when they are greatly outnumbered by partygoers. Police may also fear that they will be criticised if they do not close down the party and someone is later harmed.

108. Unfortunately this approach of closing down the party for everyone can mean that the majority of partygoers, who are not fighting or causing disorder, feel like they are being unfairly treated by the Police. Those partygoers might become more willing to condone the actions of the troublemakers and they may even join in violence and disorder directed at Police, particularly if they are heavily affected by alcohol.

109. The reviewed cases illustrate the type of behaviour Police officers are usually confronted with when they attend out of control parties. In four cases bottles were thrown at Police shortly after they arrived at or near the location of the party, and in six cases bottles were thrown after the officers began closing down the parties. Officers are also frequently verbally abused by partygoers before and after they take action to close down the party.
110. In some cases, a visible Police presence appears to have aggravated partygoers and provoked a violent response from the crowd – particularly when officers gathered within sight of the party and there was a lengthy delay while they prepared to approach the property (see Cases 2 and 4). In these situations Police can become a target for persistent bottle-throwing and verbal abuse from intoxicated partygoers – which may lead officers to take a more aggressive approach when they later close down the party.

## ISSUE 2: THE DECISION TO CLOSE DOWN A PARTY

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111. Police usually cited violence or disorder amongst partygoers as the reason why they decided to close down a party. Another issue that arose in two of the reviewed cases was the danger posed by illegal bonfires. However the Authority found that, in the past, Police often made the decision to close down a party without properly considering the extent of their legal powers in the circumstances.

### Discussion of legal powers

112. The relevant legal powers are described above in the 'Applicable Laws and Policies' section of this report. In summary, while there is no specific legal power for Police to close down a party, there are three legal avenues which may provide the Police with the power to close down a party by entering a property and ejecting all the partygoers:
- 1) **Trespass:** Police may approach the owner or occupier of the property and seek his or her cooperation in closing down the party. If the owner or occupier asks the partygoers to leave and they refuse, the partygoers become trespassers who can be removed by Police. The owner or occupier must specifically consent to Police ejecting all the partygoers from their property – it is not enough that he or she has called Police to deal with problems at the party.
  - 2) **Fire:** When dealing with a fire or other emergency Police may, if asked to do so by the person in charge of a fire brigade, exercise powers granted under section 28(4) of the Fire Service Act 1975. These powers include entering property and removing, using reasonable force if necessary, people who are in danger or who are interfering with operations to deal with the fire or emergency.

In the context of closing down an 'out of control' party involving a bonfire, Police can only rely on this power to remove partygoers from a property if the Fire Service has requested their assistance and the partygoers in question are actually in danger or obstructing operations to extinguish the fire. The mere fact that there is a bonfire at the property is not enough to justify closing down the party by ejecting all partygoers. For example, if the fire is in the backyard and does not pose a threat to partygoers inside the house, then Police are not justified in entering the house and ejecting people.

- 3) **Injury/serious damage/risk to life or safety:** Section 14 of the Search and Surveillance Act 2012 enables Police to enter a property without a warrant if they have reasonable grounds to suspect that: (a) an offence is being committed, or is about to be committed, that would be likely to cause injury to any person or serious damage to, or serious loss of, property; or (b) there is a risk to the life or safety of any person that requires an emergency response.<sup>5</sup> In these circumstances officers may take any action they have reasonable grounds to believe is necessary to prevent the offending or avert the emergency.

Police can conceivably use this power to close down an 'out of control' party, but only if the situation actually meets the requirements of the legislation. For example, if Police attend a party where fighting is occurring outside the property but they have no reasonable grounds to suspect that fighting is occurring inside, then section 14 does not give them the power to enter, let alone eject all the partygoers from the property. There must be reasonable grounds for Police to believe that entering and ejecting all the partygoers from the house and/or garden is necessary to prevent offending that would be likely to cause injury to people or serious damage to property, or to avert an emergency.

113. Police have often cited breach of the peace provisions (sections 42 and 315(2) of the Crimes Act 1961) as a source of legal power for them to close down private parties. However those sections of the Crimes Act do not specifically give Police the power to enter private premises in order to interfere with or prevent a breach of the peace, and any common law power to enter property in order to prevent injury or harm was subsumed by section 317 of the Crimes Act 1961 (and subsequently sections 8 and 14 of the Search and Surveillance Act 2012).

114. Police also have the power, under section 8 of the Search and Surveillance Act 2012, to enter property in order to search for and arrest a particular offender they have

<sup>5</sup> Prior to October 2012 a similar power was found in section 317(2) of the Crimes Act 1961.

reasonable grounds to suspect has committed an offence punishable by imprisonment.<sup>6</sup> This power enables Police to go into a property in pursuit of a partygoer who has committed an imprisonable offence, but it does not enable them to close down the party by ejecting all partygoers.

115. Lastly, Police may enter property in order to assist a noise control officer in seizing or disabling stereo equipment – but again this power does not extend to closing down parties.

### Discussion of reviewed cases

116. The Authority notes that the legal powers described above are complex, and that the Police policy in force at the time the cases included in the Authority's review took place did not specifically address the matter of closing down private parties.

117. When Police are called out to attend a party that may be out of control, they have to quickly and carefully assess the circumstances they are confronted with and determine the appropriate course of action to take – often in quite a tense and hostile environment.

118. In all of the reviewed cases Police decided to close down the party. The eight cases reviewed by the Authority fall into two categories:

- 1) cases where consent for Police to close down the party was given by the occupier (Cases 3, 5 and 7); and
- 2) cases where the Police's actions were not justified (Cases 1, 2, 4, 6 and 8).

### Consent given

119. Cases 3, 5 and 7 are examples of situations where consent to close the party down was given to Police by the occupiers of the property:

- In Case 3, the hosts of the party were overwhelmed by the arrival of a large number of gatecrashers and sought Police assistance to remove them. The trespassers were given an opportunity to leave before Police cleared them from the area.
- In Case 5, Police sought out the occupier of the property and persuaded her to close down the party because of disorder occurring in the street outside. The occupier kept the people she wanted to stay in the house while Police removed partygoers from the garden.

<sup>6</sup> Prior to October 2012 a similar power was found in section 317(1) of the Crimes Act 1961.

- In Case 7, the host of the party decided that it should be closed down due to disorder caused by gatecrashers. Police assisted with removing some people from the community hall and dispersed the partygoers outside.
120. If Police feel that a party is getting out of control and needs to be closed down, the Authority considers that it is desirable that they first seek out the owner or occupier of the property and try to obtain their cooperation. In cases where gatecrashers are causing the disorder, it is appropriate to give the occupier an opportunity to determine who should be allowed to stay and who should be ejected from the property, rather than Police charging in and ejecting everybody they find.
121. Sometimes it may be difficult for Police to locate or identify the occupier, but the attempt should be made, unless there is clearly violence or an emergency occurring inside the property which justifies immediate action under section 14 of the Search and Surveillance Act 2012 (or potentially the Fire Service Act). Police should also clearly document that the occupier has consented to Police closing down the party or, if the occupier cannot be found, the fact that an attempt was made to seek consent.

#### *Entry and ejection of partygoers unjustified*

122. Cases 1, 2, 4, 6 and 8 are cases where Police did not acquire the occupiers' consent to close down the parties, and the Authority found that Police actions were unjustified:
- In Case 1, Police argued that they had closed down the party to prevent a continuation or renewal of a breach of the peace. However, as explained above, breach of the peace provisions do not explicitly provide Police with the authority to enter private property and eject people. Furthermore, in this case the only fighting that had been reported occurred outside the house and was no longer happening when Police arrived. Police did not have reasonable grounds to believe that offending "*likely to cause immediate and serious injury to any person or property*" was about to occur inside the house when they decided to close down the party; therefore their actions in forcing entry and ejecting all the partygoers from property could not have been justified under section 317(2) of the Crimes Act 1961.
  - In Case 2, the Authority found that the Police's entry onto the grounds of the property may have been lawful – either for the purpose of assisting the Fire Service to extinguish an illegal bonfire in the backyard (to ensure there was no risk to safety), or in pursuit of bottle-throwing offenders under section 317(1) of the Crimes Act 1961. However the Police's entry into the house, and the subsequent ejection of the partygoers inside, was contrary to law and unjustified. The Police's purpose in entering the house was not to seek out and arrest offenders under section 317(1) of the Crimes Act 1961, but to close down the party by removing

everybody. Additionally, as in Case 1, section 317(2) of the Crimes Act 1961 did not apply because there was no evidence of imminent and harmful offending in the house.

- In Case 4, a senior Police officer cited section 14 of the Search and Surveillance Act 2012 as the authority for Police to enter the property and close down the party. He believed that the crowd of partygoers was a danger to Police and neighbouring properties and needed to be brought under control. However it appears that the offending and disorder (such as bottle throwing) was mostly occurring in the streets outside the front of the property where the party was being held, rather than in the property itself. To the extent that any bottles were thrown from inside the property, that was done from close to the boundary at the front of the house and occurred some time before Police were ready to enter the property. By the time Police entered the backyard most of the partygoers had left and were in the surrounding streets. There was no indication of offending in the backyard that was likely to cause injury or serious damage, or of any risk to the life or safety of any person that required an emergency response. In the Authority's view, Police did not have reasonable grounds to believe that entering the property and forcibly ejecting partygoers from the backyard was necessary to prevent offending or to avert an emergency. The decision to close the party down had already been made before Police entered the property, and they followed through with it even though the situation had changed in the time it took for them to prepare for entry.
- In Case 6, the decision to enter the property and close down the party was made by a senior sergeant before Police had actually approached the address where the party was being held. This decision was based on reports that a large number of people were fighting with weapons and causing disorder in the street. The senior sergeant incorrectly believed that Police had the power to enter property and close down parties under breach of the peace legislation in these circumstances. When Police and PSU officers arrived at the property, there were only about 20 people remaining; some were in the garage but most were in the front garden and on the street. The PSU sergeant told the occupier that Police were entering the property under the Search and Surveillance Act to check that no one was injured and to close down the party, and Police then ejected partygoers from the address. The Authority accepts that Police had genuine concerns about safety due to the fighting and disorder that had occurred in the street, but considers that Police did not have reasonable grounds to believe it was necessary for them to enter the property and eject all the partygoers in order to prevent offending or to avert an emergency (under section 14 of the Search and Surveillance Act 2012). There had not been any reports of fighting or bottle throwing by people inside the property itself; nor do the officers appear to have witnessed such behaviour. As in Case 4, Police should

have re-assessed the situation when they got to the house, and should have limited themselves to dealing with the disorder in the street instead of following through with the decision to enter the property and close down the party.

- In Case 8, Police were called to a party to assist a noise control officer who intended to remove the stereo equipment. After observing the address from a nearby location a sergeant decided that the party needed to be closed down due to disorder caused by the large number of intoxicated people. The sergeant and the PSU sergeant later stated a number of justifications for the closure of the party, namely:
  - a) *To make it safe for the noise control officer to enter* – however, as noted above, the Resource Management Act 1991 does not actually give Police the power to eject partygoers from a property; it only gives them the power to enter and help the noise control officer to remove the stereo equipment.
  - b) *To deal with a breach of the peace* – again, section 42 of the Crimes Act 1961 does not explicitly give Police the power to enter property and eject partygoers in order to prevent a breach of the peace.
  - c) *To prevent offending likely to cause injury or serious harm/to avert an emergency (section 14 of the Search and Surveillance Act)* – Before Police entered the property, a bottle was thrown in their direction which they thought had come from the backyard of the party address. They also observed that a window at the property was smashed and there was smoke rising from the backyard. The PSU sergeant argued that it was necessary for Police to enter the property in order to try and identify the person who had thrown the bottle, to prevent further damage to the property and to deal with the fire which may be a hazard to partygoers. Nonetheless, the Authority considers that Police were not justified in ejecting all the partygoers under section 14 of the Search and Surveillance Act 2012, because (i) they did not report seeing any offending inside that was likely to cause injury/serious damage, and (ii) if the bonfire was a hazard, the danger could have been addressed by extinguishing the fire rather than ejecting all the partygoers.
  - d) *To remove trespassers* – Police had information that the house was due to be demolished, and from what they observed it did not look like anyone was currently living at the address. The PSU sergeant asked around when Police entered the property but no one identified themselves as the occupier or objected to Police telling people to leave. However, officers who had visited the address earlier that evening had spoken to an occupier, and neighbours



had informed the Police Communications Centre that someone was living at the house with the owners' permission. The officers attending the address at 11.00pm had time to seek more information about whether someone was living there before they entered the property and began ejecting partygoers.

123. As noted above, the Police's legal powers when dealing with parties on private properties are complex and have not been fully understood by all officers. Police policy at the time did not adequately address these matters.
124. It is important for officers to thoroughly consider the extent of their legal powers before deciding to close down a party without the owner's or occupier's consent, and to assess whether the circumstances actually justify them taking such action. The intention of the officers entering the property cannot simply be 'to close down the party' – it has to be 'to prevent offending likely to cause injury or serious damage', 'to remove trespassers', or in some cases 'to assist the Fire Service'.
125. Another important consideration is the location of the disorder or fighting at a party. Police might have justification for entering and ejecting partygoers from the grounds of the property if they see people fighting or throwing bottles there, but if there is no indication that such behaviour is occurring inside the house, they will not be justified in entering the dwelling.
126. If Police do have reason to suspect that disorder or fighting is occurring inside the house, they may be justified in entering to investigate the situation – but that does not necessarily mean that it will be reasonable for them to eject all the partygoers.
127. An additional factor to consider is the possibility that the level of risk associated with the party may decrease over time (for example, because most of the partygoers have left the property). This is particularly relevant in cases where there is a significant delay from the time Police first arrive on the scene and the time when they approach the address with the intention of closing down the party.
128. The reviewed cases illustrate that Police practice was to close down a party that was believed to be out of control, and the legal basis for that decision was often not thoroughly considered until later, when the incident was investigated. Police have since implemented a new policy on public order policing which specifically addresses the issue of 'out of control gatherings' (see paragraphs 146-154).

### ISSUE 3: HOW POLICE CLOSE DOWN PARTIES

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129. When Police attend an 'out of control' party, a specialist public order policing unit (the Police Support Unit (PSU)) is usually called upon to assist, if available. This is because the

officers in these units are specifically equipped and trained to deal with alcohol-related offences and large-scale disorder situations; their purpose is to safely disperse large hostile crowds and de-escalate aggressive behaviour.

130. PSU officers have access to protection equipment that may be required when closing down a party, such as helmets and shields. This equipment is useful when Police are confronted with partygoers throwing projectiles at them. However one issue that arose in Case 4, where helmets were worn by the officers who cleared the property, was that it was difficult to conclusively identify the particular officer who used excessive force on one the partygoers because the officers' faces were obscured by the visors on the helmets.
131. Another issue in Case 4 was that, although the officers in one of the three entry teams were trained PSU officers, many of the others were not trained in public order policing or were not up-to-date with their training. This might explain why, after the officers entered the backyard of the property, most of them failed to re-form into organised skirmish lines and instead ran forward individually and began pushing partygoers towards the exit.
132. The Police's handling of 'out of control' parties usually comes to the Authority's attention due to complaints regarding officers' use of force while clearing partygoers from the house or garden, or while dispersing crowds on the street.

#### **Use of force while clearing partygoers from the property**

133. The investigation of several of the earlier cases in the review (Cases 1, 2 and 4) was triggered by complaints that Police used excessive force while ejecting partygoers from the property where the party was being held.
134. In these three cases the Authority found that Police were not lawfully justified in clearing partygoers from the properties; it followed that the force used by Police in achieving that objective was also unlawful. The unlawfulness was aggravated in those cases when Police used greater levels of force to remove people from the house (as in Case 1 where Police used batons, and Case 2, where they used OC spray).
135. Any use of force must be justified and proportionate to the circumstances. In the context of clearing partygoers from a property, force used by an officer in self-defence (as opposed to force used to eject a partygoer) may be justified even if the clearance is illegal. In any event, Police should only use the minimum force needed to achieve the objective. A Police presence and clear communication with the partygoers may be all that is required.
136. Cases 1, 2 and 4 all involved officers pushing partygoers in order to drive them towards the exits. Even if the closure of the parties had been lawful, this use of force would only

be justified if partygoers were provided with a reasonable opportunity to comply with a request to leave and refused or failed to do so. It would not be justified if the person was just going more slowly than the officer would like, particularly if that person posed no threat.

### Use of force while dispersing crowds on the street

137. Many of the more recent cases reviewed by the Authority have not had any issues relating to Police's use of force while clearing the property, but they have had issues in respect of the use of force while dispersing crowds out on the street. Seven of the reviewed cases (all except Case 4) involved complaints alleging that Police used excessive force while dealing with partygoers in the street. In all of these cases partygoers were arrested for offences such as disorderly behaviour, disorderly assembly, breach of the peace, obstruction, and in one case, possession of a weapon.
138. Dispersal of people away from the area is a common tactic used by Police when attending 'out of control' parties. The legal authority for this tactic is based in section 42 of the Crimes Act 1961, which gives Police the power to use force (but no more than is reasonably necessary or proportionate) in order to prevent the continuance or renewal of a breach of the peace. To disperse a disorderly crowd, officers form skirmish lines and move people up the street to try to break them into smaller, more manageable groups. The tactic may also be used to direct intoxicated partygoers away from dangerous areas, such as busy roads, and areas that are vulnerable to property damage (for example, commercial areas with many shop windows).
139. Often dispersal is an appropriate tactic to deal with a large, hostile and unruly crowd. However, problems can arise when the crowd is not moving quickly enough for the Police's liking, and this is often when arrests occur. The most common offences that people are arrested for are obstruction, disorderly behaviour and disorderly assembly. It is important to note in respect of the offences of disorderly behaviour and disorderly assembly that in order for an arrest to be justified, the person's behaviour must be "*likely in the circumstances to cause violence against persons or property to start or continue*" – verbal abuse alone will not usually meet that threshold.
140. Some of the partygoers who complained to the Authority claimed that Police were too heavy-handed, and that they were leaving the area and complying with Police directions

when they were pushed over and arrested. Conversely Police said the partygoers were moving too slowly and obstructing Police from dealing with disorder further up the road.<sup>7</sup>

141. Other types of force on the street that were used by Police in the reviewed cases were OC spray (Case 2), and a push using a shield (Case 3):

- In Case 2, the Authority found that the use of OC spray as a tactical option was unjustified because (i) Police policy generally advised against using OC spray in a crowd situation, (ii) the situation could have been resolved by less forceful means, and (iii) warnings were not issued before the spray was used.
- In Case 3, a partygoer tried to leave the area but was blocked by PSU officers who had formed a skirmish line and intended to move the crowd in the opposite direction. When the partygoer continued to attempt to go through the skirmish line, one officer pushed him with his shield. The partygoer fell backwards and broke both his wrists. The Authority found that the injuries were an unforeseen result of the use of force, and that the force was justified in the circumstances because the partygoer was impeding the Police's ability to bring the increasingly hostile crowd under control.

### Other tactics

142. A suggestion arising in some of the reviewed cases was that Police should try to use a less confrontational approach when dealing with a party that may get out of control. Research on crowd psychology indicates that early and effective engagement with the partygoers could be the key to avoiding conflict later on:

*"Where the police approach was to maintain distance, to avoid informal interactions and to treat the crowd in general with wariness, then hostility was far greater than in cases where officers interacted with crowd members in a friendly and open way."<sup>8</sup>*

143. By engaging with the party organisers, Police can create a dialogue about what behaviour they expect from the partygoers, and what the partygoers can expect from Police if the situation starts to deteriorate.

144. In theory, the more Police are seen to be supporting the partygoers in their pursuit of a safe and enjoyable party, the more likely it is that the crowd will police itself and suppress

<sup>7</sup> The Authority notes that the new 'Public Order Policing' chapter of the Policing Manual states: *"The time allowed for dispersal will depend on the circumstances. When crowds disperse at a reasonable walking pace you do not have the legal right to force them to go faster, unless dangerous circumstances justify it ...."*

<sup>8</sup> Reicher S, Stott C, Cronin P and Adang O, 'An Integrated Approach to Crowd Psychology and Public Order Policing' [2004] 27(4) *Policing: An International Journal of Police Strategies & Management* 558 at 563.

any violence or disorder that arises.<sup>9</sup> Rather than seeing Police as the enemy who wants to shut down the party and ruin everybody's fun, the partygoers will identify the people who are causing disorder as the problem and support Police in dealing with them so that the party can continue.

145. In line with the New Zealand Police's 'Prevention First' national operating strategy, Police should endeavour to become aware of large parties before they take place. This can be achieved by monitoring social networks for parties with open invitations (an approach that has been utilised by some Districts, but not widely or consistently), by engaging with the local community, or by encouraging people to register their parties in advance. Police will then be able to advise party organisers on how to prevent the party from getting out of control.

<sup>9</sup> At 563.





# Current Policy for 'Out of Control' Parties

INDEPENDENT POLICE CONDUCT AUTHORITY

146. The Authority's public report on Case 1 (titled "*Police closure of a party at 70 Homebush Road, Khandallah on 5 September 2009*" – see the Authority's website) recommended that the New Zealand Police:

- "(a) Urgently develop and implement a national policy for dealing with disorder situations such as out-of-control parties on private property.*
- (b) Ensure that training occurs in respect of such a policy which contains clear instruction on the legal powers Police have in such situations."*

147. Following engagement with the Authority, Police implemented a new 'Public Order Policing' chapter of the Policing Manual in December 2013. The new policy has a section devoted to "*Out of Control Gatherings*", which are defined as:

*"... any grouping of people, whether in a public place or private place that has exceeded its intended purpose or size and through excessive numbers and/or anti-social behaviour, or the committing of offences, causes or could cause alarm or danger to members of the public."*

148. The policy sets out different options for the Police response to an out of control gathering which are tailored to address the level of risk present, and clearly identifies the limitations of Police powers when dealing with a party on private property. It explains that while Police have sufficient powers to deal with disorder occurring in a public place, there is no "*one simple mechanism*" that empowers Police to close down private parties: "*The policing of such events is largely done with the occupier's consent or relying upon a narrow scope of legislative authority.*"

149. In relation to section 14 of the Search and Surveillance Act 2012, the policy notes that the Police's power to enter a property and take action "*does not extend past the necessary action taken to avert the emergency or imminent offending. Once the emergency situation has been dealt with Police must leave.*"

150. The policy also clearly states, in respect of noise control, that Police do not have the power to remove people from an address or close down a party based on a noise complaint or breach of abatement notice – they are only there to assist the Noise Control Officer.
151. Another important aspect of the public order policing policy is the emphasis placed on the role of prevention and engagement with party organisers:

***“Prevention***

*The overriding philosophy for Public Order Policing is one of Prevention, first and foremost. Whilst there are many tactics and procedures around Public Order Policing that involve force and direct action, the first thought and tactics must always be to prevent any form of confrontation between a gathering of people and the police or indeed between opposing groups.*

*This can be achieved through many strategies which may include:*

- *engaging with the holders of a known event before it happens*
- *providing advice around security, alcohol etc*
- *engaging with the organisers of a protest to agree on boundaries and routes*
- *high visibility patrolling in a targeted area.”*

152. The policy identifies that Police have a key role in preventing alcohol-related harm in New Zealand and explains the concept of “*host responsibility*”, which is about encouraging the organisers of a party to plan ahead in order to avoid the problems associated with large numbers of intoxicated people (for example by providing food and non-alcoholic drinks at the party, arranging security for the party, and ensuring there are safe transport options for when the partygoers leave). Police are advised to consider creating and agreeing upon an alcohol management plan with the hosts of the party that aims to, amongst other things, prevent minors from consuming or purchasing alcohol.
153. The policy also notes that Police may become aware of an upcoming party in a number of ways, such as monitoring social media sites and liaising with clubs and schools. Some areas in New Zealand encourage people to register that they are having a party and provide information about host responsibility, including:
- Hawkes Bay/Rotorua: <http://www.partyregister.co.nz/host-responsibilities.html>;
  - Palmerston North: <http://www.police.govt.nz/about-us/publication/palmerston-north-no-regrets-safe-party-pack>; and
  - Christchurch: <http://www.goodone.org.nz>.



154. When the new public order policing policy came into force in December 2013, Police notified all officers and explained the policy's key messages. Police have advised the Authority that they are currently developing a training framework for public order policing and expect that this will include training on policy and best practice for PSU officers.
155. Police have also advised that they are investigating the possibility of creating a national website where people can register their parties, which would be linked into the Police's District Command Centres. Police would then be able to engage more effectively with the hosts of those parties, with the aim of preventing problems from arising.





# Conclusions

INDEPENDENT POLICE CONDUCT AUTHORITY

156. After receiving a growing number of complaints about the closure of private parties by Police, the Authority reviewed eight cases and examined issues relating to (i) why Police decided to close down parties, (ii) the extent of the Police's legal powers, and (iii) the methods used by Police to clear partygoers from properties and disperse crowds the street.
157. Amongst other things, the Authority found that:
- i) Police regularly encountered verbal abuse and bottle throwing when they attended parties, and often decided to close down the parties due to complaints of fighting or other disorder.
  - ii) Police used various methods to clear partygoers, ranging from communication to the use of batons or OC spray. Several cases involved Police pushing partygoers to move them along.
  - iii) In the past, Police officers tasked with dealing with 'out of control' parties did not always fully understand or consider the legal authority for their actions. There was a common, but mistaken, belief that Police had the power to enter private property and close down a party without the owner's or occupier's consent, based on breach of the peace provisions. However that power is in fact limited to situations involving an imminent risk of harm to people or serious harm to property, and Police must have reasonable grounds to believe that closing down the party by ejecting all the partygoers is necessary to avert that harm.
158. In response to concerns identified by the Authority, Police have implemented a new policy on Police attendance at out of control gatherings which includes clear guidelines on the limitations of Police powers in respect of parties on private property. The new policy also emphasises the importance of prevention and Police engagement with party organisers.



# Recommendations

INDEPENDENT POLICE CONDUCT AUTHORITY

159. The Authority recommends that the New Zealand Police:

- 1) incorporate training on the public order policing policy into Police Integrated Tactical Training (PITT); and
- 2) undertake more systematic district monitoring of social media in order to identify upcoming parties where Police, in conjunction with partner agencies when appropriate, should engage with the hosts and provide advice on host responsibility.



JUDGE SIR DAVID CARRUTHERS

CHAIR

INDEPENDENT POLICE CONDUCT AUTHORITY

28 August 2014









# About the Authority

## WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

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

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

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

## WHAT ARE THE AUTHORITY'S FUNCTIONS?

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

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

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



**IPCA**

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