



IPCA

Independent Police
Conduct Authority

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THEMATIC REVIEW

**The Policing of public protests in
New Zealand**

February 2025

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Summary

WHY THE AUTHORITY HAS PREPARED THIS REPORT

1. The changing nature of the protest environment was signalled by the Parliamentary protest in February-March 2022. Following receipt of more than 1900 complaints, the Authority conducted a lengthy investigation resulting in a substantial report.¹
2. Subsequently, the Authority received 168 complaints relating to Police handling of a rally held in Auckland's Albert Park in March 2023. That rally, called 'Let Women Speak' (LWS), was organised by supporters of Kelly Minshull (also known as Posie Parker), who had been invited to speak about gender-critical ideology. Ultimately, the rally was abandoned after an estimated 2000 protestors arrived in Albert Park with the stated purpose of preventing Kelly Minshull and her supporters from being heard. Subsequent protest activity relating primarily to the situation in Israel and Gaza has resulted in further complaints, raising common themes related to freedom of expression, the right to protest peacefully (particularly where there is a counter-protest), and how Police maintain public order.
3. The results of our investigation into the various complaints we have received, and whether they show Police misconduct or neglect of duty, are set out in the appendices to this report. They highlight the fact that protests are both creating tensions in the community and placing significant pressure on Police, and that the current legal framework for the regulation and policing of protests in New Zealand is not fit for purpose.
4. The number of complaints we have received relating to policing of public assemblies, combined with the common themes that have emerged relating to the growing complexity of the protest environment, led the Board of the Independent Police Conduct Authority (IPCA) to approve this inquiry. This report builds on the Parliamentary Protest Review but is broader in scope. It considers what needs to change, including whether reasonable limitations on freedom of speech and freedom of assembly ought to be better defined, whether protest activity should be better regulated, and whether the legal tools available to Police should be reformed so that they are more clearly delineated and circumscribed, while providing the necessary powers for Police to act when they need to. We have done this under the mandate provided by section 12 of the Independent Police Conduct Authority Act 1988.
5. We have conducted the investigation of the individual complaints set out in the appendices independently, and the views expressed in this report are those of the Authority. However, the need to undertake this review was discussed and agreed with Police from an early stage, and some components of the review have been conducted jointly with Police. We have also collaborated with the Ministry of Justice and the Department of Internal Affairs on the preparation of the main body of the report. Further, we have consulted with a wide range of

¹ Independent Police Conduct Authority *The Review: Policing of the Protest and Occupation at Parliament 2022*, <https://www.ipca.govt.nz/Site/publications-and-media/2023-reports-on-investigations/2023-apr-20-ipca-findings-parliament-protest-.aspx>.

stakeholders, from frontline officers with expertise in public order policing, to academic and policing experts both within New Zealand and from comparable jurisdictions including the United Kingdom, Northern Ireland and some Australian states.

6. Our analysis shows that even if Police address current deficiencies in internal practices, procedures and training, this alone will not be enough. The current legal framework leaves frontline Police officers and their supervisors to determine for themselves what constitutes reasonable restrictions on protestors' rights, with only general and high-level guidance in statute and case law. Legislative change is required to provide a better framework within which Police can operate effectively to achieve the right balance between maintaining public order and safety on the one hand and preserving and facilitating the right to freedom of assembly, movement and expression on the other. While the complaints we have received illustrate the importance of this today, the need is only going to increase as the public protest environment continues to evolve rapidly into the future.

THE NEED FOR OVERARCHING LEGISLATIVE GUIDANCE

7. We are in an era when the protest environment is becoming increasingly complex, with often disparate groups coming together both to protest and counter-protest, combined with an international trend towards an increasing complexity in protest tactics. The complaints we have received following the Let Women Speak rally in March 2023, and subsequent protests concerning the war in Gaza, show that New Zealand's regulatory framework for the management and policing of protests is not fit for purpose.
8. The rights to freedom of assembly and speech are fundamental and enshrined in international law and in New Zealand's Bill of Rights Act. Yet by comparison with other similar jurisdictions, the regulation of protest by legislation is loose. New Zealand lacks overarching legislative guidance on what these rights should look like in practice, and what constitutes a reasonable limitation on those rights, when balanced against other rights such as public safety. Arguably these laws are so vague as to be inconsistent with the requirements for adequate precision under international law.
9. The operational impact of a lack of statutory guidance is that Police often act in a vacuum, left to their own decisions to make judgments as to reasonableness. When, if ever, is it reasonable to ask a counter-protestor to leave a protest? When is it reasonable to disallow a protest on a main road to proceed, because of the level of disruption it may cause to other members of the public? When is it reasonable to ask counter-protestors to stand in a separate area from the protest? When, if ever, is it reasonable to remove a counter-protestor's banner because of fear it will provoke violence by the main protest group? Is it reasonable to focus attention on the smaller of the protesting or counter-protesting group because of limited Police resources?
10. These are questions that front line officers are required to address, both in planning and deploying for protests, as well as in policing protests as they occur. And they are questions that arise with increasing frequency, as protests are more frequently accompanied by sometimes large counter-protests, leaving officers to balance the rights of two competing groups, overlaid by the rights of the general public to proceed with daily life. Our investigation into the

complaints set out in the appendices to this report suggest that officers sometimes do not get the balance right.

11. For this reason, we have proposed a new approach, entailing stand-alone legislation that would provide the platform to articulate the legislature's guidance on how to balance rights of freedom of assembly and freedom of expression with other rights.
12. We envisage that new legislation would contain a scheme for the notification of all public assemblies. While ultimately a decision for the legislature, our view is that the incentive for compliance with such a scheme would be the granting of certain legal protections for those who have followed the necessary steps.

NOTIFICATION AND PLANNING FOR PROTESTS

13. Council bylaws governing notification and approval of events in public spaces are inconsistent, sometimes so broad as to be seemingly outside the power of Councils to make, and rarely enforced. The lack of any effective requirement for notification of a protest, combined with the absence of Police powers to determine in advance reasonable limits on the conduct of known protests, significantly impact on the ability of Police to plan for the provision and deployment of adequate resources to police protests in a way that upholds protestors' rights and minimises undue impact on the public. It is for this reason that in Chapter 4 we have proposed that a new Public Assembly Act should include a statutory regime for notification of public assemblies, including protests. The incentive for compliance with such a regime could be the provision of certain legal protections for assembly participants, explored in Chapter 4.
14. That notification would allow Police, in consultation with the relevant local authority (and in the case of a State Highway, NZ Transport Agency Waka Kotahi) to set in advance any required conditions on the nature and form of the protest or other assembly. This would be of significant assistance in protecting the right to protest and ensuring that it is limited only to the extent that is reasonably necessary to preserve competing rights, to protect public safety and to minimise the extent to which there is an adverse impact on other members of the public and the environment.

EFFECTIVE LAW ENFORCEMENT POWERS FOR POLICING OF PROTESTS

15. When protests do occur, inevitably there will be times when the behaviour of protestors or counter-protestors leads to the need for law enforcement. We have set out in Chapter 3 the weaknesses in the legislative tools Police have at their disposal, currently spread across multiple statutes, with insufficient overarching legislative guidance on how these powers should be used consistently with the Bill of Rights Act.
16. In particular, we have highlighted variability in Police decision-making that is greatly exacerbated by the limited guidance in either the statutory provisions themselves or in case law as to Police powers and related offences intended to apply to protest situations. Reasonableness tests, such as those inherent in the disorderly conduct provisions discussed in Chapter 3, have to be applied in a huge variety of situations in which views as to what is and is not acceptable are likely to vary

widely and where rights and freedoms may clash with competing rights and freedoms. Because of that it is an area where it is particularly important that the meaning of reasonableness is delineated with more specificity than is now the case. Without that, there will be a constant tension between what Police do and what many in the community, and particularly protestors, will regard as appropriate.

17. To that end, we have proposed that the most senior officer at the scene should be able to impose conditions on the protestors as a whole or any group of them (of the same type as those that may be imposed in advance in respect of protests on public roads or thoroughways or that comprise an occupation). We have also proposed that in respect of protests, the current offence structure be substantially revised to provide better protection of protestors' rights and more clarity and certainty as to the limits of the law for both protestors and Police officers alike.
18. We have recommended that the offence provisions most commonly used to deal with behaviour requiring enforcement intervention during protests (disorderly behaviour, breach of the peace and obstructing a Police officer) should contain carve-outs, excluding them from use in the public assembly environment. These would be replaced by a provision in the new legislation, tailored for the public assembly environment. We have also recommended new offences relating to protests affecting critical infrastructure and the picketing of private residences.

POLICE POLICIES, PROCESSES AND TRAINING

19. In Chapter 5 we highlight that legislative change alone is not enough. In order to be effective, it requires that Police have the right policies and procedures in place, and that officers have the right training and skills to give effect to them. We acknowledge and applaud the significant progress in implementing the recommendations in our report following the 2021 Parliamentary protests. However, we have identified three significant gaps that need to be addressed: the need for enhanced guidance on the balancing of rights; inconsistencies in the nature and extent of risk assessments; and insufficient understanding of, and training about, crowd dynamics.

Chapter 1: Introduction

20. As with many other countries over the last few years, New Zealand has had an upsurge in protest activity. Protests are becoming more common and more divisive: they are highly organised, more easily coordinated by social media and often involve protestors, counter-protestors, and activists across a number of causes.
21. The changing nature of the protest environment was signalled by the Parliamentary protest in February-March 2022. The Authority received more than 1900 complaints, and following a lengthy investigation produced a substantial report.²
22. The second notable and problematic event was a rally held in Albert Park in Auckland in March 2023. The rally, labelled “*Let Women Speak*” (LWS), was organised by supporters of Kelly Minshull (also known as Posie Parker), who had been invited to speak about gender-critical ideology. On the day, an estimated 2000 protestors arrived in Albert Park with the stated purpose of preventing Kelly Minshull and her supporters from being heard. The rally was abandoned before anyone had the opportunity to speak when the protestors broke through barriers erected by LWS to keep the groups apart and surrounded the rotunda. Police assisted private security guards to remove Kelly Minshull from the park. A similar event planned to be held in Wellington was consequently cancelled.
23. The Authority received over 160 complaints relating to Police handling of this rally and the protestors. The complaints covered two main issues, alleging that Police failed in their duty to both:
 - give effect to Let Women Speak’s right to speak under section 14 of the Bill of Rights Act 1990 (‘Bill of Rights Act’); and
 - maintain public order, prevent crime, and prevent breaches of the peace.
24. While the Authority has been investigating the complaints arising from that event, subsequent protest activity relating primarily to the situation in Israel and Gaza (which has continued unabated for almost a year in Auckland and Christchurch and less frequently elsewhere) has resulted in further complaints, raising common themes related to freedom of expression, the right to protest peacefully (particularly where there is a counter-protest), and how Police maintain public order.
25. The results of our investigation into the various complaints we have received, and whether they show Police misconduct or neglect of duty, are set out in the appendices to this report. They highlight the fact that protests are both creating tensions in the community and placing significant pressure on Police, and that the current legal framework for the regulation and policing of protests in New Zealand is not fit for purpose.

² Independent Police Conduct Authority, above n1.

26. We drew attention to some of the deficiencies with that framework in our Parliamentary Protest Report and made a number of recommendations for change that would provide better support to Police when they are dealing with a difficult and complex event of that sort. To the extent that those changes were within the province of Police to implement, significant progress has been made. However, other recommendations for essential change to the legal framework, in order to provide better support for Police and local authorities and greater clarity for protestors, remain unaddressed.
27. In the meantime, the nature of protest events in many other Western democracies suggests the problem is growing in volume and complexity. In particular, protest tactics of groups such as Extinction Rebellion in Australia, Just Stop Oil in the United Kingdom and Restore Passenger Rail in New Zealand have been characterised by increasing disruption, violence, and obstruction of key infrastructure. For example, in Wellington on several occasions since October 2022, the Restore Passenger Rail protest group has targeted strategic parts of the roading network in and around the city at peak traffic times. This included the Wellington urban motorway in April 2023, where protesters lined up just before 8am across the southbound lane of SH1 feeding into Wellington city centre. The protestors held banners on the road, and some glued themselves to the road surface. This protest brought traffic to a halt and caused significant disruption to commuters.³
28. Protests are, of course, not new. Moreover, their importance as an integral part of a modern democracy that values freedom of expression is recognised by various United Nations instruments.
29. However, the challenges they pose have been exacerbated by the type of direct action described above. Moreover, the advent of social media has increased the speed with which events develop and evolve, as well as facilitated more overt and unified challenge to social and legal institutions. These factors are all having a significant impact on the resources of Police. The challenges are exacerbated by the ambiguity of many of the laws governing protests.
30. If current trends in New Zealand continue and escalate, they may pose a significant threat to national security and undermine the ability of Police to meet demand for ordinary services from members of the public. In the absence of an adequate and balanced legal framework, they may also invoke a response that risks undermining fundamental rights and freedoms under the Bill of Rights Act. That would be inimical to the maintenance of a democracy in which people who are frustrated or concerned about particular issues have the freedom to voice those concerns.
31. In the light of this, the Authority decided to undertake a broad inquiry into what needs to change, including whether reasonable limitations on freedom of speech and freedom of assembly ought to be better defined, whether protest activity should be better regulated, and whether the legal tools available to Police should be reformed so that they are clearly delineated

³ Four protesters were arrested and charged with endangering transport.

and circumscribed, while providing the necessary powers for Police to act when they need to. This report therefore builds on the Parliamentary Protest Review report but is broader in scope.

32. We have conducted the investigation of the individual complaints set out in the appendices independently, and the views expressed in this report are those of the Authority. However, the need to undertake this review was discussed and agreed with Police from an early stage, and some components of the review have been conducted jointly with Police. We have also collaborated with the Ministry of Justice and the Department of Internal Affairs on the preparation of the main body of the report. Further, we have consulted with a wide range of stakeholders, from frontline officers with expertise in public order policing, to academic and policing experts both within New Zealand and from comparable jurisdictions including the United Kingdom, Northern Ireland and some Australian states.

Chapter 2: What is New Zealand’s protest rights framework?

WHAT IS THE RIGHT TO PROTEST?

33. The right to peaceful protest is fundamental in democratic societies. New Zealand is bound to recognise the right by international law and has enshrined it in domestic law. In this chapter we explain the legal framework which governs protests and their policing in New Zealand, illustrating the lack of legal guidance that exists in New Zealand relative to other jurisdictions with which we normally compare ourselves.

International legal framework

34. The binding international human rights framework provides a legal foundation for the right to peaceful assembly, which is a cornerstone of the right to protest. Article 20(1) of the Universal Declaration of Human Rights provides:

“Everyone has the right to freedom of peaceful assembly and association.”

35. Article 21 of the International Covenant on Civil and Political Rights (ICCPR) similarly states:

“The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.”

36. The Convention on the Rights of the Child contains additional binding obligations in relation to the rights of children.⁴
37. Other rights recognised by these human rights instruments and elsewhere in international law, which support the right to protest, include:
- Freedom of thought, conscience and religion⁵
 - Freedom of opinion and expression⁶
 - Prohibition of discrimination⁷
 - Freedom of association.⁸

⁴ United Nations Convention on the Rights of the Child 1577 UNTS 3 (opened for signature 20 November 1989, entered into force 2 September 1990), Art 15(1) and 15(2).

⁵ International Covenant on Civil and Political Rights 189 UNTS 137 (opened for signature 16 December 1966, entered into force 23 March 1976), art 18.

⁶ Art 19.

⁷ Art 26.

⁸ Art 22.

Scope of the right in international law

38. The right under Article 21 of the ICCPR only extends to ‘peaceful’ assembly, and not to assemblies characterised by widespread and serious violence. The United Nations Human Rights Committee’s General Comment 37⁹ provides further explanation of the scope of the right of peaceful assembly under international law, including what is meant by ‘peaceful’ assembly. It provides that ‘violence’ typically entails use of physical force against others that is likely to result in injury or death, or serious damage to property. It does not consider “*mere pushing or shoving or disruption to pedestrian or vehicular or pedestrian movement*” as amounting to violence, states that there is a presumption in favour of considering assemblies to be peaceful and provides that isolated acts of violence should not be attributed to others. This means that some protestors may be covered by the right when others are not.¹⁰
39. Under international law, the right to peaceful assembly and related rights is subject to limitations. Article 21 of the ICCPR specifies the requirements for any such restrictions, and General Comment 37 provides further guidance on the way in which domestic laws may place limits on the right to peaceful assembly. Significantly for the discussion in this report, that General Comment states:

“...the laws in question must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement.”¹¹

40. New Zealand signed the ICCPR in 1968 and ratified it in 1978. That required that it give effect to the Covenant in domestic legislation.

New Zealand’s domestic legal framework

41. In New Zealand, there are a number of fundamental rights in the Bill of Rights Act that support the right to protest. These rights are enshrined in ss 14, 16 and 17, which state respectively:

“Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.”

“Everyone has the right to freedom of peaceful assembly.”

“Everyone has the right to freedom of association.”

Scope of the right in domestic law

42. The rights in the Bill of Rights Act do not constitute supreme law – that is, they may be overridden by a specific law, although section 6 provides that where a legislative provision can be given an interpretation that is consistent with the Bill of Rights Act, that interpretation is to

⁹ United Nations Human Rights Committee General Comment No. 37 on Article 21 (Right of Peaceful Assembly) [2020] CCPR/C/GC/37.

¹⁰ at 15-17.

¹¹ at 39.

be preferred over any other interpretation. More generally, none of the Bill of Rights Act rights are absolute. Section 5 of the Act allows for reasonable limitations, stating the rights in the Act “*may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society*”.

43. However, there is no general legislative definition of what reasonable limitations might look like, nor how reasonable limitations might be applied in the protest context. Unlike many other jurisdictions, New Zealand does not have stand-alone public order or protest legislation which could provide the framework for such a definition. Police powers and offences relevant to the protest environment and regulation of protestor behaviour are contained in various parts of the Summary Offences Act 1981, the Crimes Act 1961 and the Policing Act 2008. These are relevant in determining the scope of reasonable limitations during or after a protest or other public order event, but do not provide a comprehensive or necessarily helpful means for doing so in advance.
44. In theory, there are two other mechanisms (discussed in more detail in Chapter 3) which might be used to scrutinise in advance whether any limitation on the right to protest is desirable and reasonable in a given situation: the approval and permitting processes mandated by some Council bylaws; and the informal liaison and negotiation that both Police and Councils may engage in with organised protest groups when they have information (‘intelligence’) that protests are being planned.

Legal framework in overseas jurisdictions

45. Some overseas jurisdictions with which we normally compare ourselves also recognise the right to protest in their human rights legislation, while others recognise it through specific statutes or in case law. In those jurisdictions with human rights instruments, rights associated with protest are subject to reasonable limitations, as they are in New Zealand and under international law. The way in which those reasonable limitations are defined differs between jurisdictions.

United Kingdom

46. Articles 10 and 11 of the European Convention on Human Rights (ECHR) protect the rights to freedom of expression and assembly respectively, subject to certain limitations. These articles are also enshrined in domestic law by the Human Rights Act 1998, which provides in section 6 that it is unlawful for a public authority (which includes local authorities and the Police) to act in a way which is incompatible with a Convention right, unless a provision (or provisions) of primary legislation preclude them from doing so. Section 7 of that Act allows a claim to be brought before a UK court when rights have not been respected.
47. The UK also has stand-alone legislation in the Public Order Act 1986, which provides specific powers and guidance to Police in the policing of public protests. For example, as we discuss in more detail in Chapter 4, sections 12 and 14 give Police the power to impose conditions on public processions and public assemblies respectively when certain conditions are met. Section 12(1) states, broadly, that conditions can be imposed if a senior Police officer reasonably believes that, among other things, it “*may result in serious public disorder, serious damage to property or serious disruption to the life of the community*”.

48. The Human Rights Act 1988 requires that the exercise of these powers must take into account Articles 10 and 11 of the ECHR. In the 2023 Regulations made under the Act, “*serious disruption*” was defined as “*anything more than minor*”, but in May 2024 the Divisional Court held those Regulations to be unlawful.¹²

Canada

49. The Canadian Charter of Rights and Freedoms guarantees certain rights and freedoms, including freedoms of peaceful assembly and peaceful association. The rights are not absolute, being subject “*only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.*” Laws (including regulations and bylaws) limiting the right to protest, and Police powers to enforce those laws, vary between provinces. As in New Zealand, there is no stand-alone public order statute; rather, offences relating to protest are contained in Canada’s Criminal Code.

Australia

The right to protest

50. Australia does not have a Bill of Rights at the federal level, although some states and territories do, so the protection of rights associated with protests varies between states and territories. For example, in New South Wales the right to protest is based on the common law, while Queensland enshrines it in legislation, as well as providing a human right of public assembly in its Human Rights Act.¹³ Section 5(1) of the Peaceful Assembly Act 1992 (Qld) states that a person has the “*right to assemble peacefully with others in a public place*”, while section 5(2) provides that the right is:

“...subject only to such restrictions as are necessary and reasonable in a democratic society in the interests of:

(a) public safety, or

(b) public order, or

(c) the protection of the rights and freedoms of other persons”.

51. The Australian Capital Territory and Victoria also recognise the right to peaceful assembly in almost identical terms in their respective human rights legislation.¹⁴ The stance in these jurisdictions is consistent with the right to peaceful assembly under Article 21 of the ICCPR (and with New Zealand’s Bill of Rights Act), including the right being subject to ‘reasonable limits’ that can be ‘demonstrably justified in a free and democratic society’.¹⁵

The regulation of protests and imposition of ‘reasonable limitations’

¹² Liberty v Secretary of State for the Home Department [2024] EWHC 1181.

¹³ Human Rights Act 2019 (Qld), s 22.

¹⁴ Human Rights Act 2004 (ACT), s 15(1) and Charter of Human Rights and Responsibilities Act 2006 (Vic), s 16(1).

¹⁵ Human Rights Act 2004 (ACT), s 28 and Charter of Human Rights and Responsibilities Act 2006 (Vic), s 7(2).

52. The way in which protest activity is regulated in Australia also varies between jurisdictions. For example, in New South Wales public assembly provisions are contained in Part 4 of the Summary Offences Act 1988, with the stated aim being to encourage cooperation between Police and protestors engaged in peaceful protests. The provisions establish a process for consultation, cooperation and authorisation or prohibition of proposed public assemblies. No offence is created by the provisions and a protest may be lawful without Part 4 being engaged, but if protestors do engage it and receive authorisation for a protest, they will be protected from being charged with the offences of obstruction and participation in an unlawful assembly.
53. Similarly in Queensland, the Peaceful Assembly Act 1992 sets out notification requirements and the ability for Police to set conditions on the protest, but again does not contain an offence for a failure to notify. Instead, notification provides civil and criminal immunity for participants, provided the assembly is authorised, peaceful and held substantially in accordance with any conditions set.
54. Victoria does not have an equivalent to Queensland's or New South Wales's statutory guidance. Instead, local Councils have the power under the Local Government Act 2020 to make local laws, which some Councils have used to impose a requirement to apply for a permit. Melbourne City Council, for example, provides that a person must not, without a permit, unreasonably obstruct pedestrian or vehicular traffic in a public place or encourage a congregation of persons to do the same. As in New Zealand, the local laws cannot be inconsistent with the right to freedom of assembly under the Charter of Human Rights and Responsibilities Act, and there is a legal requirement for local Councils to consult with Police before granting a permit for a public protest that involves a road closure or use of Council land.¹⁶

WHAT MECHANISMS CURRENTLY EXIST IN NEW ZEALAND TO IMPOSE REASONABLE LIMITATIONS ON THE WAY PROTESTS ARE CONDUCTED?

55. While the right to protest, subject to reasonable limitations, is enshrined in New Zealand law, there is currently no legislative guidance on what constitutes a reasonable limitation as exists in some other jurisdictions discussed above. There are currently four mechanisms by which reasonable limitations are imposed. The first two of these can, at least in theory, provide some guidance to protestors on what limitations may be placed on their rights in advance of a public assembly. The last two only operate during or after the public assembly.

Local authorities and the role of bylaws

56. While New Zealand lacks a national notification system for protests as exists in, for example, Queensland and New South Wales, local Councils have the power under sections 145 and 146 of the Local Government Act 2002 to enact bylaws for a variety of purposes relating to the protection of the public from nuisance, the maintenance of public health and safety, and the minimisation of the potential for offensive behaviour in public places.

¹⁶ Summary Offences Act 1966 (Vic), s 6A.

57. The vast majority of Councils, in the exercise of this power, have enacted a bylaw that requires people who wish to use public places for the purpose of assembly, whether for protests or otherwise, to seek approval or obtain a permit from the Council in advance.
58. A few Councils, such as Auckland Council, exempt protests from this requirement. In most others, however, the approval requirements are onerous and explicitly extend to protests or do not exclude them. For example, the Rotorua Lakes District Council bylaw imports a number of parts of the *“New Zealand Model General Bylaws”*, which require permission from an authorised officer before participating in an assembly, demonstration or parade (among other activities) in a public place. Both Wellington and Christchurch local authorities also require notice to be given before holding a public assembly. Failure by protest organisers to adhere to these requirements can theoretically result in the imposition of a fine.
59. Notably, too, these provisions generally draw no distinction between types of public place. In particular, assemblies in parks and reserves are subject to the same regime as those on public roads, footpaths or other thoroughfares.
60. However, as we discuss in more detail in Chapter 3, these provisions are rarely, if ever, enforced, and many as currently drafted are of doubtful legality.

Good practice by Police, Councils, and protestors

61. The second mechanism which, at least in theory, assists in determining in advance whether any limitation on the right to protest is reasonable in a given situation comes not from any legislative framework at the central or local level, but from ongoing general liaison with organised protest groups by Police and Council staff, and by engagement and negotiation with them when a planned protest becomes known. Both depend upon effective relationship-building and intelligence gathering. The approach adopted by New Zealand Police is sometimes described as the *“4E graduated response model”*, comprising the following strategies in order of priority:
 - engaging with the protesters and identifying any potential threats;
 - educating them on the requirements of a lawful protest;
 - encouraging compliance if required; and
 - enforcement by way of warnings or prosecution only when necessary as a last resort.
62. It is this approach which underpins New Zealand Police’s current model for public order policing. There is a focus on engagement and intelligence gathering, with the aim being to avoid escalation of public disorder to the point where Police would be required to use force against or prosecute individual protestors. Police aim to get advance warning of the likely nature and scale of protests for a variety of reasons. They can determine how many staff they need to deploy to manage identified risks (including the risks of conflict between opposing protest groups); they can take steps to balance this against the demands of other policing duties, and if necessary deploy additional staff who would otherwise be on a day off; and they can attempt to negotiate

with protest organisers to reach a mutual understanding of how the event should proceed, so that the protest can be made safe for both protestors and other members of the public, and minimises unreasonable disruption affecting other members of the public.

63. For the most part, this approach has worked well. For example, planning officers from Tāmaki Makaurau told us they always want to go into a protest after having established some form of relationship with the organisers. When protests by groups with whom Police have no existing relationship happen from time to time, they strive to make contact as soon as possible. They gave as an example a relatively recent protest organised by Greenpeace. The Planning Team had not needed to plan a Police operation in response to a Greenpeace protest since 2016. Greenpeace contacted Police six weeks prior to the protest and Police were able to start planning early, engage with the organisers and effectively manage the risks without any problem arising.
64. However, for a minority of protests where intelligence gathering fails to identify the existence or scale of the planned protest in advance, or where the protest group refuses to engage with Police, effective planning for and management of the protest is more difficult. For example, in our review of the policing of the February–March 2022 protest and occupation at Parliament, we considered the way Police executed the 4E model. We found that, for the most part, Police did a good job in dealing with a complex and difficult series of events, with almost all officers displaying professionalism and restraint when dealing with protestors.¹⁷ In that case, however, the limitations of the approach were apparent. Police did not have reliable advance intelligence as to the scale of the protest, and had variable cooperation from disparate protest groups.

The application of statutory powers by Police

65. Police on the ground at the operational planning level and on the frontline currently have the role of determining how they should police protests in a way that is consistent with fundamental rights. In protest situations, officers negotiate with or give instructions to protestors, who in turn either comply with any instructions (voluntarily or because they think they have no choice) or don't comply with (which can lead to enforcement).
66. As described above (paragraphs 45-54), many jurisdictions have a form of protest or public order legislation which provides some overarching guidance on the way in which the public's right to protest should be balanced against competing rights, including public safety. New Zealand does not have any such legislation, the only guidance coming from the Bill of Rights Act and various statutory powers and offences which Police rely on in the event that protestors do not voluntarily comply with instructions given during a protest.
67. The offences relied on by Police to maintain public order are scattered throughout legislation including the Summary Offences Act 1981, the Crimes Act 1961 and the Trespass Act 1980. In all cases, charges must be balanced against rights in the Bill of Rights Act. The specific statutory

¹⁷ Independent Police Conduct Authority n1.

provisions relevant to policing of public assemblies are set out in the following table and analysed in detail in Chapter 3 from paragraph 120.

Provision	Maximum penalty	Essential ingredients of offence/defence
Trespass Act 1980 section 3 (trespass)	\$1000 fine or 3 months' imprisonment	<ul style="list-style-type: none"> • Two warnings must be given by occupier. • Defendant neglects or refuses to leave.
Crimes Act 1961 section 42 (breach of the peace)	Not an offence – prevention of a breach is justification for use of force and arrest	<ul style="list-style-type: none"> • Disturbance to the public peace or order that may provoke violence or the threat of violence.
Summary Offences Act 1981 section 3 (disorderly behaviour)	\$2000 fine or 3 months' imprisonment	<ul style="list-style-type: none"> • Behaves, or incites or encourages any person to behave, in a riotous, offensive, threatening, insulting, or disorderly manner; and • the behaviour is in, or within view of, a public place; and • the behaviour is likely in the circumstances to cause violence against persons to start or continue.
Summary Offences Act 1981 section 4 (offensive behaviour)	\$1000 fine and an arrestable offence	<ul style="list-style-type: none"> • In, or within view, of a public place, behaves in an offensive or disorderly manner; or • in any public place, addresses any words to any person intending to threaten, alarm, insult or offend that person; or • in or within hearing of a public place: • uses any threatening or insulting words and is reckless whether any person is alarmed or insulted; or

		<ul style="list-style-type: none"> addresses any indecent or obscene words to any person.
Summary Offences Act 1981 section 23 (obstruction)	3 months' imprisonment	<ul style="list-style-type: none"> Resists; or intentionally obstructs; or incites other person to resist or obstruct any constable or authorised officer (or person aiding that person) acting in the execution of his duty.
Summary Offences Act 1981 section 22 (obstructing a public way)	\$1000 fine and an arrestable offence	<ul style="list-style-type: none"> Without reasonable excuse obstructs a public way and having been warned by a constable to stop, continues the obstruction.
Summary Offences Act section 11(wilful damage)	3 months' imprisonment	<ul style="list-style-type: none"> Intentionally or recklessly, without lawful justification or claim of right, damages any property or sets on fire any tree or vegetation.
Crimes Act 1961 section 270 (endangering transport)	14 years' imprisonment	<ul style="list-style-type: none"> Intentionally causes danger to persons or property, or with reckless disregard for the safety of persons: interferes with any transport facility; or does anything to any transport facility that is likely to cause danger to persons or property.
Crimes Act 1961 section 145 (criminal nuisance)	1 year's imprisonment	<ul style="list-style-type: none"> Does any unlawful act or omits to discharge any legal duty, such act or omission being one which he or she knew would endanger the lives, safety, or health of the public, or

		the life, safety, or health of any individual.
Crimes Act section 269 (intentional damage)	10 years' imprisonment (s 269(1)) 7 years' imprisonment (s 269(2) and s 269(3))	<ul style="list-style-type: none"> • Section 269(1) - intentionally or recklessly destroys or damages any property if he or she knows or ought to know that danger to life is likely to result. • Section 269(2) - intentionally or recklessly, and without claim of right, destroys or damages any property in which that person has no interest OR intentionally or recklessly, and without claim of right, destroys or damages any property with intent to obtain any benefit, or with intent to cause loss to any other person. • Section 269(3) - Everyone is liable to imprisonment for a term not exceeding 7 years who intentionally destroys or damages any property with reckless disregard for the safety of any other property.
Crimes Act section 87 (rioting)	2 years' imprisonment	<ul style="list-style-type: none"> • A group of 6 or more persons acting together, • uses violence against persons or property; and • to the alarm of persons in the neighbourhood of that group.
Crimes Act section 90 (riotous damage)	7 years' imprisonment	<ul style="list-style-type: none"> • Being a member of a riot, • unlawfully damages any property.

The courts

68. If Police resort to enforcement and there is a prosecution, the courts must then determine (in the aftermath of a protest and in the context of the particular offence with which a person is

charged) what constitutes a 'reasonable limitation' on protestors' rights under the Bill of Rights Act. Decisions in that regard are highly fact-specific, and the tests that are applied to determine criminal liability, especially in relation to more minor offences such as disorderly behaviour, are generally expressed in general terms.

69. Breaches of the peace are not in themselves offences, but they allow a Police officer to arrest and detain the person under sections 42 and 315 of the Crimes Act 1961 for as long as is necessary to prevent the breach of the peace from continuing or a disturbance to the public peace from arising, after which detainees must be released. Because such arrests cannot result in a prosecution, they are rarely scrutinised by the courts.

Chapter 3: Nature of the problem

70. In Chapter 2 we have set out the regulatory framework for protests in New Zealand and provided some examples of the international human rights framework and the situation in other jurisdictions to provide comparisons.
71. While fundamental rights under the Bill of Rights Act support the right to protest, we have earlier noted that there is no legislative definition in general terms about what reasonable limitations on that right might look like, or how they might be applied in the protest environment.
72. The extract from the United Nations Human Rights Committee's General Comment is worth repeating here:

*"...the laws in question **must be sufficiently precise** to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement."*¹⁸

73. The current framework in New Zealand fails to meet that requirement. This chapter considers the weaknesses of existing mechanisms and the impact it has on policing and argues the New Zealand framework is no longer fit for purpose.

LACK OF OVERARCHING LEGISLATIVE GUIDANCE

74. Several jurisdictions with which we normally compare ourselves have some form of stand-alone public order or protest legislation. Because New Zealand lacks that, there is little overarching guidance from the legislature as to how protest rights should be balanced against other human rights, and what constitutes a reasonable limitation on those rights.
75. We are not suggesting there is no current guidance on this at all. Chapter 2 sets out some of the guidance contained within international human rights frameworks, and the question has been explored in academic discourse.¹⁹
76. In addition, there is substantial case law on the nature of reasonable limitations in a number of different factual scenarios. In *Police v Beggs*, for example, the High Court, in an appeal from the District Court, considered how to balance powers under the Trespass Act 1980 with rights under the Bill of Rights Act in relation to protestors on Parliament grounds, including what is meant by 'reasonable limits' in section 5 of the Bill of Rights Act.²⁰ It held that what is reasonable "*depends on the circumstances of the particular case, and not upon any predetermined formula*", although it listed some relevant considerations, such as whether the assembly is unreasonably prolonged

¹⁸ United Nations Human Right Committee n9, para 39.

¹⁹ See, for example, Hanna Wilberg 'Settling the Approach to Section 5 of the Bill of Rights in Administrative Law: Justification, Restraint and Variability' (2021) 19 NZJPIIL 97 and Claudia Geiringer 'Sources of Resistance to Proportionality Review of Administrative Power under the New Zealand Bill of Rights Act' (2013) 11 NZJPIIL 123.

²⁰ *Police v Beggs* [1999] 3 NZLR 615.

and the extent to which it infringes on the rights and freedoms of other people enjoying the privilege of being on Parliament grounds.

77. More recently, the Supreme Court considered the nature of ‘reasonable limits’ under section 5 in *Moncrieff-Spittle v Regional Facilities Auckland Limited*.²¹ The Court was required to consider whether the decision by a publicly-owned, commercial venue provider to cancel an event due to concerns about likely protest activity at that event constituted a reasonable limit on freedom of expression. It considered what test should be applied to determine whether a limit is reasonable. It first considered a structured ‘proportionality test’ approach that had been used in previous criminal law cases.²² That approach entails considering the objective of the proposed limit (legislative measure, decision or action) in question; whether the limit is rationally connected to that objective and impairs the right as little as possible; and whether there is proportionality between the limit and the objective. The Court then dismissed that approach in the context of a review of a discretionary power, finding that while there is no immutable rule:

*“We consider that in the present case, a less structured test is appropriate as properly reflecting the nature of the decision-making involved whilst giving due regard to the importance of the rights”.*²³

78. The Court found that it would be necessary to adjust the steps in a section 5 proportionality enquiry to reflect the particular context, and that a more flexible approach to assessing the compatibility of an individual decision with rights is consistent with the nature of discretionary decision-making.²⁴
79. The problem inherent in the guidance contained in case law such as this, as well as academic discourse and international human rights frameworks, is that it is largely inaccessible to the people making decisions on the ground. Those people include Police officers and local Council employees, who are required to make decisions in the planning and on-the-ground management of protests that can have a significant impact on people’s rights of freedom of assembly and freedom of speech. It also includes protest organisers and protestors themselves, who must decide how they should behave with little certainty about how enforcement officers or the courts themselves are likely to view their behaviour.
80. The courts have clearly enunciated the impossibility of prescriptive guidance on the nature of reasonable limits on certain rights. However, this does not negate the desirability of clearer (or, indeed, any) legislative guidance on the nature of protest rights and what may constitute reasonable limits on those rights. Queensland’s Peaceful Assembly Act 1992 provides one example of what greater guidance might look like, with section 2 of that Act setting out the object of the Act in recognising the right of peaceful assembly, and also in setting out what may

²¹ [2022] NZSC 138.

²² The structured approach was adopted in *Hansen v R* [2007] NZLR 1 but the Supreme Court in *D (SC 31/2019) v New Zealand Police* [2021] 1 NZLR 213 departed from this approach, saying it would not always be appropriate to go through all the steps in *Hansen*.

²³ *Moncrieff-Spittle*, n 22, at 92.

²⁴ *Moncrieff-Spittle* n 22 at 89, citing the Canadian Supreme Court in *Dore v Barreau du Quebec* 2012 SCC 12, [2012] 1 SCR 395.

constitute necessary and reasonable restrictions, including consideration of public safety, public order, and the protection of the rights and freedoms of others. In the next chapter we explore what form of guidance might be best suited to New Zealand.

Operational impact of lack of statutory guidance

81. At the operational level, this lack of statutory guidance results in a systemic failure to provide Police with sufficient guidance as to what reasonable limitations can be imposed when they are planning for a protest event. Police decision-making in this context is in any event limited by their inability to intervene and set reasonable limits on the activity in advance, other than through voluntary negotiations with the protest organisers.

Example

82. Christchurch City Council Public Places Bylaw 2018 requires that written permission be sought from a Council authorised officer for an ‘event’ (defined as an organised temporary activity) in any public place, including but not confined to roads, footpaths and pedestrian malls. A person holding an event without such approval commits an offence punishable by a maximum fine of \$20,000. Notwithstanding the absence of any application or written approval, a protest march planned for lunchtime Saturday on the main arterial route through Riccarton in early 2024 was allowed to proceed. Police only had two days’ notice, and the march caused major disruption to traffic and Riccarton shopping mall.
83. Officers we spoke to had differing views on whether the march should have been allowed to go ahead. One officer who thought it should not have proceeded in the manner proposed by the protestors told us:

“We knew a protest intended to march down ... a main thoroughfare on Saturday morning. It was clear to me that some level of disorder was going to come from that activity ... and we should try and prevent that march going down that street at that time of day. Not everyone saw it my way ... and the march took place ... and did cause significant issues. To prevent 200 people marching ... takes a significant resource. It would have been a major operation ... with a clear message to say you can protest in [the Park] for as long as you like but ... not march up this road and impede the traffic.”

84. That same officer described the inconsistency in approach to different groups:

“It’s difficult because we’re not consistent ... Every weekend for the past 12 weeks we’ve allowed people to march around the streets ... We’re knowingly allowing that law to be broken every weekend ... Not only am I recognising that you’re committing an offence, I’m also facilitating it. The University has to go and get a permit for the graduation, and they do, yet if I’m protesting a war ... I don’t have to and we will acquiesce and allow it to happen. It seems inconsistent to me.”

85. Most Councils appear to have sound processes for liaising with Police and known protest groups, and can often reach a mutual understanding of how a planned protest event should proceed. For example, a representative of Wellington City Council described the way they generally become aware of planned protests and then seek further information from the organisers, which is often forthcoming. While most protest groups do not obtain a traffic management plan as required, Council officers nonetheless liaise with Police, the protest group, and the Traffic Management Centre to prepare as best they can and the perception of the staff we spoke to was that their system of liaison works well most of the time.
86. However, it is clear to us that this is no longer enough. While the collaborative approach that Police and Councils have taken for a number of years has merit, and Police and Council officers have told us that it works without incident in a substantial proportion of protests, it has two obvious limitations. Firstly, it only works with protest groups who are already known to Police or Council, or protests that are advertised in advance on accessible social media platforms. Secondly, it only works with protestors who are compliant and want to work with Police. Arguably, the majority of protestors who cause substantial disruption and cause difficulties for Police on the ground are those who are not interested in engaging beforehand. Police officers are also reporting they are increasingly seeing people attending protests who are intent on causing a disturbance and do not appear engaged with the issue that is the subject of the protest.
87. Given this trend that Police are observing, combined with the increasing tendency for disparate groups of protestors and counter-protestors to converge, as well as the nature of the complaints we have been receiving, the approach of ongoing liaison, engagement and negotiation between Police, Council officers and protestors is no longer adequate. While it will continue to be a key component of a positive protest environment, more guidance, prescription, and certainty regarding the parameters of peaceful protests is required. More effective enforcement tools, that do not rely solely upon the use of force and accompanying arrests when things go wrong, are also required.

Limitations of Council processes

88. As we have noted above (paragraph 56), while on paper most Councils have a mechanism that provides for protests to be approved in advance and therefore subject to some regulation ahead of the event, prior notification appears to occur in only a minority of cases, and formal approval is virtually non-existent. Prosecutions under the relevant bylaws for a failure to seek approval simply do not happen. Therefore, when the informal processes described above fail, formal Council notification and approval processes are a blunt and ineffective tool.
89. There are a number of reasons for this.

The breadth and vagueness of many Council bylaws relating to public places are of questionable legal validity

90. Section 155(3) of the Local Government Act 2002 stipulates that “no bylaw may be made that is inconsistent with the New Zealand Bill of Rights Act 1990, notwithstanding section 4 of that Act”.
91. In the Authority’s view, a number of the bylaws we have examined are arguably inconsistent with that provision. They are therefore beyond the powers of the Council to make and have no legal effect. An example of a bylaw that may fall into this category is the Kapiti District Council’s Public Places Bylaw 2017 which provides, among other things:
- The Council has a right to prevent any temporary event or other activity that is likely to damage the place, harm any person, unreasonably impede any person, or is otherwise undesirable, disorderly or dangerous.²⁵ ‘Temporary event’ is not defined.
 - Council must be notified of any temporary event at least 40 days in advance and the organiser may be required to obtain Council approval.²⁶ No detail is provided as to circumstances in which approval will be required.
 - There is a maximum fine of \$20,000.²⁷
92. This bylaw could be interpreted to require 40 days’ notice for a public protest which, on the face of it, may be prohibited if it is deemed undesirable. ‘Undesirable’ is not defined. A bylaw so broad in scope, in terms of both the notice period and the grounds for prohibition, is likely to be unenforceable at law, since it would not be regarded as a reasonable limitation on rights in terms of section 5 of the Bill of Rights Act and therefore beyond the power of a local authority to make under section 155(3).
93. Further, there are sometimes discrepancies between the bylaws themselves and the processes which Council websites instruct potential protestors to follow. For example, Waipa District Council’s website states that at least 90 days’ notice is required for the conduct of an event, and that approval is required if more than 40 people are expected to attend.²⁸ However, the relevant bylaw covering events (defined to include protests) makes no reference to numbers or notice periods.²⁹

Lack of knowledge and enforcement of bylaws

94. We therefore found it unsurprising that when we spoke to Council staff, most of them were unaware of the breadth of their Council’s bylaws and did not refer to them as part of the toolkit they could rely on when planning for and regulating protests.

²⁵ Kapiti District Council Public Places Bylaw 2017, clause 6.

²⁶ Kapiti District Council Public Places Bylaw 2017, clause 10.

²⁷ Kapiti District Council Public Places Bylaw 2017, clause 27.

²⁸ [Organising an event - Waipa District Council \(waipadc.govt.nz\)](https://www.waipadcc.govt.nz/organising-an-event) accessed 3 September 2024.

²⁹ Waipa District Council Public Places Bylaw 2023.

95. But it is not uniformly the case that bylaws are drafted too broadly. Some are appropriately confined in their scope, at least in relation to notification requirements. However, they are only effective if protest groups know of the requirement, plan the event well in advance, and are willing to be co-operative and compliant with requirements. We understand from the local Councils we spoke to that the level of compliance with notification requirements varies between protest groups.
96. However, even in those cases, notice or approval processes can only be effective if the relevant Council is willing to enforce them. The information provided to us by Council staff we interviewed in Auckland, Wellington, Christchurch, Napier and Hastings made it clear that in practice, bylaws are of limited utility because Council staff have neither the capability nor the capacity to undertake any significant regulatory function in this area. Moreover, they noted that they do not have the power to issue infringement notices, they lack the resources and the trained enforcement staff to undertake prosecutions, and in any case the prosecution of organisers would likely drive them underground, which would not only make it difficult to know who to prosecute but also impede the ability to undertake informal negotiations in the future.
97. Bylaws are therefore rarely used to ban a protest entirely, whatever the potential impact on the community. For example, Christchurch bylaws require approval for street marches, but the march planned for lunchtime Saturday on the main arterial route through Riccarton with only two days' prior notice (discussed above at paragraphs 82-84) was allowed by Police to proceed, causing major disruption to traffic and Riccarton shopping mall. There was no effective prior engagement with the protestors by Council officers, and in any case it is unlikely that protest organisers would have been amenable to negotiation as to the time or route of the march.
98. Occasionally the local Council's approval system will lead to the closure of a facility which would otherwise have been used for the purpose of the protest, in order to render the protest futile. This is only possible in situations where the Council has the ability to close an area in advance, and where protestors signal their intention to occupy or use Council premises.
99. As a general regulatory tool, therefore, these approval systems appear to serve little purpose. This is not to dismiss their value entirely. When they are used, they may, for example, allow Council staff to liaise with prospective protest organisers, and advise on how the protest should be organised and safety issues addressed, although they do not play any active role in ensuring that the advice is acted on. For example, the Let Women Speak event in Albert Park in February 2023 was notified to the Auckland City Council, who provided the event organisers with fairly detailed information as to safety issues. However, although the organisers employed private security staff to assist on the day, there was only limited adherence to Council advice.
100. In some Council areas, notification of a protest to the Council may trigger a requirement for protestors to develop and submit a traffic management plan. However, the onus is on the protesting group to pay a private provider to develop the plan, which we understand can cost \$5000 or more. As a result, such a plan is rarely provided. We understand that a protest will generally still be allowed to proceed in these circumstances without consequence, regardless of whether protestors lodge the plan.

101. For example, the organisers of a protest at Parliament by Destiny Church in the months following the occupation of Parliament in February–March 2021 did not provide a traffic management plan. Given the scale of the precautions Police decided were needed to manage the protest, Police had to obtain a traffic management plan themselves from external consultants, at a cost of approximately \$25,000. In addition, of course, they had to carry the burden of implementing that plan by escorting the protestors on public roads, paying for short-notice shift changes so that adequate numbers of staff could be deployed, and diverting staff from other Police tasks requiring attention.
102. Although Police have the power to close a road temporarily under section 35 of the Policing Act 2008 where there is a danger to the public, or public disorder exists or is imminent at or near the place, it is doubtful whether the section 35 power is generally available as an alternative to a traffic management plan. It is designed only to enable the management of imminent risks and would be unlikely to constitute a reasonable limitation to the right to protest. In any event, a road closure is often an unsuitable tactical option, since both protestors and traffic will simply be diverted to another road that will in itself require a traffic management plan.
103. Police across the Districts we engaged with were all concerned that in situations where a group intends to march and obstruct a public road, the lack of enforcement by Councils of a requirement to provide a traffic management plan means that:

“...our officers become the pseudo traffic management plan ... which puts us at risk if there is an issue on the road ...where it is actually Council’s responsibility to do that with the organisers”.

104. Another planning officer expressed a similar sentiment:

“...if they haven’t got a Traffic Management Plan and we don’t provide anything and we know about it, I feel that’s a risk for us so I would put a car at the front as a safety mechanism. It shouldn’t be a Police matter but we do it because there is no one else.”

THE LIMITS ON THE ABILITY OF POLICE TO FACILITATE PROTESTS AND DETERMINE AND ENFORCE REASONABLE LIMITS ON PROTESTS

105. As the above views of officers demonstrate, the ineffectiveness of bylaws, and local Councils’ inability or reluctance to enforce them, have a flow-on effect to the way in which Police plan for and deploy to protests. This section considers some of the challenges Police currently face.

Planning and deployment

106. The ability of Police to plan for the provision and deployment of adequate resources for the policing of protests and minimise undue impact on the public is significantly limited by two factors: the absence of an effective requirement for any notification of a protest; and the fact that, even when a planned protest becomes known to Police, they have no powers in advance to determine reasonable limits on the way in which it will be conducted.

107. For many kinds of protests, although by no means all, these limitations do not matter. They are compensated for by the informal practices that have developed between Police and local authorities. In paragraphs 61-64, we described the important role played by these practices. Police intelligence staff, along with Council staff, routinely scan social media and maintain relationships with known protest groups. When a planned protest is identified through one or other source, the organisers are contacted and asked for information about the form of the protest (including size, location, route of march etc), and there may be discussions or negotiations with them about the way in which the protest should be conducted. Where there are known protestors and counter-protestors, there may be an agreement about where the groups are to stand so that they can be safely separated. This is routinely done, for example, at Christchurch Memorial Bridge, where rival protest groups are asked to congregate on either side of the bridge, with a Police 'skirmish line' separating them. In a real sense, therefore, Police have an opportunity through informal means to make planning decisions that are based on a determination of what reasonable limits on the right to protest ought to be in the particular context. They are also able to reach an informed view as to likely risk, and in many cases to deploy only a small number of staff with a relatively hands-off watching brief.
108. However, this works well only when protests become known to Police in advance and protest organisers and participants are willing to engage with them and be compliant. It does not work well where protests are not anticipated until a very late stage, if at all; where protest organisers are not co-operative; or where there are rogue elements within the protest group who do not comply with any prior agreement reached between Police and protest organisers.
109. In these instances, which apply to only a minority of cases, the ability of Police to manage protests effectively is severely circumscribed. We have identified a number of specific issues in this respect:
- Police sometimes have no prior information as to the nature of a particular protest, the impact it is likely to have, or the risks it is likely to pose. For example, at the Let Women Speak event Police negotiators engaged with known counter-protestors in the days leading up to the event and received assurances that the counter-protest would be noisy but not violent. However, we interviewed a person involved in organising some of the people attending the counter-protest who told us:

"We got an idea that a lot of argy bargy behaviour wanted to be brought to the rally. ... there was a disagreement between some core organisers. They [Police] didn't know that. It wasn't communicated to Police... because we didn't want to be associated with any argy bargyness".
 - When they do have such information, it can be partial and inaccurate. For example, Police in Auckland had an agreement with organisers of a Destiny Church march that there would be no motorcycles in the march. The protestors arrived early with motorcycles and blocked off a major road without authority. This increased the risks associated with the march, including potential negative reaction from other road users. The Operation Commander reminded the protestors of the agreement, but the protestors said they were

not changing their plans. Police were not able to enforce the agreement and simply followed up with some licensing and registration issues at a later date.

- Processes for gathering risk information have generally been developed on a District-by-District basis with little national oversight and inconsistencies between one District and another. Planning staff in the Districts where we conducted interviews all used different, locally developed risk assessment forms. One planning officer told us: *“I don’t even know what they’re doing in other Districts. I couldn’t even tell you”*. The paucity of standard operating procedures at a national level, and a corresponding training and implementation regime, was a point of concern noted in the Authority’s Parliamentary Protest Review Report.³⁰ We return to this in Chapter 5.
- Even when relatively reliable risk information is gathered, there is no objective process for determining how that information is to be assessed; officers are left to make their own subjective judgement. For example, one planning officer told us: *“Sometimes there might be reach-in from others ... because they get concerned about the swell of numbers. I struggle with that approach because it’s either [a risk of being] unlawful or it’s not. Numbers should have no impact on how many staff we put at it”*. By contrast a planning officer from another District told us: *“...you’re looking firstly at numbers, things like alcohol, drugs, previous events ...”*.
- Similarly, there is no clear guidance for Police Deployment Managers as to how an identified level of risk should be managed. More particularly, there is no agreement as to the nature and level of risk that deployment should be directed towards.

110. We discuss these issues below at paragraphs 313-323.

Unpredictability of protests

111. A challenge for Police is the unpredictable nature of protests. Police often do not know in advance what level of resource may be required both to facilitate protests and protect participants, especially when protestors and counter-protestors are going to be congregating in the same vicinity. It is currently left to Districts to decide whether, in planning for a known protest, they send minimum numbers in the hope that any potential risk won’t materialise, or plan for the worst-case scenario to ensure safety. Ideally, there is a planned response that can be scaled up or down. Operation plans we have seen all include escalation or contingency planning. However, the plan for dealing with any incidents occurring that are beyond the capability of assigned staff usually relies on officers who are on duty, but not assigned to the operation, being redirected from other business. There is naturally a delay in facilitating this.

112. Inevitably, all these issues result in some variability in policing deployment practice and expose Police to criticism when things go wrong.

³⁰ Above, n 1.

113. This is exacerbated by the fact that deployment is based not simply on levels of identified risk but on the availability of staff and the impact of their deployment on other Police operations. In this respect, a growth in protest activity clearly has a major impact on other aspects of Police operations, and the extent to which this is relevant to an assessment of reasonable limitations on protest activity has not been properly articulated or addressed.
114. When resources do not allow both the facilitation of protest activity and the minimisation of risk to be achieved, officers must necessarily choose between them. In this event, our strong sense is that officers tend to evaluate the information they receive through an unduly narrow lens that focuses primarily on the safety of participants. While they do not ignore the need to ensure that lawful protests are enabled and facilitated, this is usually a secondary consideration; they seldom weigh up in any systematic way the *probability* that a risk to safety will materialise against a proposed interference with a right to protest. This is perhaps to be expected; given two of Police’s statutory functions are maintaining public safety and keeping the peace,³¹ they are likely to give primacy to safety and take action to minimise a risk to safety with the resources available to them, at the expense of a person’s fundamental right to protest.
115. As the cases in the appendices to this report demonstrate, this may result in Police intervention on the basis of minimal or even imagined risks to safety. It also naturally leads to a focus, not on those who may be thought likely to perpetrate violence, but on the smallest group, whether they are the likely perpetrator or the likely victim. That may give the appearance of bias and favouritism, even though that is not the officers’ driving motivation.

Case study

116. The Let Women Speak group obtained a permit to hold a speaking event in a public park managed by Auckland City Council. Council and Police therefore had a little more information about the nature of the planned event than usual. They were also aware of a planned counter-protest intent on using noise as a way of preventing the speakers from being heard. The number of counter-protestors attending far exceeded the numbers anticipated but Police remained on the outskirts of the event after engaging with organisers of the counter-protest, who provided assurances that the counter-protest would be noisy, but otherwise peaceful.
117. Police were aware that similar recent events in Australia had resulted in violent clashes. The officer responsible for planning the Police response told us:

“We knew about the Let Women Speak that had been happening in Australia and that’s why I think there was a reference to counter-protests ...but we didn’t know how that would relate to New Zealand.”

118. The officer in charge of the operation at the event told us that the negotiation team took the lead in talking to counter-protest organisers, who assured them that while they were definitely there to make some noise and protest, it would be peaceful. He also made the point that no

³¹ Policing Act 2008. S 9.

previous protest *“had escalated to this point with this topic ... you predict future behaviour by past behaviours”*.

119. Let Women Speak volunteers erected some fencing to keep the groups separated. When the main speaker arrived the counter-protestors broke through the barriers and members of the crowd who had arrived to hear the speakers were subjected to threatening and intimidatory behaviour and in some cases were assaulted. Police responded by assisting the main speaker to leave and encouraging others to leave if they felt unsafe. Officers at the event told us that their assessment of the situation was that it was safer, and more likely to defuse the situation, to remove one person than to try and disperse the counter-protestors. One officer explained:

“There were a lot more people in the rainbow community than we could safely manage. Some of them were very aggressive towards people, the aggression was quite severe verbally. I had expected them to be vocal, but I didn’t expect them to be as aggressive as they were.”

SCOPE OF THE ENFORCEMENT POWERS AVAILABLE TO FRONTLINE POLICE OFFICERS AND THEIR SUPERVISORS DURING A PROTEST

120. In paragraph 67, we summarised Police powers and the offence provisions most commonly relied on by Police during protests. In this section we analyse these in more detail. We also describe any weaknesses in those provisions and assess whether New Zealand’s statutory and common law offence framework complies with international law, which requires that laws affecting the right to protest must be clear. We note in passing that none is limited to protest situations; they are generally tools upon which Police rely to deal with activity that intrudes on the rights of others.

Content of offence provisions

121. We begin with the observation that a number of the offences that currently exist appear fit for purpose. These include rioting, riotous damage, intentional damage and endangering transport under sections 87, 90, 269 and 270 of the Crimes Act 1961, and wilful damage under section 11 of the Summary Offences Act 1981. Because we regard these offences as appropriate in their current form, we do not consider them further in the analysis below.
122. Many other offences, however, are problematic in their current form and require reconsideration.

Trespass

123. The application of the law relating to trespass when a protest is being held in a place that is not already accessible to members of the public as a right, or is closed before or during a protest, is more problematic.³² For example, Wellington City Council trespassed protestors from the

³² Section 3 of the Trespass Act 1980 provides that it is an offence when a person “trespasses on any place and, after being warned to leave that place by an occupier of that place, neglects or refuses to do so.”

Shelley Bay occupation and the Speaker has the power to trespass protestors from Parliament grounds. We analysed in detail the limitations of trespass law in the protest environment in our Parliamentary Protest Review. We concluded that *“the somewhat arcane law on trespass, with its requirements for two separate warnings and its distinction between a section 3 warning and a section 4 warning is clearly oriented towards single individuals or small groups”* rather than large groups of protestors.³³ For this reason we concluded that trespass law was difficult to apply in a volatile protest situation and required reform. We repeat that view here.

Disorderly behaviour

124. Disorderly behaviour offences are contained in sections 3 and 4 of the Summary Offences Act 1981. Section 3 is directed at behaviour of 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”*. The focus is on the likely consequences of behaviour and the penalty is imprisonment not exceeding three months or a fine not exceeding \$2000.
125. The lesser offence under section 4(1) targets offensive behaviour and language and provides that *“every person is liable to a fine not exceeding \$1,000 who,—*
- *in or within view of any public place, behaves in an offensive or disorderly manner; or*
 - *in any public place, addresses any words to any person intending to threaten, alarm, insult, or offend that person; or*
 - *in or within hearing of a public place,—*
 - i. *uses any threatening or insulting words and is reckless whether any person is alarmed or insulted by those words; or*
 - ii. *addresses any indecent or obscene words to any person.”*
126. Section 39(1) of the Summary of Offences Act 1981 provides Police with the power to arrest for these offences.
127. The Supreme Court has held that behaviour is disorderly under section 4(1)(a) if *“as a matter of time, place and circumstance, it causes anxiety or disturbance at a level which is beyond what a reasonable citizen should be expected to bear”*.³⁴ The test requires officers, and indeed protesters themselves, to make a subjective judgment about what reasonable people should not be expected to tolerate. There is little guidance about how the test should be applied, and given their differing objectives, the opinions of Police officers and protesters are bound to differ. The fact that this was a split decision, with two of the five judges on the Court taking a different view, reinforces our view that legislative guidance about reasonable limits is required.

³³ Above n 15 at para 966.

³⁴ *Brooker v Police* [2007] NZSC 30.

128. In *Morse v Police*,³⁵ the Supreme Court considered the case of an appellant who had been convicted in the District Court under section 4 of the Summary Offences Act for burning the New Zealand flag in the grounds of Victoria University of Wellington, behind but within view of people attending an Anzac Day dawn service at the Lambton Quay cenotaph. The appellant had argued that her behaviour was not offensive, but was expression protected by section 14 of the Bill of Rights Act. The Court considered the test established in *Brooker* and clarified the need for the behaviour in question to be assessed as objectively disorderly or provocative of disorder – that is, it must not only cause offence, but also have a tendency to disrupt, or provoke the disruption of, the public order. Again, however, what that means in practice is a little difficult to discern. Disruption to public order does not require violence, but, short of that, it is not clear what behaviour it does capture. Inevitably, of course, it depends on context, but that does not preclude the specification of the indicators that should inform that judgement.
129. In our view, therefore, the offence of disorderly behaviour lacks clarity and fails for uncertainty and unpredictability. At a minimum, some guidance as to ‘reasonableness’ should be contained in statute rather than in case law.
130. Disorderly behaviour under section 3 has the same inherent weakness in its reliance of an officer’s view of reasonableness, but has the added complexity that it must be behaviour that is likely in the circumstances to cause violence against a person or property (and not merely disorder) to either start or continue. The Supreme Court has drawn a direct link between the conduct conceived of under section 3 and breach of the peace.³⁶ The requirement is not met when the only likely response is from Police officers.³⁷ The tests applied by courts in breach of the peace cases (see paragraphs 136-142) may therefore be relevant.
131. However, what is unclear is the extent to which the behaviour that causes the violence must be unreasonable, or whether behaviour that is objectively reasonable, but in the circumstances is nonetheless likely to cause violence by others, may satisfy the offence under section 3. Is a lone counter-protestor, standing to the side of a large protest march and reasonably holding a flag, guilty of an offence under section 3 purely because their presence is likely to cause an unreasonable and violent response from others, even though their behaviour is objectively reasonable? The law is not clear on this point.
132. We should note that, although Police officers who are trained in public order policing are not encouraged to use disorderly behaviour as an enforcement tool during a protest, other general duties officers occasionally do so, as a number of cases recently investigated by the Authority illustrate.³⁸

³⁵ *Morse v Police* [2011] NZSC 45.

³⁶ *Brooker v Police* [2007] NZSC 30, [2007] 3 NZLR 91 at [52].

³⁷ *R v Ali’Imatafifaji* [2007] NZCA 329.

³⁸ More generally, the Authority has investigated a number of recent complaints in a non-protest context that involve, from our perspective, unlawful application of the disorderly behaviour provisions by officers, and demonstrate that the offence is sometimes being misapplied.

133. In summary, we think disorderly behaviour offences are generally ill-suited to a protest environment: they are inconsistently applied, and sometimes used in a way that unjustifiably limits the right to protest, thereby undermining the social licence within which Police strive to operate.

Obstructing a public way

134. Under section 22(1) of the Summary Offences Act it is an offence for a person to obstruct a public road (such as a street or footpath) without reasonable excuse when, having been warned by a constable to desist, they continue with the obstruction or desist but then obstruct the same, or a nearby, public way again.

135. The offence again incorporates a reasonableness test without any statutory guidance and little case law as to its parameters, at least in relation to protests on roads and footpaths. The Court of Appeal said in *R v Oosterman* that this causes no difficulty “because of the open-textured and inherently flexible language of s 22”.³⁹ We disagree. The flexible language is precisely the problem. Given that by their very nature protests entail a degree of obstruction, and indeed may be designed to do so, it lends itself to a very wide measure of uncertainty for both protestors and Police officers alike, given the constant need to balance the tension between ensuring public safety and protecting protest rights (see paragraph 160 below).

Breach of the peace

136. A breach of the peace is an unlawful act under section 42 of the Crimes Act 1961, but not an offence. This means that a person can be arrested and detained in order to prevent the breach from continuing or restarting, but they cannot be prosecuted and must be released as soon as the need for their detention has passed. Police must also use no more force than is reasonably necessary to stop the breach of the peace continuing or restarting, or than is reasonably proportionate to the danger likely to result from its continuing or restarting.

137. The Court of Appeal has provided guidance on what constitutes a breach of the peace:

*“We are emboldened to say that there is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being so harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.”*⁴⁰

138. The conduct has to be “severe enough to cause alarm to ordinary people and threaten serious disturbance to the community”⁴¹, so the nature and quality of the conduct itself, as well as the likely consequences of that conduct in the particular circumstances, are all relevant considerations. An entirely peaceful counter-protest in circumstances where there is no

³⁹ [2007] NZCA 118.

⁴⁰ *R v Howell* [1982] QB 416 (CA).

⁴¹ *R (Laporte) v Chief Constable of Gloucestershire Constabulary* [2006] UKHL 55, [2007] 2 AC 105.

evidence that protestors or other members of the public are alarmed or distressed cannot therefore constitute a breach of the peace.⁴²

139. As set out in *Adams on Criminal Law*,⁴³ English courts have held:

*“The conduct in question does not itself have to be disorderly or a breach of the criminal law. It is sufficient if its natural consequence would, if persisted in, be to provoke others to violence, and so some actual danger to the peace is established.”*⁴⁴

140. However, significantly for the protest environment, section 42 is restricted to situations where the breach of the peace has already occurred and is either ongoing or likely to be renewed. Unlike jurisdictions such as the UK, the power does not extend to anticipated breaches of the peace.⁴⁵

141. While this legislative provision may not appear problematic in itself, from complaints we have received and officers we have spoken to, the way it is used by Police reflects a belief among some officers that their powers extend to the ability to arrest for anticipated breach of the peace.

142. Understanding among Police about the correct application of this provision is also not assisted by a lack of judicial guidance. Because it is not an offence to breach the peace (it merely gives Police an arrest power), cases rarely come before the courts.

Obstructing a Police officer in the execution of their duty

143. While the scope of the power under section 42 does not extend to anticipated breaches of the peace, Police do have an alternative power to act in circumstances where they believe a breach of the peace is imminent. Under section 23 of the Summary Offences Act 1981, it is an offence to obstruct a Police officer in the execution of their duty. Two of the functions of Police set out in the Policing Act 2008 are to keep the peace and to maintain public safety.⁴⁶ In the protest environment, Police can therefore use the power under section 23 in fulfilment of these stated functions. That is, they may give reasonable instructions in fulfilment of their duty to keep the peace and maintain order under the Policing Act in order to avoid a breach of the peace or disorder.⁴⁷ If a person does not comply with those instructions, Police have the power to arrest them for obstruction under section 23.⁴⁸

144. An example of what this may look like in practice is the ability to issue instructions to counter-protestors to maintain a reasonable distance from the main protest group for the purpose of maintaining the peace and, if a counter-protestor fails to comply, to arrest them for obstruction.

⁴² *Dyer v Brady, Bullen, Jones and Munro* [2006] HJAC 72, [2006] SCCR 629.

⁴³ [Citation to *Adams*].

⁴⁴ *Percy v Director of Public Prosecutions* [1995] 3 All ER 124 (QB) at 131 per Collins J.

⁴⁵ *Attorney-General v Reid* HC Auckland M920/85, 23 May 1986.

⁴⁶ Policing Act 2008, s 9.

⁴⁷ Policing Act 2008, s 9.

⁴⁸ *Minto v Police* (1991) 7 CRNZ 38 (HC).

Of course, an officer's instructions in such a scenario must be weighed against the counter-protestor's rights, and any restriction must be a reasonable limitation under the Bill of Rights Act.

145. Our concern with the obstruction power is twofold.
146. Firstly, our interviews with Police suggest some officers do not understand the limits of their ability to rely on the combination of the powers in the Policing Act and the power to arrest for obstruction of the performance of those duties. We do understand, however, that those officers who receive public order policing training do now receive legal training on this issue.
147. Secondly, the complaints we have received, particularly in the counter-protest environment, illustrate that some officers perceive the obstruction power as being broader in scope than the legislature could have intended. Case Study 1 below in Appendix B is an example of this. From our investigation it is evident that officers perceive that any risk to public safety or to the maintenance of the peace is sufficient to justify exercise of the section 23 obstruction power when a protestor fails to comply with an instruction. This approach fails to take into account the need to balance that risk against a counter-protestor's rights under the Bill of Rights Act. This balancing exercise requires a continuous assessment of the degree of risk inherent in someone's behaviour, not only when the instruction is given, but also when the decision is made to arrest them for a failure to comply with that instruction.
148. Sections 5 and 6 of the Bill of Rights Act circumscribe the obstruction power. However, in practice, the roundabout nature of this power as it relates to the Policing Act, and the reality that its scope is not often considered by the courts, make it unfit for purpose in the protest environment.

Case studies relating to these offences

Case study 1

149. Police saw Mr N waving an Israeli flag near the Auckland Town Hall on the outskirts of Aotea Square at the same time as a pro-Palestinian rally was starting inside Aotea Square. Mr N had previously interrupted similar protests by shouting through a megaphone but on this occasion he did not have a megaphone and was not shouting. He was spoken to by Police while he was approximately 150 metres from the pro-Palestinian protest group and had not attracted the group's attention. Mr N was asked to leave and stay away until the rally had finished because his presence "*could potentially cause a breach of the peace*", and he left as requested. He returned about an hour later and stood in Aotea Square on the stage where speeches were taking place wearing a face covering and without his flag. Although the protestors had not reacted to him as his identity was unknown, Police arrested him for obstruction and held him in custody at the Police Station for 90 minutes. He was charged with obstructing the Police officer who had asked him to leave and not return. The Authority has determined that the initial instruction was unlawful, since there was little evidence that his presence at that time was likely to cause a breach of the peace. Even if it had been, the subsequent arrest when he returned was unlawful because no consideration was given to whether any threat to peace or order still existed.

Case study 2

150. After protesting in Aotea Square, a pro-Palestinian protest group marched along Queen Street accompanied by Police. On the return leg of the march, heading back towards Aotea Square, Police became aware of Ms Rogers, who was standing on the footpath waving a sign by way of counter-protest. Police pushed her to the rear of the footpath and forcibly removed the sign from her because an officer thought this was necessary to “*de-escalate the situation*” after protestors attending the march “*were hostile towards her... they stopped and looked glaring at her with disdainful looks on their faces*”. Police formed a line between her and the march after she was approached by marchers holding a Palestinian flag in front of her. Ms Rogers was then arrested for breach of the peace when she sidestepped the Police line, moving quickly towards the march. She was placed in a Police van following the march and released in Queen Street approximately 15 minutes later when the march had arrived at Aotea Square. No charges were laid. The Authority has determined that removing the sign was unjustified and aggravated the situation; the consequent arrest for breach of the peace was unlawful because there was a very low probability that Ms Roger’s safety was at risk, so the interference with her right to protest was unjustified.

Criminal nuisance

151. Section 145 of the Crimes Act 1961 creates the offence of criminal nuisance, with possible imprisonment for up to one year, stating: “... *every one commits criminal nuisance who does any unlawful act or omits to discharge any legal duty, such act or omission being one which he knew would endanger the lives, safety, or health of the public, or the life, safety, or health of any individual*”.
152. The offence requires, as a pre-requisite, an unlawful act or failure to perform a legal duty. The element of endangerment, therefore, is essentially an aggravating factor that renders an already unlawful behaviour more serious.
153. The Court of Appeal has held that mere failure to make a reasonable assessment of the risk (negligence) is not enough, and that the provision creates an offence of recklessness, in which it is necessary to prove actual knowledge or awareness of the dangers associated with the activity.⁴⁹ Police have raised with us the difficulty of proving that subjective knowledge, rendering the provision largely unusable. In practice, in order to rely on the provision Police need to issue a warning to the protestor and they have told us that on occasion, protestors will wear earmuffs, or say loudly they cannot hear what Police are telling them. This increases the difficulty of proving that the protestor knew of the risks of their behaviour.
154. We agree that the mental element of the behaviour covered by this offence should extend to negligence – that is, a failure to take due care not to put others in danger.

⁴⁹ *R v Andersen* [2005] 1 NZLR 774, (2004) 20 CRNZ 1086(CA).

Conclusion on the lack of clarity as to the scope of enforcement powers

Judgments of reasonableness

155. The regulation of protest by legislation is very loose, particularly by comparison with the other jurisdictions we have considered. Police often act in a vacuum and are left largely to their own devices to make judgements as to reasonableness. We query whether a fundamental issue such as a reasonable limitation on fundamental rights ought to be left to Police officers without at least general over-arching guidance. Indeed, arguably the uncertainty in New Zealand's legislative regime is inconsistent with the requirement under international human rights law that laws be "*sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement*" (see paragraph 39).
156. The consequence – indeed the price - of leaving interpretation of broad principles of balancing and limiting rights to frontline staff is inconsistency in practice. This was borne out in our interviews, where the range of understanding of rights and powers was almost as broad as the number of officers we interviewed.
157. In saying that, we intend no criticism of either individual officers or Police as an organisation. The primary limitation we have identified in disorderly conduct provisions is the reliance on judgements of reasonableness by individual officers making decisions on the street. To some degree this is inevitable. The situations confronted by officers are fact-specific and sometimes require quick decisions as to how to act before they escalate and get out of control. Those decisions are often dictated by the resources they have available to them at the time. For example, officers who attended the Let Women Speak rally told us their decision to encourage Kelly Minshull and others to leave was driven by fears for their safety, and by having insufficient officers on the ground effectively to separate counter-protestors from supporters.
158. However, the variability in decision-making that arises from this is greatly exacerbated by the limited guidance in either the statutory provisions themselves or in case law as to how they are intended to apply to protest situations. Reasonableness tests, such as those inherent in the disorderly conduct provisions discussed above, occur throughout criminal and civil statutes, in particular within criminal law in the context of defences, such as self-defence under section 48 of the Crimes Act 1961. What sets the protest context apart is that it covers a huge variety of situations in which views as to what is and is not acceptable are likely to vary widely and where rights and freedoms may clash with competing rights and freedoms. Because of that, it is an area where it is particularly important that the meaning of reasonableness is delineated with more specificity than is now the case. Without that, there will constantly be a tension between what Police do and what many in the community, and particularly protestors, will regard as appropriate.
159. The contrary argument, of course, is that reasonableness depends upon the facts of the case, and that broad legislative tests allow justice to be done in the individual case. Indeed, the flexible tests applied by the courts may well have been developed with that in mind. We accept that the application of the law in this context will always require a significant degree of individual

judgement, that there are limits on the extent to which the legitimate parameters of those actions can be prescribed in advance, and that highly prescriptive rules would be problematic to apply and unduly fetter the ability of Police to do their job. However, that does not mean that no guidance can be given at all.

The tension between safety and rights

160. In our many interviews with officers, a consistent theme was the view that maintaining public safety trumps upholding rights of freedom of assembly and free speech, even when a protestor or counter-protestor has indicated to Police that they are willing to accept the risk to their own safety (from participants in a protest with opposing views) in order to be able to continue to exercise their right to free speech. For example, an officer interviewed in relation to the incident described above at paragraph 149 said:

“...the safest option was to remove him and yes, that may impinge on his right to protest but... what underpins my decision-making, I would rather have him make a complaint about his right to protest than him end up in a hospital bed and me be talking to you about standing with my hands in my pockets doing nothing.”

161. The emphasis on safety is reflected in Police Policy on demonstrations, which states that as an overriding principle “*the safety of the public and Police is paramount*”. Although there is mention of the responsibility of Police to help facilitate the rights of lawful, peaceful protestors and to protect them from other factions who would seek to disrupt their protest, the way in which a risk to safety (however large or small) ought to be balanced against the right to lawful, peaceful protest is not specifically addressed.
162. We put to an officer the scenario of a single peaceful protestor, whose presence was provoking an angry reaction from a nearby group of protestors with an opposing view (‘the agitators’). The officer’s view, consistent with what we have observed in complaints we have received, was that rather than address the potentially violent behaviour of the group, Police would likely focus on moving the individual peaceful protestor to safety:

“It’s normally about safety. So, particularly if you’ve got an agitating group that’s surging to, dare I say it, the peaceful protest activity, first and foremost, we’d be trying to protect them and get them to a safe area and deal with the agitators later rather than going and trying to arrest the agitator.”

163. That particular officer did express the view that if the peaceful protestor chose not to move to a safe area (preferring to continue their right to protest), he would not coercively move them. However, this is a different approach from that taken by other officers in complaints the Authority has received, in which the peaceful protestor has been forcibly removed from the protest area.
164. Sometimes that decision-making is driven by available Police resources, but sometimes it is simply driven by the view that the easiest and most immediately available avenue for addressing a risk to safety ought to be taken, without much, if any, consideration of the probability that the risk will materialise or the importance of preserving competing rights. While the Policing Act states that public safety is a core objective of officers, there is currently insufficient guidance for

frontline officers on the extent to which risks to safety should override other rights under the Bill of Rights Act.

165. We are aware of efforts within Police National Headquarters to provide training and guidance on how officers can better determine their potential response through the lens of rights as well as safety (both in preparing for deployments to planned protests and when policing on the ground at those protests). We accept that this is a complex area and without further guidance from the legislature, a difficult area for Police to strike the right balance.
166. We note that the view that the risk to safety has precedence over other rights is contrary to the United Nations Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests, which states that *“law enforcement must be guided at all times throughout a protest by their primary duty to facilitate the right to freedom of peaceful assembly [and] promote and protect human rights and freedoms”*.⁵⁰

⁵⁰ A/HRC/55/60 at para 42.

Chapter 4: Possible regulatory solutions

167. As our discussion in Chapter 3 demonstrates, the current legal framework is in our view inadequate. Essentially it leaves frontline Police officers and their supervisors to determine for themselves what constitutes reasonable restrictions on protestors' rights, with only general and high-level guidance in statute and case law.
168. The relative absence of guidance is an impediment to the Authority as well as Police. In response to a number of complaints regarding Police actions during protests (discussed in detail in the appendices to this report), the Authority has found Police actions to have been unlawful. However, we are conscious of the fact that views as to the reasonableness of specific Police actions in a protest situation may well vary widely, and that our findings are not necessarily more reflective of the appropriate community standard in balancing competing rights than those of Police. That demonstrates the core problem. The way in which protestors' rights should be balanced against those of other members of the public, and counter-protestors, is a vexed question, about which there is a vast range of opinions, as our consultations have demonstrated; it is not a question that should simply be left to the judgement of individual Police officers, or for that matter the Authority or the courts, to determine after the event. When it is, it creates a wide measure of uncertainty for both officers and protestors and risks an injustice being done to both. Greater guidance is required.
169. In our review of practice in New Zealand and the approaches adopted by overseas jurisdictions, we have identified a number of policy options for achieving this. In this chapter we explore the strengths and weaknesses of each of these options and set our view about what the proposed policy response ought to be.

LEGISLATIVE GUIDANCE

Overall legislative framework and guidance

170. Many of the jurisdictions we have considered have one or more relatively comprehensive statutes prescribing how protests, along with other public order events, are to be regulated. For example:
- In the United Kingdom, the Public Order Act 1986 prescribes a regulatory regime for the notification and approval of public processions and stipulates a number of offences relating to how both processions and other assemblies are conducted. This has been supplemented by a further Public Order Act in 2023. This creates not only a range of new offences and enforcement tools (which we discuss in more detail below), but also provides for the imposition of serious disruption prevention orders on a person:
 - i. who is convicted of a protest-related offence;
 - ii. who has a previous such offence or a protest-related breach of an injunction;

iii. in respect of whom the Court is satisfied that such an order is necessary to prevent further similar offending.

- In Ireland, the Criminal Justice (Public Order) Act 1994 provides for a range of public order offences and empowers Police to impose various restrictions and controls on large assemblies in the interests of public safety and the preservation of order.
- In Northern Ireland, the Public Processions (Northern Ireland) Act 1998 establishes an independent public agency, entitled the 'Parades Commission for Northern Ireland', with the mandate to regulate processions and related protest meetings which must be reported to it.⁵¹
- While Victoria and the Northern Territory, like New Zealand, ostensibly allow local authorities to receive applications for, and issue, permits to hold protest events in a public place, most other Australian states have legislative processes at State government level for regulating a protest event in advance of its occurrence (although offence provisions are usually contained in a separate statute). Some, such as Queensland, also recognise the importance of the right to freedom of assembly, and state, with varying degrees of specificity, the criteria (including the rights and freedoms of other people) that must be considered in imposing restrictions on protests.

171. While the details of these legislative models for regulating protests are not necessarily required or appropriate in the New Zealand context, and sometimes allow for more extensive limits on fundamental rights than we consider appropriate, there would be merit in setting out, through a single legislative vehicle, the overall approach to be taken to the regulation and management of substantial assemblies and events in public places. This would enable the legislature to articulate the principles for upholding and balancing fundamental rights in a holistic way – that is, to provide processes and more clearly articulated tests to guide judgements of reasonableness. Such guidance should be seen as a core legislative function: because guidance about rights, and limitations on those rights, involve judgements about social licence and the rule of law, it ought to emanate from those elected by the public at large to express public values in a democracy.

172. It is beyond the scope of our inquiry to develop a set of detailed legislative proposals. However, by way of example of the type of regulatory regime we have in mind, we envisage that the statute could contain:

- a set of over-arching statements of principle about the sorts of impacts arising from an actual or anticipated protest (or other assembly) that might justify limitations on fundamental rights such as the freedoms of expression, assembly and movement;

⁵¹ This was, of course, developed during the sectarian violence known as "The Troubles" and we were informed that is still applied predominantly to regulate marches by Protestant and Catholic groups.

- a new regulatory regime for advance notification by organisers of designated types of assemblies (including protests);
- whether or not an assembly is notified, a provision enabling the local Police District Commander (or appropriate delegate), in consultation with the local authority, to set conditions in advance with which participants must comply;
- a requirement that the assembly organiser must use best endeavours to communicate any conditions to participants themselves;
- an ability for the senior Police officer on the ground at the commencement or during the course of an assembly to set, and if necessary adjust, conditions;
- the types of conditions that might be imposed by the Police District Commander before the protest, or the senior Police officer during the protest, and the grounds upon which they might do so.

173. Such a statute would not only make the law more accessible for Police, protestors and the public, but it would also provide a vehicle for encouraging Police to see their functions through a human rights lens, which, as already discussed (above, paragraph 164), is given less emphasis in training and enforcement than is desirable. In order to make clear that the statute would be designed to facilitate orderly protests, it might be termed, as in Queensland, the 'Peaceful Assembly Act'.

174. We consider below each element of the proposed statute in turn. Before doing so, we make two preliminary comments.

175. First, the statute would need to be accompanied by a review and consolidation of public order offences. We discuss below some of the changes we think are required.

176. Secondly, because primary legislation in the form of statutes must be drafted at a fairly high level of generality, it is unlikely on its own to be sufficient to shape the approach taken by law enforcement officers in a specific protest situation. The statute would therefore need to make provision for the enactment of secondary or tertiary legislation,⁵² in order to enable more detailed guidance to be given of the ways in which these limitations might be given effect.

177. As an example of the form any empowering provision for secondary legislation might take, we note sections 14(1) and 14(12) of the United Kingdom Public Order Act 1986, which read:

(11) The Secretary of State may by regulations amend any of subsections (2A) to (2C) for the purposes of making provision about the meaning for the purposes of this section of—

⁵² Secondary legislation, which is passed by Order-in-Council, traditionally takes the form of Regulations. Tertiary legislation is delegated legislation and includes such things as codes of practice, manuals, instructions and Ministerial policy statements.

(a) serious disruption to the activities of an organisation which are carried on in the vicinity of a public assembly, or

(b) serious disruption to the life of the community.

(12) Regulations under subsection (11) may, in particular, amend any of those subsections for the purposes of—

(a) defining any aspect of an expression mentioned in subsection (11)(a) or (b) for the purposes of this section;

(b) giving examples of cases in which a public assembly is or is not to be treated as resulting in—

(i) serious disruption to the activities of an organisation which are carried on in the vicinity of the assembly, or

(ii) serious disruption to the life of the community.

178. An example of a provision for tertiary legislation may also be found in the United Kingdom Public Order Act 2023, which empowers the Secretary for State to issue guidance to Police on the use of serious disruption prevention orders, although any such guidance must be tabled in Parliament in draft and lie for 40 days, within which time Parliament may resolve not to approve it.

NEW REGULATORY REGIME FOR NOTIFICATION OF PROTESTS

179. One of the major problems we have identified is that decisions about what constitutes reasonable limitations on rights to freedom of expression, assembly and movement are, in the context of a protest, left to be made by individual officers on the front line.
180. Inevitably, of course, the situations that Police have to deal with are to a degree fact-specific and require the exercise of discretion by officers confronting them. That is why, as we have emphasised (above, paragraph 61), prior liaison and negotiation between Police and protest organisers is such an important component of the effective management of protest activity.
181. But that does not mean that no prior decision-making is possible about what limitations should be placed on the form a protest should take. Many situations in which some constraints on the right to protest are desirable can be identified in advance, and the general criteria that should govern the nature and extent of those constraints can be readily articulated, at least at a high level. Thus constraints ought not to be imposed merely by providing a set of offences to be used during or after the event, even if they are clearly prescribed; in our view there ought to be a mechanism for prior decision-making about what those constraints should be, so that both protestors and Police understand the parameters within which they are expected to operate. In other words, while Police must retain a large measure of discretion, that discretion needs to be exercised within a structured framework. Equally, in a broad sense protestors have a right to know in advance what they can and cannot do.

182. We have therefore concluded that the introduction of a regime in New Zealand prescribing a process for advance notification, would be beneficial for Police, protestors and the broader community.

183. As we have briefly alluded to above (paragraph 170), almost all other jurisdictions we have examined have such a regime, although they take a variety of forms and sometimes extend to an approval and permitting process. For example:

- The United Kingdom Public Order Act 1986 requires that written notice is to be given of a proposed public procession unless it is not reasonably practicable to do so or unless the procession is one customarily held in the Police area or is a funeral procession.
- The Peaceful Assembly Act 1992 in Queensland recognises the *“right to assemble peacefully with others in a public place...subject only to such restrictions as are necessary and reasonable in a democratic society in the interests of: (a) public safety, or (b) public order, or (c) the protection of the rights and freedoms of other persons...including the rights of persons to carry on business”*. The Act prescribes a notification and authorisation process for such assemblies and allows conditions to be imposed by the Police, local authorities or the courts at various points in the authorisation process.
- The Public Assemblies Act 1972 in South Australia provides for a person engaged in organising an assembly to give notice to the Police of an intended assembly. Police may object, setting out the grounds on which the proposed event would *“unduly prejudice the public interest”*, in which case the organiser may apply to the Court for approval. However, the legislation gives little guidance as to the basis upon which such determinations are to be made.
- The Public Order in Streets Act 1984 in Western Australia provides processes for obtaining authorisation from Police in advance for meetings and processions in public places. Police may only refuse a permit if there are reasonable grounds to apprehend public disorder, damage to property, public nuisance, obstruction to a roadway that is too great or too long, or risk to public safety.
- Part 4 of the Summary Offences Act 1988 in New South Wales (which incorporated the provisions of the Public Assemblies Act 1988) establishes a process for consultation and cooperation between protestors and Police, and the authorisation or prohibition of public assemblies by the Police Commissioner.

184. We have considered whether the current local authority arrangements, some of which provide for notification, are sufficient to enable Police and Councils to engage with protest organisers and seek their cooperation to organise the protest so as to minimise undue disruption. That should, of course, be the starting point, in accordance with Police's 4Es operating strategy discussed above at paragraph 61, and is in most cases enough for the purposes of Police planning and deployment.

185. It may be thought that this suffices: why the need for a statutory notification regime when a substantial majority of protests proceed without incident and without undue disruption to other members of the public?
186. However, on the basis of what we have heard from consultees both in New Zealand and elsewhere, we are satisfied that a notification regime, especially if it is combined with the ability to set enforceable conditions in advance, would be of significant assistance in protecting the right to protest and ensuring that it is limited only to the extent that is reasonably necessary to preserve competing rights. There are four related reasons for our view:
- In a significant number of cases, albeit a minority, Police intelligence systems do not presently get sufficient advance warning of a protest to enable optimal planning, which can result in ad hoc decisions made by frontline Police officers with no public order policing experience or training when things start going wrong.
 - Notification would allow those groups whose protest plans are not widely publicised but who will otherwise engage cooperatively in discussions about how the protest should proceed, to be contacted in advance.
 - Even if they would not have voluntarily changed their plans if they had been engaged with, at least some will modify their behaviour if they understand the legislative framework.
 - Nation-wide consistency and force of law behind any conditions set (see further below at paragraph 195).
187. There will, of course, still be a minority who will refuse to engage with such a notification process. There will also be occasions when it will be very difficult for Police to enforce the conditions at the scene. But that is not a good argument for rejecting a notification process altogether. The question is not whether some will ignore it anyway, but whether it will make sufficient difference to justify the resources required to make it work. We accept that most groups voluntarily engage with Police and comply with any limitations proposed by Police. We also accept that many of those who are not compliant would ignore a statutory notification process. However, on balance we are satisfied that, if a regulatory system of this sort was clear and well communicated, Police and local authorities would become aware of the details of a significant number of additional protests and be able to plan for them, and that this would be a significant improvement on the current loose and uncertain regime within which Police and Councils are required to operate. Accordingly, any new public order legislation should provide for it.
188. Some of those we have consulted during this inquiry have suggested to us that any notification process would be ‘bureaucratising’ protests and have a chilling effect on the exercise of rights to freedom of expression, assembly and movement that are fundamental to the maintenance of a democratic society. While we agree that an approval and permitting process might have this result, we do not agree that a notification process would do so. Indeed, by addressing much of

the uncertainty arising from the current legislative regime, it would go some way towards ensuring those rights receive enduring protection.

189. We stress that the purpose of a notification regime would not be to determine whether or not a protest should proceed at all. Rather, it would be for the purpose of facilitating voluntary engagement with protest organisers, considering whether any restrictions as to the form of protest should be imposed, and setting appropriate conditions to impose those restrictions (as proposed below from paragraph 228).
190. We note that such a notification regime would replace the disparate notification and approval processes that already exist in most Council bylaws. As we have discussed above (paragraphs 90- 93), these bylaws are broadly drafted and many appear to be contrary to the Bill of Rights Act and therefore unlawful under section 155(3) of the Local Government Act. A wholesale review of Council public places bylaws would therefore be a necessary corollary of the legislative regime we are proposing.
191. There are a number of issues which would need to be considered and addressed in the development of this regime:
- Upon whom should the obligation to notify be imposed?
 - What consequences should follow from a failure to notify?
 - To whom should notification be made?
 - How far in advance should notification be required?

Upon whom should the obligation to notify be imposed?

192. Generally, notification regimes in other jurisdictions impose the obligation to notify on the organiser of the protest. This is sometimes done directly, and sometimes indirectly (as in the UK Public Order Act 1986) by specifying that the notice must provide the name and address of the persons (or one of the persons) proposing to organise it.
193. We recognise that sometimes protests will develop organically without a single organiser as a point of contact. However, that is the exception rather than the rule. Generally, there is a person or group of persons who initiate the event and communicate the fact that it is to take place – for example, through social media. Indeed, both Police and Council officers reported to us that, when they learn through intelligence gathering that a protest is to occur, there is generally little difficulty in identifying who the organiser is.
194. We have also considered whether a notification regime might encourage protest organisers to engage in strategies to disguise their role. We accept the risk that this might occur, although those in other jurisdictions such as the United Kingdom have told us that this is not generally a problem. However, given our proposal below that a failure to notify will result in the removal of legal protections rather than criminal liability, we do not see this as an issue; there will be nothing in the regime that would incentivise organisers to conceal their role.

What consequences should follow from a failure to notify?

195. A requirement for notification of public assemblies carries with it the implication that there will be adverse consequences for a failure to adhere to that requirement. But what should those consequences be? Two related issues arise: what consequence should follow from a failure to notify; and what implications should that have for the lawfulness of the assembly itself?
196. Overseas jurisdictions vary in both respects. South Australia and Tasmania require that a ‘permit’ or ‘approval’ be issued before a notified event can take place, and any person organising or conducting an event without a permit or approval commits an offence. The United Kingdom similarly makes organisers of an event guilty of an offence if the notice requirements have not been satisfied or if the date, time or route of the event differs from that specified in the notice, although it is a defence if the accused proves they did not know of or have reason to suspect the failure.

Legal protection for those who notify – our preferred approach

197. Others take a softer approach and essentially give the regime some teeth in a positive way by providing legal protection to participants in an assembly if it is notified. For example:
- In New South Wales the public assembly provisions in Part 4 of the Summary Offences Act 1988 do not specifically require notification, and no offence is created by the provisions themselves. However, if the assembly is notified, participants in it are not guilty of any other offence if the assembly is held in accordance with the notified particulars and: (i) the Police Commissioner does not oppose it; or (ii) the Police Commissioner opposes it but unsuccessfully applies to the Court for a prohibition order; or (iii) the protest organiser applies to the Court for an authorisation order.
 - In Queensland, a failure to give notice also does not constitute an offence. However, if notice is given, the Police Commissioner or local authority may issue a notice of permission or may apply to a magistrate for an order refusing permission. The Court may then refuse permission or specify conditions that are to apply to it. There is no specific offence of participating in an assembly that is unauthorised or conducted contrary to the conditions imposed. Instead, section 6 of the Peaceful Assembly Act 1992 states the positive consequences of notification and authorisation: a person who, after notification, participates in an authorised public assembly that is peaceful and held substantially in accordance with the notified particulars *“does not merely, because of the participation, incur any civil or criminal liability because of the obstruction of a public place”*.
198. The approach taken in these latter jurisdictions has a number of attractions:
- It has symbolic advantages, by making clear that the regime is designed not to prevent such assemblies from occurring altogether, but to facilitate their management for reasons of maintaining public safety and minimising undue disruption.
 - It would not potentially criminalise organisers who on a voluntary basis are simply facilitating the exercise by others of their fundamental right to protest.

- Instead, the provision of limited protection for protestors who notified would enable decisions to be made in advance about the conditions under which a proposed protest might be made and would provide a measure of certainty and legal immunity if they conducted themselves according to the particulars notified. In contrast, those who chose not to notify or to comply with conditions would lose that immunity, but still retain the right to demonstrate reasonable excuse on the facts of the particular case if subsequently prosecuted.
- The creation of an offence for failure to notify might sometimes be difficult to enforce, since, as noted above, it might encourage organisers to lower their profile so that protests appear to develop organically. The provision of a legal immunity would provide no such incentive.
- Conversely, the fact that limited legal immunity followed notification would provide benefits to participants who might place pressure on organisers to comply with the notification requirement.

199. On the other hand, the softer approach is a little opaque: the legal ramifications of a failure to notify might not be obvious to many or most protestors, and it may not therefore provide sufficient incentive to encourage cooperation by organisers who are currently uncooperative, or unstructured in their approach to organising a protest.

200. Notwithstanding that, on balance we favour the softer approach similar to that taken in New South Wales and Queensland, under which protestors would have immunity from criminal and civil liability if a protest proceeded substantially in accordance with the particulars notified, subject to any conditions subsequently set by Police in advance or at the scene. It would be better aligned to international obligations; it would be more likely to be regarded as facilitating rather than impeding legitimate protest; and it would maximise cooperation from protest groups to enable protests to be undertaken safely and without unnecessary disorder or disruption.

Criminal penalties for those who do not notify – an alternate approach

201. However, if it were thought that this would not provide enough incentive for notification and achieve its objectives, and that the failure to notify should be an offence, we are satisfied such an offence provision should apply only to limited types of protests. A blanket requirement for notification of every assembly in a public place, enforced by way of criminal penalties, would be unjustified (although, as we have discussed above at paragraphs 90-94, some local authority bylaws currently purport to require this). In particular, it would be an unreasonable limitation on spontaneous protests in terms of section 5 of the Bill of Rights Act. It would also be contrary to the Model Protocol for Law Enforcement Officials to Promote and Protect Human Rights in the Context of Peaceful Protests developed by the United Nations Human Rights Committee,⁵³ which states that national laws should not require prior authorisation for assemblies and must

⁵³ A/HRC/55/60 at para 18.

also enable the holding of spontaneous assemblies. There might also be some difficulty in defining what an ‘assembly’ for this purpose was; if the definition was limited only by reference to the numbers involved (for example, 20 or more persons), that would potentially cover, and place unduly onerous and unnecessary controls on, all manner of harmless gatherings in public places.

202. If a notification regime enforced by way of criminal penalties were to be adopted, how then should it be limited? We have identified two possible options.
203. The first option is to limit the notification regime according to the motive or purpose of the assembly. Two notable examples are Western Australia and the United Kingdom.
204. In the former, notice must be given of processions of three or more persons but only if they are held for the purposes of communicating or expressing a view to, or ascertaining the view of, the public or any section of the public.
205. In the latter, a procession requires notice only if it is intended to demonstrate support for or opposition to the views or actions of any person or body of persons, publicise a cause or campaign, or mark or commemorate an event.
206. We do not support that type of limitation. There is a strong argument for exempting specific assemblies from the regime; funerals are an obvious example. But otherwise, we do not think the notification regime should distinguish between gatherings by specifying those that are captured by reference to motive. The purpose of the regime is to determine whether any restrictions on the activity ought to be imposed because of its likely interference with the rights of others, not because of the reason why it is being undertaken. There is no reason, for example, why protestors intending to assemble on or march down a public road should be required to give notice, but not those organising boy racer meetings, musical events, graduation marches or Christmas parades.
207. The second option, which we prefer, would be to limit the regime to events on the basis of location, which we would limit to: (1) assemblies on public roads (and perhaps footpaths or throughways, however defined) and; (2) events that comprise an occupation (by way of encampment or otherwise) of a public place by 20 people or more for a minimum period – for example, 12 hours or overnight. We consider each of these in turn.

Assemblies on Roads

208. Moving and static assemblies (including protests and demonstrations) on public roads should be subject to mandatory notification because they are most likely to cause serious disruption to other members of the public, to raise safety concerns, and to give rise to the need for traffic management plans.
209. This is specifically the approach taken in Western Australia, Tasmania and Northern Ireland. It is also impliedly the approach taken elsewhere in the United Kingdom, where the Public Order Act 1986 requires notification only of ‘processions’ but not ‘assemblies’.

210. We note there is already a power for proactive regulation of such activities on public roads. Section 35 of the Policing Act 2008 empowers an officer to temporarily close a road if they have reasonable cause to believe that, at or near the place:
- public disorder exists or is imminent; or
 - danger to a member of the public exists or may reasonably be expected; or
 - a serious offence has been committed.
211. We note, too, that obstructing a public way without reasonable excuse is already an offence under section 22 of the Summary Offences Act 1981 if the person obstructing is warned by a Police officer to desist and fails to do so.
212. We accept that this would effectively ban spontaneous protests on public roads and might be seen as an unjustified limitation on rights in terms of section 5 of the Bill of Rights Act. However, we stress that it would not impede spontaneous protests in any other place.
213. Consideration would need to be given to the definition of public roads (and analogous thoroughways) for this purpose. In section 35 of the Policing Act 2008 it extends to every square or place intended for the use of the public, and in section 22 of the Summary Offences Act 1981 it is defined to mean every road, street, path, mall, arcade, or other way over which the public has the right to pass or repass. In Western Australia it is defined to include footpaths and any steps, doorways or entrances abutting it.
214. We are inclined to the view that all of these definitions would be too wide. They would, for example, stifle the sort of one-person protest that occurred in the case dealt with in Appendix B of this report. It is beyond the scope of this report to attempt an appropriately limiting definition, but at a minimum it should obviously cover all areas accommodating public vehicular traffic. It might also extend to pedestrian malls that are designed for through foot traffic.
215. Consideration would also need to be given to the definition of ‘assembly’. It clearly connotes two or more people, but it may be thought that a gathering of a larger number of people should be required before the notification regime is triggered. On the one hand, the application of the regime to a gathering or march of half a dozen people might be seen as ‘a sledgehammer to crack a nut’. On the other, two people walking up a motorway can be just as disruptive as 20.

Occupations

216. The second type of assembly that we propose should be covered by the notification regime, if it were to be enforced by criminal penalties, are those that are intended to include an occupation of a public place (such as a reserve or a town square) for any significant period. They might be defined as an assembly that comprises at least 20 people and is intended to endure for such a period that it will significantly increase disruption to the public. We envisage, for example, assemblies that are intended to endure overnight or are accompanied by structures such as tents that signify an intent to engage in an ongoing occupation.

217. We have had three such events drawn to our attention during the course of our inquiry. The first was the occupation of Pukekawa, the Auckland Domain pā in February 2022. Protest activity organised by Destiny Church, involving thousands of people at multiple events in Auckland, culminated in the occupation of the Domain by approximately 30 people who erected 40 tents at the site. The second was the occupation of Cranmer Square in Christchurch, at the same time, which began with a group of 12 to 15 people erecting five tents and gradually increased in size over a four-week period. In the third, dsuring April and May 2022, a large number of people, including some of the people who had occupied Cranmer Square, occupied the Residential Red Zone in Christchurch, causing significant damage to a Council reserve.
218. These events caused major disruption, required the deployment of significant resources by Police and Council, and posed significant challenges for them as they sought to bring the events to a peaceful conclusion.

To whom should the notification be made?

219. We envisage that notifications would be made to local authorities, who would then liaise with Police as to how the protest should be handled. The form of the required notice should be prescribed and include such information as the particulars of the organiser; the purpose of the assembly; the date, time and place or route of the event; its expected duration; and the expected number of participants. In this respect, the process would largely mirror what currently happens informally when either a Council or the Police gets advance notice from protest organisers or from their own intelligence gathering that a protest is to take place.
220. A notification requirement would formalise this and enable Councils and Police in all cases to discuss with protest organisers, for example:
- what form the protest will take;
 - whether any changes are required to address unnecessary disruption;
 - if the protest is on a road, how traffic management issues should be addressed;
 - how safety concerns should be addressed.
221. It would also enable Police, in consultation where appropriate with Council officers, to set conditions as to the way in which the protest is to be conducted (discussed further below from paragraph 228).
222. Such a notification process would to a large extent mirror the processes that Police and many Councils already follow when protests become known to them through intelligence gathering. The difference is that a standard notification regime would communicate expectations to protestors, impose a more systematic practice, and allow consideration to be given in advance as to what conditions on the nature and form of the protest should be imposed. It would also clarify that ultimate responsibility for the management of a protest rests with Police and not Councils.

How far in advance should notification be required?

223. We have been told by Police that, unless they receive at least 21 days' notice of a protest on a public road, they may incur significant costs. This is because, if the event requires staff resources that can only be provided by changing staff rosters, the collective agreement imposes an obligation on them to pay each staff member whose rostered day off is changed, an additional \$100 for the first shift and \$50 for each shift thereafter, unless the staff member is given at least 14 days' notice of the change to their shift roster. One District Commander told us that for a single protest this can result in additional costs of \$25,000. It goes without saying that, in the context of large-scale protests that require the deployment of significant numbers of Police staff, this is a significant cumulative fiscal burden on Police that inevitably impacts on their workforce and their ability to meet demands for their service.
224. However, in our view it would be unreasonable to require notice so far in advance in every case. The planning of many, if not most, protests is unlikely to be undertaken so far in advance and even if the event itself is in contemplation at that point, vital information such as likely numbers is unlikely to be known. On the other hand, organisers should be encouraged to give at least 21 days' advance notice when they are in a position to do so.
225. We also note that the notice period needs to allow time for conditions to be set (as proposed below) and, if necessary, to be challenged and reviewed.
226. In the light of this, we think notice should be given at least 21 days in advance unless it is not reasonably practicable to do so, in which case it should be given at the earliest reasonable opportunity, and in any event, not later than five working days before the date of the protest.
227. If an organiser notified within five to 21 days but not at the first reasonable opportunity, they would not commit an offence but would be civilly liable for any additional costs borne by Police as a consequence of the short notice.

THE PRIOR SETTING OF CONDITIONS

228. A notification regime would better facilitate Police and local authority planning and deployment. However, it would not go far enough to achieve the type of advance clarity around the legitimate parameters of protests that we are seeking. We are satisfied that, as is the case in comparable overseas notification schemes, the Police in consultation with the local authority should be able to set enforceable conditions in advance. That would be of significant assistance in protecting the right to protest and ensuring that it is limited only to the extent that is reasonably necessary to preserve competing rights, to protect public safety, and to minimise the extent to which there is an adverse impact on other members of the public and the environment.
229. Such condition-setting would generally be able to be done by way of constructive dialogue in advance with protest organisers, as often now happens voluntarily. But where necessary it would also allow boundaries for a proposed protest to be communicated to protest organisers who are unwilling to engage constructively, or whose constituency is diverse and unlikely to be amenable to restrictions on a voluntary basis, so that the boundaries within which they must

operate are at least to a degree articulated in a consistent way. Our view in this respect was reinforced by a senior officer in the London Metropolitan Police who told us that setting conditions in advance was effective because it focused protestors on expectations.

230. In relation to roads, condition-setting would do nothing more than allow prior decision-making about whether, and under what conditions, there will be a reasonable excuse for the obstruction of a road, the absence of which is already an offence if a person refuses to comply with a Police direction to desist. In essence, therefore, it would provide a more transparent and systematic, and potentially less arbitrary, way of deciding to limit a protest on a road than is currently available to Police. It would also expand the time horizon within which decisions about closing a road could be made, as well as impose some legislative restrictions around the making of such a decision. Some consequential amendment to the Policing Act might be required.
231. Whatever the location, prior condition-setting would also provide a more effective way of dealing with a large and coordinated group, in respect of whom mass arrests for obstruction are often impracticable.
232. The local Police District Commander would be best placed to impose such conditions, but the legislative framework would need to prescribe a threshold to be reached before any condition could be imposed and the types of conditions that would be available. The legislature should obviously be satisfied that the types of available conditions, and the threshold for applying them, are reasonable limitations under section 5 of the Bill of Rights Act. There should also be a requirement that Police set conditions in consultation with the local authority (and in the case of a State Highway, NZ Transport Agency Waka Kotahi).
233. We envisage, for example, that the legislation might allow for the setting of conditions as to time, place, and the location or route when there are reasonable grounds to believe that:
- the condition is necessary to reduce the risk to the safety of others, of serious public disorder or damage to property, of serious disruption to the life of the community (including the activities of businesses in the vicinity), or of unreasonable interference with the rights and freedoms of others; and
 - there are no other less restrictive means available to address the identified risk.
234. There should also be provision for conditions that are designed to reduce the risk of confrontation between protestors and counter-protestors when they are expected to congregate in the same place.
235. Of course, there is no good reason why the ability to set conditions should be confined to assemblies which are notified in accordance with a statutory requirement. If a protest organiser fails to comply with the notification requirement, but Police or Council learn of the planned event in some other way, conditions should still be able to be imposed if they meet the statutory test.
236. Most other jurisdictions provide for an independent review mechanism if conditions are imposed in advance. We think this is essential to ensure that the setting of any conditions by

Police as to the form of protests on public roads is subject to proper scrutiny to ensure that they are a reasonable limitation on the right to protest and the minimum necessary for the purpose. This might be achieved by provision for urgent application to the Court, or by way of legislative provision for a judicial review officer appointed for the purpose. If notification, as we have proposed, could be made only five days before the date of the planned assembly, the review would need to be able to be concluded within that time period so that participants were not denied their legitimate right to assemble merely because of delays in the system.

237. We expect that Police would use best endeavours to communicate conditions to protest organisers and participants both in advance and on the day (for example, through the use of loud hailer for communication). Guidance would need to be given as to how this was to be done effectively.
238. We have considered what the consequences should be if a person knowingly fails to comply with a lawfully imposed condition. We are inclined to think for the purposes of transparency that separate offences ought to be created when:
- a protest organiser fails to use reasonable endeavours to communicate conditions to potential participants (for example, by putting them on the social media page that has advertised the protest); and
 - protest participants knowingly fail to comply with a condition.
239. We note for completeness that, in cases where there may be doubt about whether the organiser has effectively communicated conditions to participants on the day, the Police might need to reiterate those by way of loudhailer at the scene. That would be for the purpose of ensuring that participants were aware of the relevant condition or conditions, and to lay an evidential foundation for the use of force or prosecution in the event of non-compliance.

Should provision for a Traffic Management Plan be a potential condition?

240. When there is an assembly on a public road, measures are generally required to manage traffic flows and re-direct motorists. These are often simply put in place on the day by Council staff and Police officers (for example, by changing traffic light phasing or erecting bollards). This generally suffices for an assembly that is small and peaceful.
241. Occasionally, however, a more detailed and documented traffic management plan is required. When Councils learn of an assembly in advance, they sometimes request such a plan from the protest organisers, but this is only infrequently provided because organisers do not have the expertise to develop such a plan themselves and are reliant on private traffic consultants, whose charges frequently exceed \$5000 and are therefore regarded as prohibitive. In those instances, the burden and cost of providing such a plan tends to fall on the Police, who bear the cost of getting such a plan prepared.
242. Our proposed notification process would allow a more systematic and accurate assessment to be made in advance about how traffic flows can be managed, and the extent to which a traffic

management plan is required. Police have told us that they do not think responsibility for making that assessment, and where necessary developing or obtaining a plan, should rest with them, although they have a role to play. Rather, they are of the view that the expertise resides, or should reside, in local authorities – or in the case of a State Highway, NZ Transport Agency Waka Kotahi. We are inclined to agree. But whatever view is taken of that, the current ad hoc arrangements are unsatisfactory. Responsibility for traffic management should be clearly articulated in statute both to ensure public safety and to minimise unnecessary disruption to the travelling public.

243. To that end, we propose that a new legislation should specify whether Police or Councils (or in the case of a State Highway, NZ Transport Agency Waka Kotahi) should have responsibility for developing a traffic management plan when required.

244. Given that this regime would cover all types of assemblies on a public road (including such events as university graduation marchers), we also propose that the statute should provide a procedure for the imposition of all or part of the cost of developing and implementing a traffic management plan on those organising an event. However, that should not rest in the hands of the agency responsible for the development of a traffic management plan, since those wishing to challenge the imposition of costs would face the unreasonable burden of applying to a court to have the condition over-turned. Rather, in the small number of cases in which this would be appropriate, we envisage a simple procedure enabling the agency to apply to a judicial officer for a costs order. The judicial officer, in deciding whether to impose such an order, would be required to consider whether it would have the effect of unreasonably limiting the rights to freedom of assembly, expression and movement, taking into account:

- the purpose of the planned assembly;
- its public and private benefit;
- its scale;
- any alternative means by which it might be held;
- the cost of obtaining the plan and the resources required to implement it;
- the size of, and resources available to, the person or organisation planning it; and
- the frequency with which they hold assemblies of the type being planned.

The setting of conditions at the scene

245. Our proposal for the prior regulation of protests and other assemblies is confined to those planned for public roads and occupied public places (whether or not they are notified in advance).

246. We think there would be significant benefits in empowering Police to set conditions at the scene of any other assembly or event in a public place, and in specifying the statutory criteria for the

setting of such conditions. This might include, for example, a condition to ensure separation of protestors and counter-protestors at a venue such as a park or civic square.

247. As we have already described, this is currently done from time to time at a protest scene by officers of varying seniority and rank in two ways:

- first, in reliance upon the fact that their functions under section 9 of the Policing Act 2008 include keeping the peace and maintaining public safety, which the courts have interpreted to include that they can give instructions to members of the public if that is required to keep the peace or maintain safety, and in the event of non-compliance with the instruction, may arrest them for obstructing an officer in the execution of their duty;
- and secondly, by giving protestors instructions to do or refrain from doing something that they believe may provoke violence or disorder, and then arrest them for breach of the peace when they fail to comply.

248. However, the extent to which these practices are authorised by law is often uncertain, and practice is variable.

249. A regime for the setting of conditions by the senior officer at the scene, on the basis of specific statutory criteria, combined with the creation of an arrestable offence relating to a failure to comply with lawful orders given by any officer, would in our view eliminate the need to rely on breach of the peace and obstruction *in a protest situation* (see further below at paragraphs 231-232).

250. The setting of conditions under our proposal would be subject to the same statutory threshold and list of available conditions as those that could be set in advance in respect of public roads and other occupied public places, and be subject to the right of review.

251. We envisage that the power to set such conditions would be restricted to the ‘senior Police officer’ in charge. Further consideration would need to be given to how that was defined. However, we should clarify we do not mean the most senior, for example, of two officers dealing with a particular incident or person. We mean the person who is in charge of the overall operation. This should not necessarily be driven by rank. In our view, what is important as a prerequisite is that the person has had public order training and therefore has an understanding of the nature of conditions that are likely to be compatible with the Bill of Rights Act.

252. We make the point that where there is an immediate need to deal with an imminent threat of disorder or violence, we have proposed new powers to enable instructions to be given. The power here to set conditions is a more general one, relating to how the protest ought to proceed in a manner consistent with both the minimisation of disruption and risks to safety and the protections of rights under the Bill of Rights Act. While there may be a slight delay while a senior officer determines any appropriate conditions, we do not see this as an unreasonable impediment; the senior officer in this respect ought always to be at the scene or otherwise immediately contactable.

PUBLIC ORDER OFFENCES

253. While the regulatory process we propose will in our view do much to clarify expectations of protestors, and enable Police to take enforcement action when those expectations are not met, there will inevitably continue to be occasions when protests do not go according to plan, and Police need to deal with unexpected events to protect the public or minimise undue disorder or disruption.
254. We have already noted above (at paragraph 121) that a number of the more serious offences that currently exist and may be applied in the protest context appear fit for purpose. These include rioting, riotous damage, intentional damage and endangering transport under sections 87, 90, 269 and 270 of the Crimes Act 1961, and wilful damage under section 11 of the Summary Offences Act 1981. Because we regard these offences as appropriate in their current form, we do not consider them further in the analysis below.
255. However, in Chapter 3 we have concluded that the powers and offences with a more preventive focus - disorderly behaviour, obstruction, and breach of the peace - are too vague in their scope and, partly because of the absence of sufficient guidance in statute and case law, are often misapplied. We have also suggested that the offence of criminal nuisance is unduly restrictive.

Criminal Nuisance

256. Turning first to criminal nuisance, we have considered whether the requirement for an unlawful act is too restrictive, but we have concluded that a simple offence of endangerment, without any other unlawfulness, would be far too broad. We understand from Police in any event that, in the protest context, almost all problematic behaviour that requires an immediate response before any warning can be given is accompanied by some other unlawfulness. Where there is no otherwise unlawful act but there is time to give a warning, the new offence we propose below will provide Police with the power they need in order to act to avert the danger.
257. However, we reiterate the view (discussed above at paragraph 154) that the mental element of the offence – intention or recklessness – is too narrow and should be extended to cover negligence – that is, a failure to take reasonable care to avert an evident danger. In many situations it is too difficult for Police to prove beyond reasonable doubt that the person had actual knowledge or awareness of the dangers associated with their unlawful activity. This is a particular problem in the protest context, where protestors are increasingly taking measures (such as wearing earmuffs) so that they cannot hear what Police are telling them. However, it is an undue limitation on criminal culpability in other contexts as well, and we propose that there should be a general amendment to the offence.

Disorderly behaviour, obstruction and breach of the peace: a new offence

258. In Chapter 3, we have concluded that the powers and offences with a ‘preventive’ focus – disorderly behaviour, obstruction and breach of the peace – are too vague, their scope is

uncertain, and they are applied inconsistently. More importantly, because judgments of reasonableness differ, they are sometimes used in a way that unduly stifles legitimate protest.

259. We are mindful of the fact that these provisions have general application well beyond the protest context, and it is beyond the scope of this inquiry to determine whether more general reform is required.

260. Instead, we propose that there be specific exemption for protests, in the form of a proviso equivalent to the offence of disorderly assembly in section 5 of the Summary Offences Act 1981 which reads:

“This section shall not apply to any group of persons who assemble in any public place for the purpose of demonstrating support for, or opposition to, or otherwise publicising, any point of view, cause or campaign.”

261. In the absence of breach of the peace, disorderly, and obstruction, our proposed condition-setting regime, with the accompanying arrestable offence of failing to comply with any condition set, would go some way to empowering Police with tools more appropriate to the maintenance of the peace in the protest environment. However, many of the problems that Police officers have to deal with in a protest situation are dependent upon time, place and circumstance, and the law needs to provide officers with sufficient power to deal with unforeseen situations of danger as they arise. The proposed condition-setting regime will not suffice.

262. Many officers we have spoken to suggested that the solution is to introduce a ‘move on’ power, such as exists in a number of Australian State jurisdictions and the United Kingdom. For example, section 4 of the Summary Offences Act 1966 in Victoria empowers Police to give a direction to a person or persons in a public place to leave that place and not return for a specified period not exceeding 24 hours where the officer suspects on reasonable grounds that the person is breaching the peace or endangering the safety of any person, or is likely to do so, or is otherwise likely to cause injury to a person or damage to property or pose a broader risk to public safety.

263. We have significant reservations about a general ‘move on’ such as this. It would be broad, effectively unreviewable, and open to abuse. Indeed, when we asked officers during consultation whether they would support such a power, some enthusiastically supported it on the basis that it would be enable them to require any person who they regarded as a ‘nuisance’ on the street to move on, including drunks, homeless people, vagrants and so on. However, it is not within the scope of our inquiry to reach any final conclusion about whether such a power should be available outside the context of protests.

264. Within the context of protests, we are satisfied that such a power would be both too broad and too narrow. It would be too broad, at least if framed in the same way as Victoria, because it would suffer from the same vagueness and uncertainty, and the same inconsistency of application, as the existing preventive powers. It would be too narrow because it would confine the Police response to a requirement for the person to remove themselves from the scene, whereas in many protest situations, the most appropriate and least restrictive response

(especially where there is a counter-protest) is for the person to desist from a particular activity or stand elsewhere.

265. Instead, we propose there should be a provision tailor-made for protests and included in our proposed new legislation that would give Police the power to give reasonable instructions to a particular person or persons in defined circumstances, with an accompanying arrestable offence of failing to comply. It would in general terms be analogous to the power available to Police under sections 197 and 200 of the New South Wales Law Enforcement (Powers and Responsibilities) Act 2002 to give any reasonable direction to a person, including an order to leave the scene, if they believe on reasonable grounds that the direction is necessary, amongst other things, to deal with a serious risk to the safety of that person or any other person.
266. This would complement our proposed regime allowing condition-setting by the senior officer at the scene (see above, from paragraph 179), but it would be directed towards individual behaviour rather than the nature and form of the protest as a whole. It would to some degree mirror the current obstruction offence (which enables Police to give instructions in accordance with their general duties under the Policing Act 2008), but it would be crafted in more specific terms.
267. We envisage that the provision would allow an officer to give a reasonable instruction to a person to act, or desist from acting, in a particular way if specified circumstances exist. As an example, the provision might specify that the officer must have reasonable grounds to believe that there is an imminent and substantial risk that the person's behaviour will result in violence to them or any other person, damage to property, or serious disorder, and that there is no other less intrusive means of averting that risk. It would then be an arrestable offence if the person were to fail to comply.
268. We have not reached any final view about whether these or some less stringent grounds would be appropriate, but we think they should be drafted in relatively specific terms. Otherwise, the offence of failure to comply will suffer from the same uncertainty and inconsistency of practice as currently exists and leave some officers with the view (as has been mooted to us by Police) that it should be an offence, without more, for a person to fail to comply with any instruction given by an officer in a protest situation.
269. We also propose that the legislation should require the officer to be satisfied that the instruction is not an unreasonable limitation on the rights of freedom of expression, movement, or assembly under the Bill of Rights Act. While it would include an ability to give a direction for the person to leave the scene, this would be a very last resort when no other lesser direction would suffice to avert the perceived risk.
270. We recognise that the exercise of a power such as this in a protest situation would often entail the exercise of the same type of hairline judgements as are currently made in relation to arrests for breach of the peace and obstruction. While our proposed power would squarely place the power within a rights framework, it would still be critical that Police commanders and frontline staff receive adequate training in its use (see below, paragraphs 291–312).

New offences of interference with critical infrastructure and picketing of private residences

271. We have also considered recent developments in other jurisdictions that might be appropriate to address the changing protest environment. For example, the United Kingdom Public Order Act 2023 has introduced offences of ‘tunnelling’ and ‘locking on’ to deal with a particular type of protest tactic. We are not generally persuaded that these are necessary: they appear to be attempts to prevent a recurrence of a specific event; and they would be likely simply to lead to a potentially endless cycle of committed protestors changing their strategy and inviting a legislative response.
272. However, there are two exceptions.

Interference with critical infrastructure

273. First, in some other jurisdictions there is a specific offence of impeding access to critical infrastructure, which is provided for in sections 7 and 8 of the UK Public Order Act 2023 and entails knowingly or recklessly interfering with the use or operation of key national infrastructure. Such an offence would, for example, extend to the blocking of access to airports and railway stations, the blocking of key transport routes such as the Auckland Harbour Bridge, and impeding the movement of essential freight, as was attempted at Picton during the Parliamentary protest. We do not think such activity is adequately covered by the current range of public order offences where no damage is caused, and propose that consideration be given to the introduction of a new offence of this type.
274. Of course, if an event were notified in advance as we have proposed, the objectives of having an offence of this sort could readily be met by the imposition of conditions with an offence of failing to comply. A separate offence of interfering with critical infrastructure might therefore be seen as redundant. However, notification will not always be made, and the ability for Police to set a condition at the scene will not always avert the harm caused by the blocking of critical infrastructure. Indeed, the harm might have been inflicted before the Police even arrive.
275. Careful thought would need to be given to the definition of critical infrastructure. The UK offence in section 7 defines ‘key national infrastructure’ as road transport infrastructure, rail infrastructure, air transport infrastructure, harbour infrastructure, downstream oil infrastructure, downstream gas infrastructure, onshore oil and gas exploration and production infrastructure, onshore electricity generation infrastructure, or newspaper printing infrastructure. Section 8 then gives a more extended definition of each of those terms. For example, road transport infrastructure is confined to ‘special roads’ within the meaning of the Highways Act and roads with particular assigned numbers. If road transport infrastructure were to be included in such an offence in New Zealand, it would need to be very narrowly defined to extend only to sections of the roading network that are critical connections to vital services. Even then, there would be a need to ensure that the definition did not unduly interfere with the exercise of a legitimate right to protest – for example, by criminalising the blocking of a road to a port in the context of an industrial dispute. It may be that road transport infrastructure should be precisely defined as specific roads designated by Order-in-Council.

Picketing of private residences

276. Secondly, protests outside the private homes of politicians, and others, are becoming increasingly common. Such protests may include the use of loudhailers in the middle of the night, disturbing not only the subject of the protest, but also other members of the family, including children, as well as neighbouring residents. We understand that protestors are employing tactics which make it difficult for Police to respond under current laws, for example in leaving before Police arrive, or in sending different individuals on each occasion to prevent the behaviour from being captured by harassment laws (which require a warning for a previous instance of harassment before an offence is committed). Further, the carveout of protest activity from certain offences we propose above (see paragraph 260) would mean that current disorderly offences would no longer apply to this type of protest activity.
277. We think there is merit in filling this gap with the inclusion in our proposed new legislation of an offence which prohibits, or limits, protest activity outside private residences. In the United States, such protests are regulated to varying degrees in the states of Arizona, Colorado, Illinois and Minnesota, while cities such as Boston and Los Angeles have also moved to ban, or limit, this type of protest activity. The precise nature of regulation varies; some, such as that in Boston, seek to only ban protests occurring overnight, while the state of Arizona restricts the ban to protests conducted with the intent “*to harass, annoy or alarm*”.
278. The Irish government proposed such an offence in 2021 – by way of the Protection of Private Residences (Against Targeted Picketing) Bill – although it lapsed when Parliament was dissolved pending an election and has not yet been revived. It would have introduced an offence for a person to organise or engage in, whether formally or informally, any targeted protest within 200 metres (or less) of a residential dwelling. A ‘targeted protest’ was defined to mean a protest directed at a particular person or group or activity and included a picket or protest activity targeted at an individual believed to reside in a particular residential dwelling.
279. We have not determined the precise nature and scope of such an offence. However, we think protests targeting public figures and their families in their private residences, sometimes in a highly disruptive way and merely because of their public function, are a potential deterrent to those considering performing such a role and should not be permitted.

Chapter 5: Police policies, processes and training

REFORMS SINCE THE 2022 PARLIAMENTARY PROTESTS

280. In order to be effective, Police require that the right policies and procedures are in place, and that officers have the right training and skills. This chapter considers the improvements that Police, in our view, need to make internally. We emphasise, however, that these internal changes, while vital, are insufficient in themselves to solve the concerns we have raised earlier in this report. It is for this reason that we have structured the report in such a way as to first consider the legislative change required to provide a better framework within which Police can operate. Without that framework, internal policy changes and better training will simply be inadequate as a basis for effectively achieving the right balance between the maintenance of public order and safety on the one hand, and the preservation and facilitation of the right to freedom of assembly, movement and expression on the other.

Our review of the Police response to the 2022 Parliamentary protests

281. Part 3 of our 2022 review of the protest and occupation at Parliament (2022 Review) described the evolution of public order policing in New Zealand, resulting in New Zealand Police adopting a preventive approach that emphasises engagement, persuasion, and negotiation to minimise the need for confrontation and use of force. This remains Police’s current operating philosophy and, as noted above (paragraph 61), is now referred to as the 4Es approach of “*Engage, Educate, Encourage and Enforce*”. We endorse that approach and believe our proposed statutory regime would enhance it in practice.

282. However, our 2022 Review highlighted an internal Police report prepared in 2020 that described the unsatisfactory nature of Police policy and practice in public order policing that limited the effectiveness of the 4Es approach. This included the fact that while Police policy set out the overarching principles, it did not provide the detail required to facilitate effective planning and operations.

283. We concluded that while protests have always been dynamic and volatile with a degree of unpredictability, Police policy has generally been premised on the historical assumption that protests are organised and single issued, with a clear leadership structure. We found these assumptions are no longer valid, and suggested an approach that is based on facilitation, engagement, and persuasion, may need some rethinking.

284. Our 2022 Review also found that there was no substantive co-ordination of public order policing, no national training curriculum, and no national monitoring of training and equipment.

What have Police done since 2022?

285. We are pleased to note that, following a Police internal review subsequent to the protest at Parliament, Police have established a public order policing function in the Operations and

Capability Group at Police National Headquarters. New positions have been established with a full-time public order policing focus.

286. During 2023, Police also established a centralised equipment store and delivered newly developed National Public Order Capability (NPOC) training. They reviewed the tactical manual, developed a common operating system, designed a standard training curriculum, and established a national training and certification framework. A National Working Group of subject matter experts from around the country has been established to ensure that all Police are training to a common operating model.

WHAT WORK REMAINS TO BE DONE?

287. The next stage in Police's enhancement of its public order policing operating model is to develop specialised annual training for public order policing Team Leaders and Commanders.

288. In this respect, there is still a significant way to go with an uplift programme to ensure that Police has a well-equipped, trained, and sustainable public order policing capability. In particular, there are multiple outstanding recommendations contained in the Authority's Parliamentary Protest report.⁵⁴

289. These include the need:

- To replace end-of-life equipment used routinely by public order policing teams. We note that staff are still routinely using end-of-life personal protection equipment.
- To ensure health and safety matters are addressed, including that there is enough safety equipment for all frontline staff.
- To review what equipment is internationally available to enhance the range of suitable options.
- To improve public order policing command through training of team leaders, Commanders, and Instructors in addition to the standardised training provided to public order policing constables.

290. We have also identified three other significant gaps that need to be addressed: the need for enhanced guidance and training on the balancing of rights; inconsistencies in the nature and extent of risk assessments; and insufficient understanding of, and training about, crowd dynamics.

The need for improved guidance and training on the balancing of rights

291. Major improvements to Police policy and training have been made in recent years, and particularly since the 2021 Parliamentary protest.

292. Where Police are aware of an event ahead of time, guidance is often contained in a written Operation Order, which is a plan for the purpose of conveying to staff detailed instructions about

⁵⁴ Independent Police Conduct Authority, n 1, pp 217-p224a.

the Police role at an event and how that should be undertaken. Recently that has sometimes been accompanied by a legal appendix setting out the ingredients of available powers and offences, and the need to balance competing rights in the use of those powers and offences.

293. Operation Orders also routinely provide that officers should only arrest in a crowd when there is no reasonable alternative, the arrest can be made without causing greater disorder, and a supervisor's approval has been obtained where practicable. These orders are based on broader Police policies.

294. In the context of protests, these policies have undergone significant change since the Parliamentary protest and the events covered in this review and additional guidance provided to all staff, not just specialist public order trained staff. For example, following the Let Women Speak rally held in Auckland in March 2023, complaints were made that Police failed, amongst other things, to give effect to the right to speak under section 14 of the Bill of Rights Act 1990. Police conducted some work around issues relating to free speech in response to those complaints. Police engaged with the Free Speech Union and updated Police policy on policing of demonstrations to include stronger statements related to free speech. Police also developed and circulated some scenario-based internal guidance about policing events and protests after clashes occurred at meetings in the lead-up to the election.

295. The 'Demonstrations' policy has also been updated to include several statements related to balancing of rights and the right to freedom of speech and expression. It states that the following principles apply to the policing of demonstrations:

- The safety of the public and Police is paramount.
- Police staff are trained in policing of demonstrations.
- The rights of lawful, peaceful protestors must be protected from all factions who would seek to disrupt that peaceful protest or incite behaviour that would breach the peace.
- Police response to a demonstration that is known about in advance should be planned and staffed for.

296. Under the heading 'The right for freedom of speech and expression under the Bill of Rights Act 1990', the policy states that:

"Police's role is to keep the peace and uphold the law, which includes allowing the exercise of freedom of expression, a right upheld by the New Zealand Bill of Rights Act 1990. In short, people are free to say what they wish, providing it is within the bounds of the law. It is important that people are able to exercise these rights.

Police's focus is necessarily on maintaining order, safety and allowing the lawful exercise of rights. This is in line with our responsibilities under the Policing Act 2008."

297. The scenario-based guidance provided to staff to assist with decision making and balancing of rights describes seven scenarios based on protest situations staff might encounter and advises staff of the relevant legal provisions and how they can be applied to the scenario.

298. For example, one of the scenarios is loosely based on the Let Women Speak event as follows:

“A prominent but polarising individual has decided to hold a public rally at an inner-city park and has asked Police to attend, citing concerns that those with opposing views may cause trouble. The District is concerned to not be seen to be providing ‘free security’ for the event but also acknowledges Police’s responsibility to keep the peace and prevent crime. Police recommend to the speaker that they need to organise private security for the event: however they choose not to take this advice.

Significant crowds are forecast to attend the event and the language used on social media relating to the event indicates a potential for some violence.”

299. The advice provided on how to respond is as follows:

***“What is the Police’s responsibility In this situation?** Even though Police have recommended to the individual that they organise private security, Police still have a responsibility to keep the peace, maintain public safety and prevent crime.*

***What are the next steps for Police?** In the situation where a demonstration is planned, a risk assessment should be prepared so that all aspects of the demonstration can be monitored, any safety risks identified, and adequate Police staffing is provided if a deployment to the demonstration becomes necessary.”*

300. Another scenario describes a person burning a New Zealand flag outside Parliament in a situation where members of the public are watching but no-one is joining in or becoming violent. The scenario sets out the rights the protestor has to freedom of expression under section 14 of the Bill of Rights Act and advises staff that *“a contextual analysis is required and Police must consider if there is an actual risk of public disorder caused by the protestor’s actions.”*

301. The advice provided about the actions officers can take to resolve the situation is as follows:

***“What steps can Police take:** Police should assess the situation and whether the protestor’s actions are likely to provoke others to violence, and therefore be a breach of the peace. Police are justified in arresting the protestor (if necessary) to prevent the breach of peace continuing.”*

302. A third scenario involves an individual attending a weekend street corner meeting held by the local MP and shouting over the top of the MP, frustrating other members of the public:

***“What are the issues for Police to consider:** During public demonstrations, Police must balance the need to maintain order against the rights of those in attendance, such as the rights to freedom of expression and to peaceful assembly. Where an individual is vocal in their views at a demonstration, loudness or a tendency to annoy is not sufficient to constitute a disruption to public order which may make restrictions upon their freedom of expression necessary.*

Can/should the protestor be removed? If so on what grounds? Police’s function is to preserve the peace, and s42 of the Crimes Act 1961 provides justification to anyone who witnesses a breach of the peace to prevent its continuance or renewal. This includes the power of arrest under s42(s). If the protestor’s disturbance goes beyond what reasonable members of the public should be expected to hear, then Police intervention may be necessary.”

303. Notwithstanding these significant improvements, which we welcome, there is still insufficient guidance about what reasonable limitations on the rights to freedom of assembly, movement and expression might be. Where time permits, decisions related to arrest and the balancing of rights are often directed by the Operation or Forward Commanders, who will have a range of experience and may or may not have public order policing training and experience:

- The Commander in Albert Park for the Let Women Speak event (see Appendix A) was in that role because he was rostered on duty that weekend. He had no public order policing training or experience and no previous experience as a Commander at a protest event.
- The Inspector making decisions related to Ms Rogers (see Appendix C) was in charge of the District’s Family Harm Group and was at the rally because she was rostered on duty that weekend. She had attended the Inspectors Qualifying Course and the Tāmaki Makaurau Command Programme but had not received any training related specifically to protests.
- The Commander in Aotea Square who directed staff to tell Mr N to leave (see Appendix B) was a Mentor Commander on Tāmaki Makaurau’s Command Programme with previous command experience at protests.
- The Commander who removed the sign from Ms Rogers (see Appendix C) was the Public Order Policing Commander for that operation.

304. Moreover, because the law itself is broad and uncertain, the additional policies and scenario-based guidance are unable to, and do not, clarify for officers having to make quick decisions on the ground what a reasonable limitation or response is, and therefore do not facilitate effective planning and operations, particularly in regard to how to balance competing rights.

305. For example, the Operation Order for the march up Queen Street in Auckland on 25 November 2023, resulting in the arrests of Ms Rogers and Mr N (see Appendices C and B), includes the following statement:

“The freedom of expression and speech is an important part of our democracy and Police needs to play its part regardless of our views on the topic at hand.

The Police role in this operation is to keep the peace and uphold the law which includes allowing the exercise of freedom of expression, a right upheld by the New Zealand Bill of rights Act 1990. In short, people are free to say what they wish, providing it is within the bounds of the law.”

306. While this is an unproblematic statement of principle, it does not provide any further guidance on how that ought to be applied in practice, evident by the circumstances of the two arrests that were made.
307. To some degree, it might be expected that training would suffice to fill this gap, and we reiterate that significant enhancements to training have occurred since the 2021 Parliamentary protest. In particular, following a number of internal Police reviews, Police developed a 'Command and Control (C2) Training Framework' in 2023, which reflects the tactical, operational and strategic operating environments of commanders across all ranks. Papers submitted when the development of the C2 Training Framework was approved acknowledged that the Framework will require regular review by business owners to ensure it remains current and fit for purpose. Enhancements are also planned for annual training for specialist public order policing Commanders and operators (IPOC and APOC training).
308. However, four particular limitations in the training arrangements remain.
309. First, NPOC training material, which is base-level training designed to ensure a standardised tactical response (formations and drills) if required during a protest, includes an hour's training on what reasonable limitations might be in a protest environment by reference to various scenarios. However, the training is limited to specialist public order policing staff and should be widened. Staff in command roles when Police are responding to protests are often not trained in public order policing. None of the officers involved in the decision making for the cases highlighted in our appendices had attended the training on reasonable limitations delivered during the NPOC training.
310. Secondly, Commanders we have spoken to during the review have said that, while command and control training is a feature of qualifying courses and command and control training in Districts, they could not recall any training related specifically to managing protests and counter-protests:

"...a lot of the training in terms of public order and protest is gained through experience. We want the same outcome for a Police officer with 20 years' experience as somebody with two months. You'd have more consistency."

"We're still behind the eight ball to even train our staff in how we police protests effectively and efficiently without having to go over that threshold of arresting people."

"Nationally through the Police we don't get a lot of guidance. The only time I can think of we've had national guidance was the co-governance meetings being held pre-election. ... Some of the meetings got a little bit ugly and there were counter-protests and it made the media. ... Then we got Operation Instructions from Headquarters ... that gave us some guidance on how we should be at District level policing those events. It's only ever happened once that I'm aware of. So I think Districts are left up to their own devices ... to decide how we want to do it."

311. Thirdly, frontline staff who are not specialists in public order policing are frequently required to undertake much of the responsibility for policing protests, but more general training for them is undertaken at District level and is variable in extent and content.
312. Finally, training is delivered by Police solely for Police, despite the fact that planning and operations often involve a degree of collaboration between Police and Councils and will increasingly do so under our proposed regime. Training should extend to relevant Council staff, potentially including periodic desktop exercises based on various protest scenarios.

Inadequate risk assessment process

313. The Police policy entitled 'Command and Control – Planning' has been updated to say that every operational plan should be subject to a separate risk assessment. However, for the purpose of making decisions about the type of operational response required for an event (as opposed to Health and Safety risk assessments), the way in which this is done varies between Districts.
314. In situations where Police are notified of, or become aware of, a planned protest, planners complete an assessment of the situation to inform how Police will respond. The assessment is completed by staff located in the Police Area or District where the protest is going to occur.
315. Some Districts have developed their own assessment tools to assist with determining the Police response. For example, planners in Tāmaki Makaurau use a locally developed Event Notification and Initial Assessment Form. Risks are identified in three categories: Crime and Crash, Be Safe/Feel Safe (numbers), and Trust and Confidence. Each category is assigned a number between 0 and 3 depending on the identified risk. In the Crime and Crash category, if there is an identified risk of crime, that category will be assessed at 3, but if there is no risk of crime identified it will be assessed at 0. The higher the number of people expected to attend, the higher the number assessed in the Be Safe/Feel safe category. The Trust and Confidence number relates to public expectations. The scores assigned to the three categories are added together and this determines who has responsibility for the Police response. If the three scores add up to 8 or 9, the risk is assessed as being moderate to high and decisions about the Police response will be owned by the District Planning Team and some form of Operation Order prepared. If the scores add up to 0 the event is assessed as requiring no further Police action. There are various levels of response in between.
316. The Police response can range from local officers being made aware of an event with a decision that no Police presence is required, through to a large operation with an Operation Commander, specialist Public Order trained staff, varying numbers of staff rostered to attend, and an Operation Order setting out the tactics to be used.
317. While these are welcome developments, they are insufficient for the purpose in three respects.
318. First, they are District specific and often developed without knowledge of what other Districts have already done. Although some variations between Districts (and indeed between Areas) can be expected to take account of local considerations, there is nevertheless unnecessary duplication and inexplicable variation.

319. Secondly, there is no clear and consistent guidance as to how the information in the risk assessment tool is to inform the decision about the required level of resource for the operation. For example, the assessment form in Tāmaki Makaurau does not provide any guidance around what the appropriate resourcing and operational tactics ought to be. Instead, it provides a blank space for this information, to be entered following “*consultation and decision making at Inspector level, ... should involve Inspectors from the relevant Area, Deployment, Operations or rostered Duty Inspectors.*” This is consistent with what we have found in other Districts where we have conducted interviews.
320. When planning staff from four Police Districts were asked about how Police decide what the appropriate resource is for an event, they told us:

“I go risk based. What’s the intel picture telling me. They have a risk indicator framework ... which will give me an indicator around numbers and around unlawfulness. I can have 5,000 people at a protest but if it’s going to be lawful I’m not going to chuck a heap of staff at it. I base it on that unlawfulness. Sometimes there might be reach in from others saying, “No you’re going to put more staff at this” because they get concerned because of the swell of numbers. I struggle with that approach because it’s either unlawful or it’s not. Numbers should have no impact on how many staff we put at it. A counter-protest against a protest, same thing. Is there likely to be a clash between the groups? Are they just likely to yell at each other because that’s quite different.”

“You’re looking firstly at numbers, things like alcohol, drugs, previous events, previous intel on the events ... Previous knowledge will generally give us an indication of what the number should be. There’s not an actual checklist, that’s more around the knowledge and of our planners and my experience and knowledge, there’s always an ability to reach out to the organiser ... because they’re going to give you a better insight into what they’re actually doing”.

“The key is working with our intelligence group to make sure we’re collecting information about the who, what, where, numbers, trying to identify and potentially engage with the group leaders to understand what their intent is, what’s the risk of violence for the Police, that’s the key indicator. We look for items where there might be conflict and violence and that really comes down to location and numbers of people involved. A key indicator is what’s happened previously. Intelligence will do the risk assessment.”

“We sit around and go through all the events and categorise them. The protests that happen every week, there’s not a lot of direction so I put together a generic operation order and asked the Area Commander “what’s your intent. How do you want these policed” ...The way I tried to design it was you police the event, then you debrief the event, intel has some input and then that models for the next week. ...Even nationally through the Police we don’t get a lot of guidance. The only time I can think of was ... the co-governance meetings that were being held across the country.... Districts are left up to their own devices to come up with

and decide how we want to do it. We put a lot back on the District Leadership Team saying “You’re running the District. How do you want us to Police these events?”. [Regarding potential for inconsistencies related to assessment of risk and level of deployment] I don’t even know what they’re doing in other Districts, I couldn’t even tell you.”

321. Decisions related to operational resourcing and appropriate tactics rely heavily on intelligence, officers’ knowledge of how groups have behaved previously and information provided by the groups where Police have been able to engage with them.
322. The evident gap in this approach is that there are no guidelines as to the level of risk to which Police ought to deploy. Having gathered the necessary risk assessment information, what risk should Police be expected to address in their deployment decisions – in terms of both seriousness and probability of occurrence – in the light of available resources and other demands on policing? And, in making their deployment decisions, how should they balance risks to safety against their role in facilitating the exercise of democratic rights by protestors and others.
323. The Let Women Speak event in March 2023 and the protest at a subsequent court appearance for the person charged with assaulting Kelly Minshull, are good examples. In response to the original speaking event in March 2023, Police did not foresee the number of protestors against the event who would turn up, nor the level of risk this would pose in terms of both public safety and the ability of the event organisers to exercise their rights. However, there was nothing by way of Police intelligence to suggest that these risks were other than low. What then should determine Police deployment decisions? Police numbers were increased with support from other Districts for the subsequent court appearance, based on the behaviour of counter-protestors at the original event. The number of people who attended to protest and counter-protest was lower than anticipated but the protest still took place. Police had sufficient numbers to manage the groups when counter-protestors tried to move towards the other group, and *“...the counter-protestors had a good position to protest and rally and got their message across. We got thanks from both sides and everyone went away happy”*.

Ensuring sufficient understanding of crowd dynamics

324. There is increasing international literature on the most effective ways to police crowd situations, and the UN is incorporating this work into guidance for public order policing. One such article describes the shift in understanding of crowd psychology over the last few decades, and what it means for the way Police should (and in New Zealand often do) approach policing of crowd situations such as protests:

“...rather than thinking primarily about the best form of police action to control the crowd, it is important also to concentrate on how to act in order to get the crowd to control itself. Second, the best way of achieving this is to place a major emphasis on how to be supportive towards crowd members pursuing legal goals and activities, even under conditions where one is aware of the presence of groups with illegal goals and even at points where they start to act in illegal or

violent ways. Such an emphasis makes it more likely that crowd members will, at best, suppress violence in their midst and, at worst, isolate people acting violently and accept police action against them should it prove necessary.”⁵⁵

325. This approach is consistent with that which we often see adopted in New Zealand. Officers we interviewed were very conscious of the impact the Police response to incidents can have on a crowd. For example, an officer with extensive experience with policing protests spoke to us about the importance of understanding crowd dynamics and establishing a rapport with protest organisers:

“...you’re probably going to have 80% or 90% who are very law abiding ... there’s a small element in there who want to take it to the next level for all sorts of reasons and it’s the larger element we’re trying to police. We’ve had some good success with that in the past where some of that smaller element is abusing members of the Police just standing there and some of the other group say don’t speak to the Police like that the Police officers have got nothing to do with what we’re protesting about, that’s exactly what we want. If the Police officer is acting more aggressively then you’re not going to get that support from the majority of the crowd, so that’s a really tricky part of policing.”

326. However, an understanding of crowd dynamics is not sufficient by itself and needs to be combined with proper risk assessments incorporating human rights considerations. For example, the risk assessment for the Let Women Speak event (discussed in Appendix A) was based entirely on an assessment of Police intelligence about potential risks to safety, without any consideration of the need to protect rights, including the right to freedom of expression. When a large crowd of noisy counter-protestors arrived with the stated purpose of disrupting a permitted public speaking event, Police decided to stay on the outskirts of the event and take no action to ensure the separation of the groups. One of the main reasons provided by Police officers at the event for not taking any action was that they were concerned that any affirmative action by them would further aggravate the larger crowd of counter-protestors.

327. Training needs to incorporate both an understanding of the interaction between crowd dynamics and risk management strategies that protect fundamental rights.

⁵⁵ “An integrated approach to crowd psychology and public order policing,” Reicher, Stephen, Clifford Stott, Patrick Cronin, Otto Adang, *Policing*, (27) 4, 2004 p 25

Recommendations

INTRODUCTION OF NEW LEGISLATION

328. We recommend that Police propose to Government the introduction of new standalone legislation, which contains both a set of over-arching statements of principle about the sorts of impacts arising from an actual or anticipated protest (or other assembly) that might justify limitations on fundamental rights such as the freedoms of expression, assembly and movement, and specific powers in relation to how it should be managed and controlled.

LEGISLATIVE GUIDANCE FOR NOTIFICATION OF, AND PLANNING FOR PROTESTS

329. We recommend that Police propose to Government that the new legislation should include:

- a new regulatory regime for advance notification by organisers of designated types of assemblies (including protests);
- whether or not an assembly is notified, a provision enabling the local Police District Commander (or appropriate delegate), in consultation with the local authority (and, in relation to a State Highway, NZ Transport Agency Waka Kotahi), to set conditions in advance with which participants must comply;
- a requirement that the assembly organiser must use best endeavours to communicate any conditions to participants themselves;
- an ability for the 'senior Police officer' on the ground at the commencement or during the course of an assembly to set, and if necessary adjust, conditions; and
- the types of conditions that might be imposed by the Police District Commander before the protest, or the 'senior Police officer' during the protest, and the grounds upon which they might do so.

330. We recommend that Police propose to Government that the new legislation should:

- specify whether Police or Councils (or in the case of a State Highway, NZ Transport Agency Waka Kotahi) should have responsibility for developing a traffic management plan when required;
- allow as a condition of an assembly that a judicial officer, on application by the responsible agency, may impose an order requiring those organising an event on a public road to cover, or contribute to, the cost of developing and implementing the plan;
- provide that, in determining whether to impose such an order, the judicial officer must consider whether it would have the effect of unreasonably limiting the rights to freedom of assembly, expression and movement, taking into account:

- i. the purpose of the planned assembly;
- ii. its public and private benefit;
- iii. its scale;
- iv. any alternative means by which it might be held;
- v. the cost of obtaining the plan and the resources required to implement it;
- vi. the size of, and resources available to, the person or organisation planning it;
- vii. the frequency with which they hold assemblies of the type being planned.

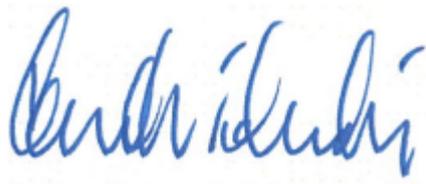
LAW ENFORCEMENT POWERS TAILORED FOR PUBLIC ASSEMBLIES

331. We recommend that Police propose to Government that:

- The criminal nuisance offence contained in section 145 of the Crimes Act 1961 be amended to allow for the mental element of negligence to be included – that is, a failure to take reasonable care to avert an evident danger.
- Section 42 of the Crimes Act 1961 (breach of the peace), sections 3 and 4 of the Summary Offences Act 1981 (disorderly and offensive behaviour) and section 23 of the Summary Offences Act 1981 (obstruction) contain carve-outs in similar terms to that provided for in section 5 of the Summary Offences Act, excluding them from use in the public assembly environment.
- A provision be included in the new legislation that would give Police the power to give reasonable instructions to a particular person or persons in defined circumstances, with an accompanying arrestable offence of failing to comply. It would in general terms be analogous to the power available to Police under sections 197 and 200 of the New South Wales Law Enforcement (Powers and Responsibilities) Act 2002 to give any reasonable direction to a person, including an order to leave the scene, if they believe on reasonable grounds that the direction is necessary, amongst other things, to deal with a serious risk to the safety of that person or any other person. While it would include an ability to give a direction for the person to leave the scene, this would be a very last resort when no other lesser direction would suffice to avert the perceived risk.
- A provision be included in the new legislation creating a specific offence of picketing a private residence.
- A provision be included in the new legislation creating a specific offence of knowingly or recklessly impeding access to critical infrastructure. As set out in paragraph 274, careful thought should be given to the definition of critical infrastructure.

332. We recommend that Police:

- expand National Public Order Capability training to all frontline staff in command roles who may be called on to respond to protests;
- incorporate training relating to the management of protests and counter-protests into command and control training in Districts;
- provide standardised training to frontline staff, not limited to specialists in public order policing;
- propose to Councils that protest training be extended to relevant Council staff, potentially including periodic desktop exercises based on various protest scenarios;
- develop national guidelines as to the level of risk to which Police ought to deploy, including guidance as to the way in which officers should balance risks to safety against their role in facilitating the exercise of democratic rights by protestors and others; and
- incorporate into training, guidance on the interaction between crowd dynamics and risk management strategies that protect fundamental rights.



Judge Kenneth Johnston KC

Chair
Independent Police Conduct Authority

18 February 2025

IPCA: 23-17463

Appendix A – Police response to the Let Women Speak rally in March 2023

1. Kelly-Jay Keen-Minshull (Kelly Minshull) is a member of a UK-based group that organises worldwide public speaking events under the banner of Let Women Speak (LWS). Kelly Minshull uses the name Posie Parker when speaking at LWS events, which are designed to provide a platform for women to speak publicly about gender critical ideology and issues. The ideas discussed at the LWS events are widely regarded as controversial and previous international events have attracted protest activity.
2. In 2023, Kelly Minshull announced she would be speaking at events in Australia and New Zealand. New Zealand-based women’s groups volunteered to help organise public speaking events in Auckland and Wellington, with the first event planned for Saturday 25 March 2023 in Auckland.
3. On 17 February 2023, event organisers advised Police of the proposed events and submitted an Event Proposal to Auckland City Council requesting permission to hold the Auckland event in Albert Park.⁵⁶
4. On 7 March 2023 Tāmaki Makaurau Police assessed the proposed Auckland event as low risk and decided it was not necessary to plan an operation in response, but that they would continue to monitor the situation.
5. As the date for the Auckland event got closer, there was increasing media coverage and public debate about whether the event should be allowed to proceed. Those opposed to the event, including members of Parliament, made public statements that holding the event was a threat to public order and the speeches at LWS events would be harmful. The Free Speech Union publicly supported the event, arguing the event was lawful and the principle of free speech defended the right for Kelly Minshull to speak and the rights of people wanting to hear her speak. The Minister of Immigration announced he was reviewing whether Kelly Minshull should be allowed entry into New Zealand the week prior to the Auckland event.
6. On Monday 20 March, Police in Tāmaki Makaurau decided that the risks associated with the event were higher than first anticipated. Police also became aware of another separate event planned by Destiny Church being held nearby, in Aotea Square, at the same time as the LWS event.
7. Police decided that the Police response to the LWS event needed to be elevated and planned an operation, with rostered staff, to cover both events.
8. On the day, an estimated 2000 protestors arrived in Albert Park. Let Women Speak volunteers had erected some fencing to keep the groups separated. When Kelly Minshull arrived, the

⁵⁶ A permit was issued on 15 March 2023.

protestors broke through the barriers and members of the crowd who had arrived to hear the LWS speakers were subjected to threatening and intimidatory behaviour and in some cases were assaulted.

9. Police responded by assisting private security guards in facilitating the main speaker to leave and encouraging others to leave if they felt unsafe. The event was abandoned before anyone had the opportunity to speak.
10. The Authority received 168 complaints about how Police handled the event, of which 35 were from people who were present at the event, with the remainder of the complaints coming from people who had watched the live stream of the event or online footage.
11. The complaints alleged that Police failed in their duty to both:
 - give effect to Let Women Speak’s right to speak under section 14 of the New Zealand Bill of Rights Act 1990 (Bill of Rights Act); and
 - maintain public order, prevent crime, and prevent breaches of the peace.
12. Complainants say that, even though the risk of injury and threats from hostile counter-protestors and the international dimension of the event were communicated to Police at an early stage, the Police deployment at the event was grossly inadequate.
13. They suggest the deployment was inadequate because:
 - Police initially assessed the situation as low risk despite the concerns raised by organisers, which meant that by Monday 20 March, when Police decided there was an increased risk following events in Australia, an officer was left “*throwing a minor op order together*” because “*ops are under the pump*”⁵⁷, and Police were approaching officers who were on days off looking for volunteers to attend.
 - The Police focus was on intelligence-gathering and not keeping the peace or protecting the free speech rights of a group whose event was officially permitted, and this remained the focus throughout.
 - The Police plan to use negotiation to keep opposing groups separated was unrealistic given the violent clashes that had occurred at events held in Australia a week prior and the media coverage and public debate in New Zealand in the lead-up to the event.
14. After assessing the complaints, we decided to investigate how Police handled the event and identified the following issues for investigation:

⁵⁷ Officer A told us Tāmaki Makaurau Police and the Operation Planning Group were also engaged at the same time with the following 2023 events: All Whites soccer game (23 March), Black Caps cricket match (25 March), Blues rugby match (26 March), Warriors rugby league match (26 March), Symphony concert (1 April), Ice Cube concert (1 April) and Black Caps cricket match (2 April).

- Was the Police risk assessment and initial response to the proposed Let Women Speak Event adequate?
 - Was the operation planning and resourcing adequate?
 - Did Police appropriately respond to events as they unfolded on the day?
15. While the Authority was investigating this event, we received further complaints from more recent events which raised similar issues, including issues related to freedom of speech. This resulted in a more comprehensive review of the policing of protests as discussed in the main report, but delayed reporting on the complaints received about the Police response to this event.

THE AUTHORITY'S FINDINGS

Issue 1: Was the Police risk assessment and initial response to the proposed Let Women Speak event adequate?

In undertaking the initial risk assessment, individual officers complied with existing Police practice and procedure.

However, the initial risk assessment was flawed because it was based on inconsistent and incomplete information, and not supported by appropriate guidance as to how identified levels of risk should inform deployment decisions.

Issue 2: Was the operation planning and resourcing adequate?

Inadequacies in the planning for this event resulted primarily from systemic inadequacies in the risk assessment process rather than any fault of individual officers.

While the Commander's Intent was consistent with the overarching Police philosophy for policing protests, its appropriateness suffered from the same flawed risk assessment process as highlighted in Issue 1.

The number of staff rostered to the operation was limited by staff availability. Sourcing extra officers from other Police Areas or Districts or redeploying officers already on duty in Tāmaki Makaurau to the operation was not justified based on the information available at the time.

Issue 3: Did Police appropriately respond to events as they unfolded on the day?

The Operation Commander and the Forward Commander did not properly respond to unfolding events by deploying additional staff to protect LWS supporters.

There was no obligation on Police under the Bill of Rights Act to take positive steps to ensure that the LWS speakers were able to be heard, and Police had no power to control noise levels unless the noise reached the threshold of an offence.

The Police response after protestors surrounded the rotunda was inadequate and did not have sufficient regard to public safety.

ANALYSIS OF THE ISSUES

Issue 1: Was the Police risk assessment and initial response to the proposed Let Women Speak event adequate?

16. In this section we consider the following issues in detail:

- What information did Police have when the risk assessment was made?
- How did Police in Tāmaki Makaurau assess the risk and determine the initial Police response to the event?
- Was the initial Police response to the event adequate?

What information did Police have when the initial risk assessment was made?

LWS organiser advised Police of planned events by calling 105 number

17. Ms A is associated with several women’s groups in New Zealand. After Kelly Minshull announced she would be visiting New Zealand, Ms A volunteered to find a venue for a LWS public speaking event in Auckland and obtain any permits. On 17 February 2023, she rang the Police 105 number to advise Police of the planned events in Auckland and Wellington.⁵⁸

18. The Police 105 call taker recorded that Ms A told Police:

- The Auckland location was yet to be confirmed but they would not be blocking any roads.
- Between 80 and 100 people were expected to attend.
- An international speaker, Kelly-Jay Keen from the UK, would be speaking at the events.
- “Anti-women” people might attend to protest.
- Internationally there had been hostile aggressive opponents.
- There had already been comments in Facebook about trying to stop the speaker from attending.

19. The information was forwarded to Wellington District Police for a supervisor to review. Ms A received a call from Police later the same day and was asked to call Police again a week before the event. Ms A was given a reference number linked to the information she had provided.

⁵⁸ 105 is the phone number Police use for people to call to report things that don’t need urgent Police assistance, as an alternative to the 111 line.

Event Proposal submitted to Auckland City Council

20. On 17 February Ms A also submitted an event proposal to Auckland City Council (Council) with a request to hold the Auckland event in Albert Park.

21. Ms A told us she knew it would be easier to organise if the group just told Police they were going to hold a protest, but Kelly Minshull had specifically asked organisers to obtain a permit for an event, so that it was clear the group had permission speak at a specified location:

“We wanted it to be a permitted event so we had permission to be there and... if any protestors did show up there would be support for a permitted event.”

22. The Event Proposal Included the following information:

- The event was a women’s public speaking event being organised by the Let Women Speak Event Committee.
- The speaking event would be held between 11am and 2pm with approximately 100 participants.
- The organisers would be using a hired sound system, erecting crowd control fencing, and using hired security and volunteer marshals.
- Ms C was the event organiser and the contact person on the day of the event.

23. The proposal also advised Council that:

- Police had been notified of the event and a request made for Police to be present.
- A security firm had been engaged and a security plan was in the process of being developed.
- The event was hosting an international keynote speaker who had run similar events in UK and USA and *“we do anticipate there will be a cohort of noisy and possible hostile spectators, most of whom will be young (teenage to twenties). We have notified Police of our event and have asked them to have a presence – this will be confirmed as we hear back from our Police liaison.”*

24. A Health and Safety Plan submitted with the proposal identified potential risks at the event and assigned each risk a score of between 1 (low risk) and 5 (high risk). The plan described how organisers intended to mitigate any risks.⁵⁹

25. Ms A told us that the score attributed to the risks indicated the level of risk they anticipated before the risk control activities had been applied.

⁵⁹ To comply with the Trading and Events in Public Places Bylaw, the Auckland City Council requires event organisers to submit a Health and Safety Plan with all applications for an event permit. The Council does not have a prescribed form that must be used. Let Women Speak developed its own document and called it an Event Hazard/Risk Management Plan.

26. Organisers advised Council in the plan that people attending the event and marshals were at risk of distress or injury from “potential aggressive actions by anti-women spectators”. The risk was scored at level 3. Organisers planned to mitigate the level 3 risk as follows:

“Crowd control fencing, a security plan and assessment...including four professional security guards, police notified of the event ahead of time by nominated contact person and seven trained marshals to assist.”

27. The form also identified that marshals were at risk of being injured or threatened by “hostile spectators”. The risk was scored as level 2. The plan to mitigate the level 2 risk was “marshals instructed not to engage and event marshalling training provided. In the event of an emergency the following leadership structure will be observed: Police, security, and marshals in that order”.
28. Organisers advised Council they expected 20 people to participate in the speaking event, with 50 spectators attending to listen to the speakers.
29. Ms A told us that she thought that potentially 200 protestors could also be at the event. Ms A said she arrived at this number by attending a protest march held in Queen Street on 12 February 2023, protesting for an increase in Transgender Healthcare Services. Ms A thought that observing how many people were at this protest would indicate the size of the transgender community that might attend to protest at their event.⁶⁰ Ms A told us:

“We certainly anticipated there would be some. There have been some at every event that [Kelly Minshull] has ever run but in the main they tend to be roughly equal groups. ...It was only in that week or two that she’d been travelling Australia that those events started to get really big and ugly and even then you don’t expect New Zealanders to come out in those numbers screaming like that.”

30. Information in the proposal submitted to Council did not include the number of protestors anticipated by Ms A and did not advise that the international keynote speaker was Kelly Minshull or make any reference to the UK based group’s involvement with planning the event.

Police receive a copy of the Event Proposal from Council

31. It is standard procedure for Council to provide advance notification of an Event Proposal to interested parties. This is done to provide an opportunity for interested parties to raise any concerns about the event that can be addressed through the Council process.
32. On 3 March 2023, Mr D, the Auckland City Council Event Facilitator, e-mailed a copy of the Event Proposal from LWS to the Tāmaki Makaurau Police District Planning Team.
33. Mr D told us that Council did not get an immediate response from Police to the initial notification. He says he did not expect to engage with Police at that stage because the initial

⁶⁰ The gender identity views expressed by speakers attending Let Women Speak events are widely regarded as being discriminatory and harmful to the transgender community.

notification did not indicate anything other than a women's speaking event with a variety of speakers, and a maximum of 100 people attending with no real impact on the public space.

34. Mr D told us:

"Typically we would not normally look at something like this... but because [the application] had added [some] infrastructure to Albert Park... a heritage space with the heritage rotunda, we went through a permitting process."

Police contacted by LWS Police Liaison volunteer

35. Ms B volunteered to help organise the speaking events for Kelly Minshull after seeing the event promoted on Facebook. Ms B was asked to take on the roles of Police Liaison and Head Marshal.
36. Between 3 March and 7 March, Ms B contacted Police several times, including visiting her local Police Station, telephoning Auckland Central Police and e-mailing the local Community Sergeant, attempting to advise Police of the planned event and identify who she should liaise with in Police.
37. Ms B used the reference number given to Ms A during her initial interactions with Police. However, when Ms B rang Auckland Central Police Station she was provided with a different number and asked to refer to it in any further contact, which she did.⁶¹
38. We make the point here that the recommendation for change to the legal framework suggested in the main report, including a national notification system that either encourages or mandates notification, would provide greater clarity for people organising a public assembly as to how they should communicate with Police and avoid the confusion and inconsistent Police messaging that occurred here.
39. On 7 March, Ms B received a phone call from Officer A. Officer A was the officer in charge of operations planning for the Tāmaki Makaurau District Police planning team and responsible for assessing the Police response to all the notifications received by them.⁶²
40. The Police response to events and protests will differ depending on the circumstances and can range from local officers being made aware of an event with a decision that no Police presence is required, through to a large operation with an Operation Commander, specialist Public Order trained staff, staff rostered to attend and an Operation Order setting out the tactics to be used.

⁶¹ When Ms B called at her local Police Station, she quoted the reference number Police had given Ms A. Ms B was advised there was no-one available for her to speak to and provided with an e-mail address. Ms B then rang Auckland Central Police Station, quoted the reference number given to Ms A and asked to speak to someone about the event. She was told to go back to her local Police Station and provided with a different reference number and told to quote that number when she returned to her local station. Ms B returned to her local station and was advised to e-mail the local Community Sergeant. Ms B sent an e-mail and as requested used the second reference number she had been given, not the reference number linked to the information provided to Police by Ms A.

⁶² The Tāmaki Makaurau Police District comprises Auckland City Police, Counties Manukau Police and Waitemata Police.

41. Officer A told us that most of the events he considered were straightforward because they were low key community events that would be sent directly to the Prevention Manager in the area where the event was taking place. In these circumstances local Police made a further assessment and decided how to respond. Where a larger operation was required, he was responsible for ensuring operation plans were completed by one of his planners and were appropriate and timely.
42. On 7 March, Officer A discussed the proposed LWS event with Ms B. Ms B told us that she informed him the LWS events had started in Hyde Park in London without any issues, but recently Kelly Minshull had been speaking internationally and protestors were becoming louder and more physical, footage of which was available on You Tube.
43. After speaking with Ms B, Officer A completed a risk assessment to determine the Police response.

How did Police in Tāmaki Makaurau assess the risk and determine the Initial Police response to the event?

Event Notification and Initial Assessment Form

44. The Tāmaki Makaurau Planning Team use a locally developed online Event Notification and Initial Assessment Form to assess risk and decide how they will respond to events, including protest activity.⁶³ Information is entered into the form under a series of headings including Event Details, TENR (the Police threat assessment methodology), Initial Risk Assessment, Assignment Determination and Planning Summary.⁶⁴
45. In the Event Details section Officer A recorded the following:
 - *“Let Women Speak is an Open Mic event. These events have the potential to have counter-protest groups attend to disrupt. Event organiser (Ms B) is very concerned about this happening as the event is being live streamed globally.*
 - *Possibility of counter-protests as events in Australia will be happening prior to this and they have already attracted protest with physical retaliation indicated.*
 - *Possibility of counter-protest that could escalate.*
 - *Organisers will be putting up a barrier around the rotunda to have some distance between the group and any counter-protestors.*
 - *Organiser spoken to by Ops Planning and aware of other groups’ right to protest and free speech.”*

⁶³ There is no national framework, and the risk assessment process and procedures differ between Police districts.

⁶⁴ TENR is an acronym for Threat, Exposure, Necessity and Response. It is a Police decision making tool used by officers to assess the level of threat and the appropriate response.

46. In the TENR section he recorded the following:
- *“Threat: Can be a polarising subject that has attracted heated counter-protest by other groups.*
 - *Exposure: Possibility of physical reprisal from counter-protest group. Organiser (Ms B) is very worried about this as these Open Mic events have been targeted.*
 - *Necessity: Believe good to have small Police presence to attend to have visibility.”*
47. Based on this information Officer A decided that the appropriate response was to have the weekend Duty Senior Sergeant attend to speak with the organiser and any counter-protest organiser to set expectations, together with ‘a couple of staff’.
48. We asked Officer A how Police decide what weight to give to information when assessing risk and the Police response.
49. Officer A said:
- “A lot of it is around what the actual event is, so you’re looking firstly at numbers, looking for things like alcohol, drugs, previous events, previous intel on the event... My planners are very valuable because... they know about events... and being involved in a lot of operations... straight away you’re going to know which ones are going to be higher risk.”*
50. The next part of the form is called the Initial Risk Assessment. Risks are identified and scored in three categories: Crime and Crash; Be Safe/Feel Safe; and Trust and Confidence. Each category is assigned a number between 0 and 3 depending on the identified level of risk. In the Crime and Crash category, if there is an identified risk of crime, that category will be assessed at 3, but if there is no risk of crime identified it will be assessed at 0. Scores of 1 and 2 are assigned where the assessment is that there is either a low risk or moderate risk respectively. There is no further guidance regarding how those judgements are made. The higher the number of people expected to attend, the higher the number given in the Be Safe/Feel safe category. The Trust and Confidence number relates to public expectations.
51. The scores assigned to the three categories are added together and this determines who has responsibility for the Police response and the type of response. If the three scores add up to 8 or 9, the risk is assessed as being moderate to high and the decision about the Police response is owned by the District Planning Team and some form of Operation Order prepared. If the scores add up to 0 the event is assessed as requiring no further Police action. Overall, there are five different categories and levels of response.
52. In the Crime and Crash category, Officer A recorded that it was unknown whether counter-protestors would attend but this was a possibility, and assigned a score of 1, Low Risk.
53. We asked Officer A what factors he considers when assessing whether there is a high, medium, or low risk of crime. He said that Police consider numbers, drugs, alcohol, and previous knowledge of events, which will generally give an indication of what the numbers should be:

“There’s not an actual checklist as such, it’s more around the knowledge of my planners and my experience and knowledge.”

54. Officer A told us:

“So crime and crash I put as low risk because it was unknown if counter-protestors would attend but it was a possibility. ...In there you’ve got a lot of could/would/should. The information was very low key from the organiser. We know straight away from events like that in previous ones that we’ve dealt with that counter-protest is a real possibility and sometimes it has resulted in push and shove... so at this stage it’s documented as it could be a possibility until we’ve got more information.”

55. Officer A also told us he was not aware at that time of the information Ms A had provided to Police via the 105 number and did not know who the main speaker was.

56. In the Be Safe/Feel Safe category Officer A recorded that the number of people expected to attend was unknown but around 70 to 100. This number equated to a low risk and scored 1.

57. In the Trust and Confidence category Officer A recorded that there was some expectation by the organisers that Police would attend to deal with any counter-protest that might get out of hand. This was recorded as “some expectation” and given a score of 2.

58. The scores when added up resulted in the event being categorised as a low-risk event capable of being managed by Police in the area where the event was taking place, with the proviso that the District Operations Planning Team would assist with planning if it was necessary to escalate the response.

59. The same day, Officer A advised Ms B by e-mail that he had:

- asked the Police Intel section to scan social media for any counter-protest activity,
- advised the relevant Auckland City District staff of the event, including staff rostered on duty over that weekend, with *“a view that they attend and make contact with yourself and any counter-protest group if there, to set some expectations”*.

60. He told Ms B that Police would contact her again when they had some firmer details.

61. In line with usual practice, the on duty Senior Sergeant for that weekend (who ultimately became the designated Forward Commander for the police operation) was also copied into the e-mail.

62. On 8 March, Officer B, the Area Prevention Manager for Auckland City, reviewed the Initial Assessment. He agreed with Officer A’s assessment and commented that the Police response might grow with continued monitoring of intelligence.

63. Officer B told us that his initial assessment was that the event was *“an event in Albert Park with a group of women promoting women’s rights and having a speaking event”*. He said it seemed to him to be a low level of risk, but in line with the usual procedure, he sent the information off

to the Police Intelligence Group to assess potential risks. He also told us that when he completed the assessment, he did not know who the main speaker was.

64. We asked Officer B to comment on the view expressed to us that the initial Police response was insufficient given that Police had been told of the risks by organisers including that the event “*could attract protest with physical retaliation*”. He said that, while he listened to the information provided and considered it, Police also needed to verify the information because it could be subjective and at this early-stage Police “*hadn’t seen the counter-protest and didn’t even know the name of the person who was going to speak*”.

Police responsibilities pursuant to the Bill of Rights Act related to freedom of expression

65. Another issue raised with us in the complaints we received is that Police failed to give effect to Let Women Speak’s right to speak protected by section 14 of the Bill of Rights Act .
66. Section 14 provides that ‘Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form’.
67. The complainants contended that section 14 places a responsibility on Police to take positive steps to give effect to that right, which in the context of this case meant that the Police risk assessment should have taken into account the known risk that counter-protestors had a plan to prevent Kelly Minshull from being heard by a noisy demonstration and that Police had a responsibility to take positive steps to ensure LWS speakers were not shouted down and could be heard.
68. We do not accept that proposition. New Zealand law does not impose a positive obligation on the State to facilitate the right to be heard, and we do not think Police are required, or should be required, to deploy sufficient resources to fulfil such a role.
69. We discuss enforcement of noise control levels later in the report.

Was the initial Police response to the event adequate?

70. We accept that Officer A was not aware of the information Ms A provided Police via the 105 number. We also note that, while organisers had clearly articulated the potential risk that existed from protestors, they did not assess the risk as being particularly high in their event proposal, with the risks associated with hostile and potentially aggressive spectators scored at 2 and 3 on a scale of 1 to 5.
71. In chapter 3 of the main report, we point out that Police processes for gathering risk information have developed on a District-by-District basis with little national oversight and inconsistencies between one District and another and, even when relatively reliable risk information is gathered, there is no objective process for determining how that information is to be assessed, so that officers are left to make their own subjective judgement.

72. Similarly, there is no clear guidance for Police Deployment Managers as to how an identified level of risk should be managed and no stated policy as to the nature and level of risk that deployment should be directed towards.
73. In addition to this, the risk assessment processes we have seen do not incorporate any assessment from a human rights perspective. Officers are not trained to assess risk from any perspective other than risk to safety. The risk assessment for the LWS event was based entirely on an assessment of Police intelligence about potential risks to safety, without any consideration of the need to protect rights including the right to freedom of expression.
74. At Chapter 5 of the main report, we make the point that further training in this area is required and needs to incorporate an understanding of crowd dynamics and risk management strategies that protect fundamental rights.
75. Officer A and Officer B complied with Police practice and procedure when conducting the initial risk assessment. However, the assessment was unsatisfactory for two reasons of a systemic nature.
76. Firstly, it was hampered throughout by the inconsistent and fragmented communication Police had with organisers trying to notify Police about the event. Above (see paragraph 55), we highlight that Officer A was unaware of the information Ms A provided to Police via the 105 line, which included details of the main speaker. As above (at paragraph 36), we list the various contacts Ms B had with Police attempting to liaise and provide information about the event. Contact and information was being received through multiple channels and not brought together by Police in a systematic way. As a result, the risk assessment was not undertaken on a properly informed basis.
77. Secondly, when the information Officer A and Officer B did have was being assessed, because Police do not have a systematic process for conducting such assessments, Officer A and Officer B made judgements based primarily on their own individual knowledge and experience of the group, which was very limited, and without any guidance about how to assess the weight to be given to information provided to them by the organisers or how to balance the perceived level of risk against the preservation of the rights of those holding the event and protesting against it.

FINDING ON ISSUE 1

In undertaking the initial risk assessment, individual officers complied with existing Police practice and procedure.

However, the initial risk assessment was flawed because it was based on inconsistent and incomplete information, and not supported by appropriate guidance as to how identified levels of risk should inform deployment decisions.

Issue 2: was the operation planning and resourcing adequate?

78. The Police initial assessment occurred on 7 March 2023 and did not change until the week leading into the event. On Monday 20 March Police decided an elevated response was required and started planning an operation for Saturday 25 March covering both the LWS event being held in Albert Park and the separate Destiny Church event occurring at the same time in Aotea Square.
79. In this section we consider the following issues in detail:
- Was initial operation planning adequate?
 - Was the Commander's Intent for the operation appropriate?
 - Was final operation planning adequate?
 - Was resourcing for the event adequate?

What information was available to Police by the time operation planning commenced on 20 March?

Permit approved by Auckland City Council

80. On 10 March Auckland Council's Health and Safety Advisor reviewed the Health and Safety Plan submitted by LWS with their event proposal. Mr D told us that the Council reviews Health and Safety plans and provides feedback and guidance to applicants where necessary. Plans are reviewed rather than being endorsed as approved, because responsibility for ensuring participants are safe remains with the organiser of the event and the circumstances and safety requirements can change over time.
81. On 15 March, the Council notified LWS that the permit had been issued. LWS were not asked to make any amendments to their Health and Safety Plan. A special condition of the permit stated, *"The Health and Safety plan for your event has been sighted. Any feedback provided by Auckland Council is to be implemented"*. A list of standard conditions was attached to the permit. Organisers were advised that failing to adhere to the submitted plan would be considered a breach of a bylaw,⁶⁵ and organisers were also required to comply with Council's noise provisions.⁶⁶

Police intelligence products released

82. On Wednesday 15 March, the National Intelligence Centre and Open Source Intelligence Teams, both located at Police National Headquarters, were scanning for information related to the LWS tour in New Zealand.

⁶⁵ Auckland Council Public Trading, Events and Filming Bylaw 2022.

⁶⁶ Auckland Unitary Plan 2016.

83. On Friday 17 March, the National Intelligence Centre forwarded information about the event to the Tāmaki Makaurau Police Intelligence Team.
84. The report included the following content:
- *Counter-protests are expected in New Zealand.*
 - *It is almost certain there will be tension between event attendees and counter-protestors.*
 - *It is unlikely these events will result in physical violence as counter-protest organisers are encouraging attendees not to engage physically or verbally with LWS attendees.*
 - *Open Source intelligence scanning did not locate any information on-line to suggest anyone attending the tour or the counter-protest intend to use violence.*
85. The report advised that Police should consider engaging with the organisers of the tour and counter-protest groups and provide Police presence at the events with ongoing scanning for further events or planned counter-protests.

Kelly Minshull attends a speaking event in Melbourne

86. On Saturday 18 March, Kelly Minshull attended a speaking event in Melbourne. The event resulted in violent clashes between anti- and pro-trans rights activists requiring Police intervention.
87. The event received extensive media coverage in New Zealand and re-ignited public debate about whether Kelly Minshull should be allowed to enter New Zealand to speak.
88. Members of the Green Party called for Kelly Minshull’s entry into New Zealand to be blocked on the grounds her arrival would pose a significant threat to public order. The Free Speech Union advocated for entry to be allowed on the basis that while the ideas Ms Minshull held were offensive to some people, the Union supported the right of people to hear her views and equally the right of those who disagreed to use counter-protest and peaceful protest to challenge her views.

LWS Police liaison officer contacts Police with further information

89. On Sunday 19 March, Ms B sent an e-mail to Officer A, the Tāmaki Makaurau planning officer, to advise him of a social media post by a group called the Trans-Liberation Alliance. The post was headlined “**NO PLATFORM FOR TRANSPHOBIA!**”. The post described Kelly Minshull as a “*notorious far right English transphobe*” and provided details of the LWS event in Auckland. Readers were encouraged to go to Albert Park and take “*the loudest, most obnoxious noise-makers you can get your hands on*” to “*shut down transphobia*”.
90. Ms B advised Officer A the post was being shared online and asked Officer A to call her to discuss. Officer A forwarded the e-mail from Ms B to Officer B, early on Monday morning.

Were the initial stages of operation planning commencing on Monday 20 March adequate?

Police decided an elevated response is required

91. By Monday 20 March it was clear an elevated response was required, and Police appropriately started planning an operation. Officer B was still tasked with responsibility for policing the event following the initial risk assessment. Officer A advised Officer B that the event will “*probably get some decent attention on the day and need staffing*”.
92. Officer A contacted Ms B on Monday 20 March, and advised her he had forwarded the information to staff working at the weekend. Later that morning, Officer B e-mailed several key staff about the Albert Park event. He advised them that the event had initially been assessed as a business-as-usual event that required monitoring, but now needed upscaling to a minor operation due to the counter-protest clashes in Melbourne and the Green Party asking for Kelly Minshull to be denied entry to New Zealand. He asked individual staff if they would be able to assist with the following tasks:
 - Identifying officers working that could be pulled into a minor operation with some contingency/escalation capacity.
 - Contacting the event organiser.
 - Drafting a minor operation order.
 - Scanning for further intelligence about the event.

Tāmaki Makaurau District Planning Team started planning an operation

93. Officer A told us that, although Officer B had indicated he was going to organise a minor operation, the Tāmaki Makaurau Planning Team recognised that a bigger response was required, even though it was still unclear if Kelly Minshull would be allowed to enter New Zealand,⁶⁷ and started planning an operation.
94. Planning was co-ordinated by the specialist Tāmaki Makaurau District Planning Team, with Operation Orders drafted and distributed by them.
95. They held several planning meetings at the start of the week, covering both the Albert Park LWS event and the Destiny Church event being held in Aotea Square at the same time.⁶⁸

Operation command staff were appointed

96. The usual role of the officer designated as the Operation Commander for this operation is a deployment manager responsible for managing staff movements and deployments across the

⁶⁷ On Monday 20 March 2023, Immigration NZ announced that in light of the events over the weekend, it was reviewing if Kelly Minshull was still able to travel to New Zealand using the electronic travel authority she held as a British passport holder, without obtaining a visa first.

⁶⁸ The Operation Orders confirm the orders were drafted by a Sergeant from the Tāmaki Makaurau District Planning Team.

District. He was appointed the Operation Commander because he was rostered to work that weekend as the duty Inspector.⁶⁹

97. The Operation Commander for any operation is normally involved with planning the Police response to an event, but in this case the Operation Commander was unable to attend any meetings prior to the event because he was chairing an interview panel that week and not available.
98. Officer A told us that because the Operation Commander was not available, he took on the task of arranging meetings, with the Manager of the Planning Group also assisting.
99. The officer designated as the Forward Commander was appointed as the Forward Commander because he was the rostered duty senior sergeant for that weekend. The Forward Commander is responsible for managing operational activities on the ground. The officer was already aware of the event prior to his appointment as Forward Commander because event notifications are routinely sent to the duty officer, and he had therefore been provided with a copy of the initial risk assessment. However, he was working on a project at the time and located in a building quite a distance away from the Police Station where the planners were located. This meant he was not involved in many of the discussions leading into the event. He told us that on reflection he should have ensured he was involved, as this was his first protest in a command role.

Conclusion

100. In light of the information and intelligence that Police had received by Monday 20 March, it was appropriate for planners to recognise the need for a more elevated response. While their initial steps to plan the operation were appropriate, the effectiveness of the planning was hampered by the absence of the Operation Commander and Forward Commander from many of the planning meetings during the week before the event.

Was the Commander's Intent for the operation appropriate?

What was the Commander's Intent?

101. In general terms the Commander's Intent drives the operational strategy that will be used at the event, and its formulation is an important part of operation planning.
102. The Commander's Intent for this operation was expressed as being:

"to maintain a safe and secure environment using negotiation as the principal method of preserving the separation of groups who are in conflict with each other. While the doctrine of minimal deployment and maximum reserve will be followed, the ability of responding quickly to police any incident must always be maintained."

⁶⁹ Auckland City Police have a duty roster for Senior Sergeants and Inspectors to provide extra coverage for incidents and events occurring over the weekend. Staff are rostered on over the course of the year and each officer will be required to cover approximately two weekends during the year.

103. The following instructions were also included in the orders:

“Prior to and during the operation, the Forward Commander will liaise with the rally coordinator at each venue to outline Police expectations and that the volunteer marshals will control both the rally and any march.

Prior to and during the operation the Police Negotiation Team will liaise with the rally co-ordinator at each venue to outline police expectations.

Venue groups will police each venue to maintain public order.

Response Group will remain on standby within the CBD and deploy if directed by the Operation Commander.”

104. To understand what the Commander’s Intent meant in practice, we spoke to the Operation Commander who told us that when he read the Commander’s Intent to staff at the briefing, he explained to staff it meant *“watch, stand off, react if we need to.”*

105. We also discussed it with the officer in charge of the Response Group for the operation. The Response Group comprised two teams of officers that included some officers with specialist public order policing training. The officer in charge of the Response Group told us that the Commander’s Intent for the operation was read out at the briefing, and he recorded being told that the threat was low and *“it was a community-based policing approach which means reassurance, low presence, low footprint and making sure people are safe through communication”*. He explained that having a low footprint means not having too many police officers trying to overbear the situation.

106. In the Event Debrief Form completed by the Operation Commander he confirmed that *“staff [were] deployed to the two locations and [the] contingency [response] team remained mobile between these locations.”*

How was the Commander’s Intent determined?

107. The Operation Commander is usually responsible for directing and controlling the operation and also determines the Commander’s Intent.

108. Officer A told us that when an operation is planned, the usual process is that a planner will discuss the Commander’s Intent with the Operation Commander to establish how they want to police the event. The planner will then ensure the plan is focused on what the Operation Commander is aiming to achieve. That did not happen for this operation because the Operation Commander was not available the entire week because of another commitment.

109. Unusually, therefore, the content of the Commander’s Intent for this operation was not informed by the wishes of the Operation Commander, although Officer A could not recall how the Commander’s Intent was decided upon.

110. The Manager of the Planning Group told us the wording of the Commander’s Intent for this operation, was something he had previously drafted and used for operations where appropriate.

He was unsure if the planners had spoken to him before applying it to this operation, or just simply identified it was the correct approach for this situation.

Did the planning staff think the Commander's Intent was appropriate?

111. The Manager of the Planning Group told us he agreed it was the correct approach for this operation because:

"You're looking at two groups who are opposed to each other and we want to keep them separated and negotiation through our liaison or Police Negotiating Team is a method of doing that."

112. He stated that this approach, of a minimum deployment of Police with sufficient in reserve to be called upon, if necessary, ensures the Police presence does not escalate a situation:

"Minimal police presence, really focus on negotiation, really try and get the leaders to Police their own crowd... On this one here that's essentially what we're trying to convey."

113. He also said that intelligence information would only influence that approach where they had specific information about what a group was intending to do:

"If it's just a basic protest of people just wanting to express their views, even in an emotional state, it would still apply."

114. We asked him to comment on the view expressed to us that using negotiation as a way of keeping everyone calm and separated was unrealistic and not going to work in this instance due to the nature of the public debate leading into the event and what had happened in prior events in Australia. He said:

"I think the plan we'd put together, the structure, was fine. The complexity was that you had the two counter-protests and my biggest fear was the [Destiny Church protest at Aotea Square] were going to come up and aggravate the counter-protestors at Let Women Speak... Numbers are always going to be a concern but we didn't believe that there would be any violence between the counter-protestors and organisers of Let Women Speak. We had no indication there would be anything aggressive there. It was [the Destiny Church protest] we thought would probably aggravate the counter-protestors at Let Women Speak greater than the speakers at Let Women Speak."

115. While it is unclear how the wording of the Commander's Intent was determined, all the planning officers we spoke to thought the approach of minimal deployment, meaning having a Police presence with a hands-off watching brief, combined with engaging with the varying groups and setting expectations, was the appropriate response for this operation based on the information they had at the time. The planning officers told us that they were aware of events that had occurred in Australia the week prior to the event. However, based on past experiences with the groups they knew would be attending and reassurances provided that they intended to be noisy but non-violent, they did not believe that the violent clashes that occurred in Australia would be repeated in New Zealand and considered the event to be low risk.

116. We also note that one of the organisers we spoke to told us that following the events in Australia “we knew there would be more than 200...I just could never have imagined that 2,000 plus people would show up...and certainly not with that level of aggression.” Another organiser told us, “we had no idea what we were going to be dealing with. We had no real clue. It was escalating and had escalated in Australia but we had no idea how that would translate over here.” The same organiser also told us that other gender critical protests she had attended in New Zealand had been “pretty non-aggressive...It certainly wasn’t like this ... It’s relatively respectful”.
117. The Operation Commander also told us that although he was not involved in developing the Commander’s Intent he agreed with the approach. He told us that *“based on my experience policing these types of events, and recent experience in managing Covid segregation of people ... people were fierce in their opinion on the subject but generally tolerant of each other’s perspective”*.

Did tactical staff believe the Commander’s Intent was appropriate for the operation?

118. After the briefing at which the Commander’s Intent was read out (see paragraph 105) the Officer in charge of the Response Group discussed the tactics they would use with the Forward Commander and a decision was made that in line with the Commander’s Intent to police with a low footprint, the response teams would remain in their vans until called upon by the Forward Commander.
119. The officer in charge of the Response Group was not required to be involved in any of the planning for the operation but we nevertheless asked him if he had a view about the appropriateness of the Police response to the event. He told us:

“I think the message may have got diluted ...The [Commander’s] Intent was a low risk gathering for...whatever message Ms Parker was giving...and showed some intel on some people who were very low level risks...Could we have done things better? Yeah 100%...On reflection I could’ve stood my two teams on this location, had them present and visible right from the start, showing presence, showing police presence and we know we’re there to do that. That may have deterred and prevented crime...so that’s one strategy that I probably would have adopted immediately.”

120. We explore the impact of the specialist teams remaining in vans further in Issue 3 below (see paragraph 231).
121. We also asked the Sergeant in charge of one of the response teams, if having more Police in the park might have prevented protestors surging the rotunda and he responded:

“Yep, 100% agree, it should have been like that all the time, but they didn’t want to do that because then it would have been in-your-face policing and they wanted a more softer approach...because it’s not going to aggravate them...but then they didn’t expect the size of the crowd.”

122. The Operation Orders were finalised on Friday 24 March and Officer A briefed the Operation Commander, on Friday afternoon.

Conclusion

123. We accept that the approach adopted for this event, focusing on engagement and intelligence with the aim of avoiding escalation of public disorder to the point where Police would be required to use force against or prosecute individual protestors, was consistent with the overarching police philosophy which underpins New Zealand Police's current model for Public Order Policing, sometimes described as the '4E graduated response model'.
124. However, the same failings that we highlighted in Issue 1 (inconsistent and incomplete information gathered during the assessment process, and a systemic lack of appropriate guidance as to how identified levels of risk should inform deployment decisions), also resulted in a Commander's Intent that was not appropriate for the operation.
125. A further reason for the inadequate Commander's Intent was the ad hoc nature of interaction between the planners and the Operation Commander in the lead-up to the event. As already noted, the latter was not available the week prior to the event and not engaged with the planning process. All the officers we spoke to told us that this was unusual and a learning from this event is the importance of ensuring commanders are involved in the planning process of an operation.
126. In chapter 3 of the main report, we discuss the changing nature of the protest environment and the increasing tendency for disparate groups of protestors and counter-protestors to converge, and conclude that the approach of ongoing liaison, engagement and negotiation between Police, Council officers and protestors is no longer adequate. While it should continue to be a key component of a positive protest environment, more guidance, prescription, and certainty regarding the parameters of peaceful protests is required.
127. The Commander's Intent, combined with an operation covering two events occurring simultaneously, drove the tactical decision for specialist teams to remain in vans rather than bolstering the Police presence in Albert Park. If the systemic flaws in the risk assessment process had not existed and all the known risks had been properly assessed, this might have resulted in a different approach to the event and potentially a bigger Police presence on the ground in Albert Park. As the officer in charge of the Response Group and one of the Sergeants said (see paragraphs 119-121), this may have had a deterrent effect, reducing the escalation of the tension between LWS and counter-protestors. We discuss this further in Issue 3.
128. Our view is that the Commander's Intent was inadequate, and this inadequacy had a direct impact on the decision to keep specialist teams in vans rather than deploy them in Albert Park.

Was the final operation planning adequate?

Planning team received further Intelligence

129. In the days immediately prior to the event, Police continued to receive further information about the likely scale of counter-protests at the event.

130. On Thursday 23 March, Officer A received an e-mail from one of the volunteer organisers of the LWS speaking event. The e-mail included links to several social media posts opposed to the LWS event and expressed a concern to Police that some of the posts were ‘bordering on incitement’. Officer A forwarded the e-mail to the Tāmaki Makaurau Intelligence Group and Operation Commanders.

131. On Friday 24 March, Tāmaki Makaurau Police Intelligence Group released a report with information about the event, which stated:

“Based on information from recent Australian events and the online narrative currently observed, it is almost certain there will be some confrontation between opposing ideologies increasing the risk of violence and personal harm to attendees. Online commentary calling for people to bring weapons including bricks suggests there may be individuals who pose a risk of physical harm to people caught up in the conflict.

It is impossible to assess how many people will attend these events on the day.”

132. At midday on Friday 24 March, the National Intelligence Centre based at Police National Headquarters advised the Tāmaki Makaurau Intelligence Group and Command Centre it had assessed that the content of the report it distributed on 17 March remained accurate and relevant. That report concluded that:

“...while it was almost certain there would be tension between event attendees and counter-protestors, it was unlikely the events would result in physical violence because counter-protest organisers were encouraging attendees not to engage physically or verbally with LWS participants.”

133. The Manager of the Planning Group told us that while he couldn’t recall if he saw the report from the Tāmaki Makaurau Intelligence Team released on Friday 24 March, the events in Melbourne had already been discussed at the planning meetings, including the Nazi salute.

134. He told us:

“We saw the far-right party there and... someone did some research into that, and it was just a coincidence that they just happened to be there when she was speaking, and they did a Nazi salute and so we weren’t convinced that we’d get the same element turning up at this event.”

135. Regarding the reference to online commentary calling for people to bring weapons and bricks, he said:

“If there was more flesh in that because we get that a lot from people, the keyboard warriors who will say one thing... and it doesn’t materialise. If there was a bit more foundation to those comments saying we know that certain persons of interest have said this and this and we know that those people will attend events like this then... the risk factor increases substantially, and we would put measures in place but reading it now, it wouldn’t have excited me much to actually get involved in how we would have planned that operation.”

136. The Manager also said that while he could not recall if he saw the intelligence report at the time, it would not have told him anything he didn't already know about this event, or in fact any protest.
137. Officer A also told us that his recollection is that the online post referring to people bringing weapons and bricks was quickly taken down because of the vitriolic comments it received from other groups and individuals saying it was not appropriate, and that some protest groups will make a lot of noise online but are nonetheless not known as violent groups.
138. In summary, operations staff continued to receive information about the type of protest that might be anticipated which, if taken at its highest, suggested the event would be a high risk one. However, the staff we spoke to said that in their experience, a lot of the threats posted on social media do not materialise, and the groups they were monitoring were not known as violent on the ground. As we highlighted in Issue 1 and in the main report, the lack of a uniform risk assessment process meant that it was left to individual officers to assess what level of risk to plan for based on the information they were receiving.

Police engaged with Council about private security arrangements for the event

139. Police were in regular contact with Council during the week prior to the event over a range of issues, including the number of private security guards hired by LWS organisers for the event.
140. LWS had advised Council on the Event Proposal that a security firm had been engaged and a security plan was being developed. Council had contacted the organisers on 20 March to ask how many security staff would be at the event and were advised there would be four.
141. On Wednesday 22 March, Council advised LWS that its health and safety advisor did not believe four guards would be sufficient to keep everybody safe at the event and asked LWS if it was considering increasing the number of guards at the event.
142. Ms C from LWS advised Council they had spoken to the security firm and on their advice had increased the number of guards to six. Ms C advised Council that the security provider:

"...has a clear assessment of the current situation based on Australian events and media reporting. In his opinion and experience, he believes increasing the guards to six will be sufficient."

143. Police met with Council representatives on 22 March. Following that meeting, Mr D from Council contacted Ms C again. He advised her he had been discussing Health and Safety aspects within Council and with Police. LWS were asked to ensure there was two layers of fencing with a two-metre gap between the event attendees and protestors. In relation to security Mr D stated:

"six could be a bit light considering the potential turnouts, as it is your responsibility as the event organiser to ensure the safety of all those in attendance. It is also important to note that the Police role on site will be to keep the peace and ensure public safety, not to act as security for the event."

144. Ms C replied later that evening, advising that they had complied with the Council request regarding fencing but would have six guards at the event.
145. Ms C also made the point that members of the public outside the fenced area were not the responsibility of the LWS organisers and noted the Police role on site was to keep the peace and ensure public safety.

Police engaged with LWS Police Liaison representative

146. On Monday 20 March, the Forward Commander for the operation rang the LWS Police liaison officer, Ms B.
147. Ms B told us that the Forward Commander reassured her that Police would be at the event monitoring the situation and he would meet her at the rotunda at 8.30am on the day of the event. The Forward Commander recalls telling Ms B he would meet her at the rotunda at 8.30am so she would be able to identify him as the point of contact during the day if needed.
148. The Forward Commander told us that Ms B raised several potential scenarios with him, asking what would happen in each situation, and recalls Ms B specifically asking him if Police could form a line between the two rows of fences being erected, to keep the groups separated. The Forward Commander told Ms B that he was unable to commit to a particular response to any of the scenarios because it would depend on what else was happening at the time.
149. Ms B recalls the Forward Commander told her he would have about six officers whose job it was to report how things were evolving on the day to him or the Operation Commander and there would be a number of Police on call to bolster the numbers if needed and that *“this is how we run operations... it’s an unknown, we don’t know how many people are going to turn up”*. Ms B told us she discussed the use of fences with the Forward Commander and explained that events in Melbourne had shown that it would be helpful if Police wandered through the area between the two rows of fencing.
150. On 24 March, the officer in charge of the Police Negotiation Team, also rang Ms B. Ms B says he explained he would be at the park with his team to make sure everyone was safe, and he would also meet her at the rotunda at 8.30am the following day.
151. The officer in charge of the Police Negotiation Team recorded details of his conversation with Ms B in the Webex message group being used by officers attending the operation to communicate with each other. He recorded that Ms B advised him that numbers attending the rally were unknown, but the attendees would focus on the rotunda and ignore all others outside the crowd control fencing.
152. The officer in charge of the Police Negotiation Team also recorded that *“[Ms B’s] expectation of Police is to... create a line between them and the counter-protesters.”*
153. On 24 March, after speaking with the Police Negotiation Team, Ms B went to the rotunda in Albert Park to meet the sound technician and saw that posters had recently been glued to the

rotunda. The posters were targeted at the LWS event and included an image of people at the Melbourne LWS event doing the Nazi salute.

154. Ms B reported this to the officer in charge of the Police Negotiation Team and sent him photographs of the posters. Police advised they would not be removing the posters and Ms B reported the matter to the Council.

Police engaged with protest groups

155. The Tāmaki Makaurau Police Negotiation Team was tasked with contacting leaders of the various protest groups identified as attending the event. The officer in charge told us that the message given to the people contacted was that it was up to the groups to police themselves and ensure the protest was legal and peaceful.

156. The officer in charge and another member of the Police Negotiation Team recorded the following information from representatives of groups attending the Albert Park event they spoke to on 24 March:

- *Plan is to surround the band rotunda and create enough noise to drown out the speakers.*
- *Numbers expected definitely 500 – but possible up to 2000.*
- *Large Instagram and Twitter messaging directing PRIDE community to attend and bring with them implements for creating noise.*
- *Plan is for tomorrow to be violence-free.*

157. The Police Negotiation Team also spoke to representatives of the group protesting on Aotea Square. He was advised the group expected between 500 to 1,000 people and 50 bikes. The plan was for the bikes to travel up Queen Street to Aotea Square and hold speeches from the back of a vehicle. The group had assigned people from within its own group to moderate participant behaviour.

158. Early morning on 25 March, the officer in charge of the Police Negotiation Team spoke with another representative from the community intending to protest, who told him:

- They were concerned about the low police numbers.
- There was a rumour that people attending the Destiny Church organised event in Aotea Square were planning to come to Albert Park.
- Attendees had been advised to make a noise but do it in a non-violent peaceful way.
- They acknowledged they were responsible for policing their own people.

159. The Police Negotiation Team shared the information received by recording it in the Webex message page.

Conclusion

160. Planning staff engaged in appropriate levels of liaison with Council, LWS and protest groups in the days leading up to the event. The systemic lack of guidance on a risk assessment strategy, and the physical absence of the Operation Commander, continued to mean the planning was conducted in a more ad hoc manner than usual.

Was resourcing for the operation appropriate?

Staff rostered to work on the operation

161. On Monday 20 March Police began identifying staff available to work on the operation covering both the LWS event at Albert Park and the event being held in Aotea Square.

162. The officers we spoke to involved in planning the operation told us it was not unusual to have only a week to plan an operation for an event. The time Police have available is obviously dependent on the information they receive and all the officers we spoke to confirmed it can range from as little as a day's notice to planning months in advance.

163. We have seen the Operation Orders for this operation and forty-eight officers were rostered to be on the ground, policing the operation. The staff list is attached to the Operation Order as an appendix with named officers assigned various roles as follows:

- **Albert Park** – A Forward Commander with a Sergeant and seven officers
- **Road Policing Group** – Albert Park – A Sergeant and five officers
- **Police Negotiation Team (PNT)** – A Sergeant and three officers
- **Field Intelligence officers** – A Sergeant and three officers
- **Aotea Square** – A Forward Commander with a Sergeant and four officers
- **Response group** - a Senior Sergeant in charge of two groups with a combined staff of two Sergeants and 14 officers. The two groups, which included some officers with specialist public order policing training, were available to be deployed as required by the Operation Commander at either location.

164. The Operation Order included an escalation plan setting out a process for extra officers to be deployed to the operation if the Operation Commander decided at the event that the circumstances were such that the event was beyond the capacity of assigned staff to manage. Any extra resources, however, would consist of officers already on duty being redeployed from their current Police activity to the operation.

Concerns with the level of resourcing for the event

165. One of the issues raised with us in complaints we received is that the Police deployment was grossly inadequate to meet their duties to keep the peace and maintain safety.

166. Police were planning for two concurrent protests – one driven by Destiny Church in Aotea Square and one in response to the LWS event in Albert Park. This added to the pressure on Police resources.

Was resourcing driven by the identified risk, or by the number of Police staff available?

167. The planning and resourcing for the event should have been driven by the Commander's Intent. However, because of the ad hoc way the Commander's Intent was developed on this occasion, combined with a lack of available resources, this did not occur.
168. The Manager of the Planning Group told us:

“Essentially, they were the numbers that we could pull together at the time, using the public order teams from Auckland City and Waitemata. ...In hindsight we would have put more staff there but with the information we had, we only had a week to get the staff... and what we can grab within our own resources without affecting the delivery of our business as much as possible...”

169. However, he also told us, “I would have thought it was adequate for what we knew at the time.”

170. The Manager of the Planning Group told us Police had never previously had any issues in Auckland City with the Destiny Church Group and the group is very good at policing its own members. He was confident that the staff assigned to Aotea Square could be used at Albert Park if necessary and there was an escalation plan built into the operation and the Operation Commander had the ability to contact the District Command Centre if necessary and request additional staff from officers already at work but performing other police duties.

171. Officer A, the planning officer that conducted the initial risk assessment, also told us that he was comfortable with the level of staffing for the operation and that:

“There was a bit of pushback with us getting the two extra reserve group sections, we had to do a TM notification for that,⁷⁰ once we got those I was very comfortable with the numbers we had, bearing in mind we still didn't have an idea of the numbers that were going to turn up... we also made a request for extra Public Order Policing staff, we got a few but probably not the numbers we wanted but at the end of the day the operational demand was unprecedented at that time period...”

172. We asked Officer A if they had the staff needed to meet the identified risk or just had the staff available on the day and had to make do. He told us:

“In the planning we are definitely subject to operational demand and what District Commanders will allow us... that's why we look at the Commander's Intent of minimal deployment and maximum reserve, so the key is the escalation

⁷⁰ A TM notification is the request that goes to the other District Commanders when Auckland City want to use staff from outside the Auckland City Police area.

plan... you have the ability to call on staff if you feel you need to have extra staff and that's an operational call on the day by the Inspector."

173. Officer A told us that the level of staffing at the event did reflect the potential risks at the event, and this is apparent when one compares the staffing available for the LWS event with the staffing provided two weeks earlier in Coyle Park, Auckland in response to the Big Gay Out event.

174. Officer A said:

"In reference to risk and staffing, Op Big Gay Out is... in some ways more of a risk... because there's far more people attending... with a lot of those groups that would have been at [Albert Park] and you have a Prime Minister attending. The point of difference is it's a community event and the relationship we have with organisers at that venue. For that reason, we only had two Senior Sergeants and a Sergeant plus eight officers, that was the staffing total for that event."

175. We have seen the operation orders and staff list for the Big Gay Out event and can confirm the staff numbers are as described by Officer A. The main difference in staffing levels on the ground at Albert Park was the use of a Negotiation Team and Field Intelligence Officers and the availability of a response group comprising a further 17 officers.

176. The Operation Commander told us that although the staff rostered to the operation were "the staff we had because we couldn't get anyone else", he was happy with the staff numbers "for an operation that we've run with similar staff previously for other similar things and we were ok. Nothing really too much happened."

177. The Forward Commander told us that leading into the event he felt it was going to be 'hostile' because of the narrative surrounding the event, but at the same time everyone from both sides were telling the negotiation team that they would be peaceful with all protest organisers providing reassurances that they would be noisy but not violent.

178. He told us that the discussion at the meetings he attended prior to the event was that in Auckland nothing had escalated previously involving this topic, and that future behaviour is predicted by reference to past behaviour.

179. The Forward Commander told us that while he was not happy with the level of staffing, contingencies were in place, and he believed all available Tāmaki Makaurau staff had been rostered to attend and "there has to be a reason if you are requesting extra staff". He also told us that the staff on the ground raised concerns about the level of staffing because they were concerned about what they could do if "things went wrong".

180. The Operation Commander made the following comments in the Event Debrief form:

"Appropriate staff numbers deployed to these 2 events based on intel received. ...There was some angst from Forward Commanders around resourcing. Managing their expectations based on staff numbers deployed on the day was challenging but we managed."

Conclusion

181. Although Police considered the event to be low risk, planners were mindful there was some potential risk at the event and the level of staffing reflects that concern. Police were also mindful of the need to have a public order policing capability. The Police Negotiation Team was utilised to engage with the various groups, in accordance with the Commander's Intent.
182. Judging if the level of staffing deployed to the operation was sufficient to address known or potential risks is difficult. On the one hand, Police had been advised of some potential risks by LWS organisers and were aware of what had happened in Australia and some of the rhetoric on social media in New Zealand. On the other hand, Police had engaged with protest organisers, received assurances that their intent was to be noisy and non-violent and previous protests in Auckland attended by the same groups had not caused any issues for Police. Police assessed the event as low risk and staff were deployed on the day in line with the Commanders Intent, which reflected the risk assessment.
183. In Chapter 3 of the main report, we discuss the challenges for police related to planning and deployment and make the point that there is no clear guidance as to how an identified level of risk should be managed and no agreement as to the nature and level of risk that deployment should be directed towards.
184. It is therefore difficult for us to judge what the staffing level ought to have been and if it was adequate. It is also difficult to judge because officers were deployed at the event in line with the Commander's Intent and deliberately kept a low profile, when arguably having a higher profile could have potentially deterred what occurred. What we can say is that the planners did identify the need for an increased level of staffing and did ensure there was some public order policing response capability available to the Operation Commander if required.
185. If Police had decided prior to the event that additional staff were required, the officers would need to have been brought in from other Police Areas or Districts. This comes at a cost, both financial, and in the form of officers not performing their usual policing duties. Based on the information Police had at the time it is doubtful whether this would have been justified.
186. On the day, the Operation Commander could have used the escalation plan and asked the District Command Centre to reassign staff already on duty elsewhere in Tāmaki Makaurau District, to the operation. Again, this would have meant other policing demands were not met while those staff were at the operation. Based on the information he had at the time, this would not have been justified.

FINDINGS ON ISSUE 2

Inadequacies in the planning for this event resulted primarily from systemic inadequacies in the risk assessment process rather than any fault of individual officers.

While the Commander's Intent was consistent with the overarching Police philosophy for policing protests, its appropriateness suffered from the same flawed risk assessment process highlighted in Issue 1.

The number of staff rostered to the operation was limited by staff availability. Sourcing extra officers from other Police Areas or Districts or redeploying officers already on duty in Tāmaki Makaurau to the operation was not justified based on the information available at the time.

Issue 3: Did Police appropriately respond to events as they unfolded on the day?

187. In this section we consider the Police operation at the event and consider the following issues in detail:

- What happened before Kelly Minshull arrived and should Police have responded by having an increased presence in Albert Park?
- What happened when Kelly Minshull arrived?
- Was the Police response to events as they unfolded after protestors surrounded the rotunda adequate?

What happened before Kelly Minshull arrived and should Police have responded by having an increased presence in Albert Park?

Let Women Speak participants

188. Ms B arrived at Albert Park at around 8.30am and erected two rows of fencing around the rotunda, with a two-metre gap, as agreed with the Council. The external fence was a waist-high metal fence, and the second internal fence a rope fence. The two-metre gap between them was intended as an empty space creating a barrier between people attending the event and any protestors.

189. LWS marshals were situated in the space between the two rows of fences and instructed by organisers to ensure people attending the LWS event remained in the fenced off area in front of the rotunda and did not engage with anyone outside the fenced area. Marshalls were advised that anyone engaging with protestors outside the fenced area would be asked to leave the event.

190. Six security guards had been employed by LWS. Their role was to keep Kelly Minshull safe and support the volunteer marshals if they needed help. They arrived at around 10am.

191. Ms B's understanding was that the volunteer marshals and security guards would be responsible for moderating the behaviour of people attending the event to listen to the speeches and standing inside the fenced-off area in front of the rotunda, and that Police would take responsibility for anything that might happen outside the fenced-off area.

192. Prior to Kelly Minshull arriving, people wanting to listen to the LWS speakers were marshalled through the fence line and were standing in front of the rotunda in the fenced-off area. Volunteer marshals were walking between the rope line and metal fencing. More volunteers were in the rotunda putting up flags and banners.

193. One of the organisers told us that as more people began to arrive in the park it became harder to manage the people entering the fenced-off area in front of the rotunda. She told us that prior to Kelly Minshull arriving, she spoke to a couple of people who were trans allies but, in the rotunda, and asked them if they wanted to be on the LWS side of the fence. She told us:

“We couldn’t legitimately stop anyone coming through. A couple of people were clearly trans and we knew they weren’t there in good faith, so they were approached and asked do you want to be on this side of the fence...They just kept saying we want to listen so there wasn’t a huge amount we could do about it because it wasn’t a restricted event.”

194. We note here that when Kelly Minshull entered the rotunda she was assaulted. The incident received a lot of publicity with images showing Kelly Minshull splattered in tomato juice. The person responsible for the assault was already in the rotunda when Kelly Minshull arrived. Police decision making at the event would not have altered the outcome and the incident is therefore outside the scope of our investigation and not included in this report.

195. At around 10.30am security guards told LWS organisers they were leaving the park to collect Kelly Minshull and leaving one security guard behind, in and around the rotunda.

196. We asked one of the organisers who was in the rotunda what was happening immediately before Kelly Minshull arrived. She said:

“The crowd was just highly aggressive... All the abusive placards waving around, you know ‘suck my dick’ or whatever they were saying... and then the noise... the noise was an assault in itself really. I was extremely bloody concerned...There were just so many people and I couldn’t see any Police. I knew I was alone with only one security guard and I didn’t know where he was.”

197. We asked if she was concerned for her safety at this point in time and she replied:

“No. I don’t think I was... At that point the fences weren’t down and I just thought they were going to be really obnoxious. We were expecting obnoxious noise because that’s what they do. It hadn’t reached the point yet where I thought it was beyond that stage.”

198. We also interviewed a person who attended the LWS event and was standing in the crowd directly in front of the rotunda. He estimated that approximately 150 people were standing in front of the rotunda immediately prior to Kelly Minshull arriving and said:

“There was still quite a good distance and barrier in place between the crowd... it was starting to get noisy... with yelling and screaming and pots and pans... and whistles and horns... It still seemed a very sort of not worked up crowd but just there to make a noise and that’s fine... You’re perfectly entitled to be there... At that stage there was probably a couple of thousand protestors... I saw a couple of sections of Police wandering around... They were away from the rotunda, there was no Police in that area they were off around the periphery.”

199. He told us that the crowd did not get ‘fired up’ until Kelly Minshull arrived.

200. In the minutes before Kelly Minshull arrived, Ms B contacted Police twice asking Police to come to the rotunda and stand between them and the protestors because she had had a pot thrown at her and was concerned about the behaviour of crowd. The requests were recorded in the Webex messaging officers were using to communicate with each other but there was no further response from Police.

Protest groups at Albert Park

201. Two representatives from protest groups arrived early and spoke with Ms B at the rotunda. Ms B described the meeting as amicable, with both Ms B and the protest representatives providing reassurances that LWS participants and protestors intended no physical harm.

202. Several groups had promoted protest activity on social media platforms. The Trans Liberation Alliance called for “*all hands on deck to shut down transphobia*”, encouraging participants to bring “*umbrellas, signs, banners and the loudest most obnoxious noise-makers you can get your hands on*”. The intent of this group was to hold a noise demonstration to prevent LWS speakers from being heard. Anti-fascist groups were also promoting the Trans Liberation Alliance protest on social media. A member of an anti-fascist group told us that they believed the LWS speakers reflected far right ideology, to which they were opposed.

203. In addition to the noise demonstration organised by the Trans Liberation Alliance, a group of trans allies, not associated with the Trans Liberation Alliance, had organised for speakers to meet at the fountain in Albert Park to hold an alternate speaking event. We spoke to a participant who told us:

“We just got an idea that a lot of argy bargy behaviour wanted to be brought to the rally and it was a lot of Americanised protest style behaviour they were encouraging. It’s a noise demo but we were thinking it was more effective to have something where we could have a platform to speak from, like trans voices within the community and they can talk about why they’re gathered and why Let Women speak ideology is so harmful...but we didn’t get the chance to do that on the day because it was so big and another group that was there encouraged everyone to rush the rotunda before we had a chance to speak about the day.”

204. The group promoting the alternate speaking event had a plan for different zones in Albert Park to be used by those wanting to shut down the LWS speakers (red zone), those who wanted to see what was happening but be back a bit (orange zone) and those who did not want to protest but wanted to gather in support (green zone). The aim of the group was to allow their speakers to speak and explain why there was a counter protest:

“This wasn’t about shutting down women’s voices at all but rather trying to let other communities know there is a whole entire community of voices that we’re excluding.”

205. Another group, which called itself the Unite Group, parked a large truck on Princes Street outside the Albert Park entrance nearest to the rotunda. The truck was fitted with a sound system and large speakers and was used to play music and broadcast messages to protestors in Albert Park.

206. Several politicians and high-profile activists also made it known they would be at Albert Park in support of other protest groups at the event.
207. At around 10.30am protestors who had been wandering around Albert Park started congregating around the rotunda. At this stage they remained outside the fenced-off area set aside for LWS attendees. Protestors congregated around the entire circumference of the rotunda in a much larger than anticipated protest.
208. These photographs show the situation immediately in front of and at the rear of the rotunda just prior to Kelly Minshull arriving.



209. We asked a representative from one of the trans allies groups if they had been aware before Kelly Minshull arrived of a plan to surge the rotunda. They told us:

“No, not even we knew. We felt completely blindsided, a group of us felt completely blindsided by it... When everyone rushed the rotunda everything was off. We were just on damage control trying to put out the fires.”

Police

210. The Forward Commander visited Albert Park at around 7am to familiarise himself with the park and check a report that protestors had planned to sleep at the park overnight. He did not see

anybody at the park but did see posters Ms B had reported the night before. He told us the content of the posters did not change what he already knew about the views of the protestors and did not warrant escalating or changing any of the plans. After familiarising himself with the park, he returned to the Police Station to attend a briefing at 9am.⁷¹

211. For the duration of the operation, the Operation Commander, was based at the College Hill Police Station monitoring events on CCTV footage. Communication with staff at Albert Park and Aotea Square was via a Webex text message group for people working on the operation and a dedicated channel on the Police radio.

212. The Operation Commander held a briefing for staff at 9am which included relaying the content of the Operation Orders. He told us he instructed officers that the purpose of the operation was to maintain a safe and secure environment and that:

“...people come and voice what they want to do and then we leave... Our intent is... to make sure everyone’s safe. That means watch, stand off, react if we need to.”

213. The Operation Commander told us he also gave some direction about the tactical response and told staff that:

“Because of the numbers and the two events being separately located, I would like our contingency team [the Response Group] to float between the two and our focus if anything comes up... should be in that space.”

214. The Forward Commander told us that after the briefing by the Operation Commander, the various groups discussed the tactics they would use at the event regarding how they would deploy and allocate staff and how they might respond to different scenarios that could occur.

215. The Forward Commander had eight staff available to police the Albert Park venue. After the briefing, he discussed with the sergeants how they would deploy the staff at the event. He decided that he would use the venue staff initially to roam the park to assess how many people were there, who they were and what was happening.

216. The Forward Commander made the point to us that the staff assigned to the Venue Group at Albert Park were not trained public order policing staff or even staff who normally work in the response cars. He told us they were community policing staff with general police training but no specialised training for this type of environment.

217. Officer C was in charge of the venue group at Albert Park. He split the group into pairs and tasked them with moving around the park observing what was happening and reporting back to him. One of his officers, Officer D, told us that as the crowd increased in size the officers began walking around the perimeter of the crowd because it was difficult to see anything when they

⁷¹ The Forward Commander told us that he had arranged to meet Ms B at the rotunda at 8.30 am but had subsequently been advised that the Police Negotiation Team would be responsible for communications with rally and protest organisers and so returned to the Police Station without attending the meeting

were amongst the crowd and also very difficult to hear other staff due to the noise level, even though they were wearing earpieces.

218. The Forward Commander and the officer in charge of the Response Group discussed what the tactical response was to be for the two teams in the Response Group (see above, paragraph 162). Because they did not want to be going into the park with ‘*too much show of force*’, in accordance with the Commander’s Intent for the operation (see above from paragraph 101), the Forward Commander decided to keep the team in their van on Princes Street so that they were close enough if things happened but at the same time not be a “*show of force*”.

219. The Forward Commander also told us:

“These response teams are the ones trained in public order and so if they’re required elsewhere, to get them out of there, to get them elsewhere back in the van, dictated how we use them... I just thought having them free to respond wherever... our ability to get in and make a difference and form the line [Ms B] wanted, 18 [officers] was never going to be enough and so that was why I decided having them out there would be a good, six at one (event) and half a dozen at the other... with response teams to stay in the van in and around Princes Street to deploy quickly if it was needed elsewhere.”

220. He also said that while there were escalation plans in place, there was no discussion about how to respond if larger than anticipated numbers turned up to protest. He said:

“One thing we reflected on was around contingency plans if things got as big as they did. That wasn’t discussed in as much detail as we could have. ...It was almost implied that we’ll just kick in, chip in and do this but actually, as you can see there wasn’t enough staff to do the ideal thing.”

221. The Forward Commander recalls being asked by Ms B to put officers between the fence lines to keep the rally participants separated from protestors. He told us that he considered the request both before the event and during the event. He said that when Ms B asked him prior to the event he was unable to commit either way because he did not know “*on the day what that was going to look like*”. Ms B confirmed with us that the Forward Commander did not commit to any particular course of action on the day, advising he could not disclose operational tactics.

222. The Forward Commander says he considered the request at the event but decided he did not have enough staff:

“It was a real balancing act... When we got there I just simply didn’t feel like there was enough staff on the ground to facilitate that... Where do you prioritise your staff that was the biggest struggle on the day... You’ve got a protest here but Aotea Square’s not that far away and nothing to suggest that something’s going to happen... So, putting in a line of Police didn’t seem like I could keep them there for long... Deploying them [elsewhere] would’ve been very, very difficult. I was between a rock and a hard place... Do I put everyone here and then something else happens somewhere else? ...I felt my actions on the day suited every scenario rather than some hypothetical at that point in time... I had to continuously assess where the threats were and not put all my eggs in one basket.”

223. The officer in charge of the Response Group, told us that even if the decision had been made to have a larger Police presence in the park, he would not have done this by forming a barrier with officers between the two fence lines, because it would have been too dangerous for staff.
224. Prior to Kelly Minshull arriving the Forward Commander was required to deploy staff from the venue group to attend the initial response to an incident in Princes Street when Green Party co-leader Marama Davidson was hit by a motorcyclist. He was also required to respond to a report of an unattended suitcase and utilise staff to ensure it did not present a threat to the crowd.
225. We make the point here that when the Forward Commander arrived at the event he was faced with a very difficult and evolving situation. The number of protestors that arrived far exceeded the number anticipated and there was a reasonable expectation from the event organisers that his decision-making would take account of their right to freedom of expression protected by the Bill of Rights Act.
226. The Forward Commander who Police tasked with making the tactical decisions at the event was an experienced officer but had no training or experience related specifically to public order policing and had received no command and control training related to the policing of protests. Although he says (see paragraph 228), that he did not anticipate the crowd escalating until after Kelly Minshull arrived, he also told us that his assessment of the situation prior to the event was that it was likely to be a hostile environment (see paragraph 176). The Operation Commander noted in the Event Debrief form that the Forward Commanders had raised concerns about the level of staffing.
227. The Commander's Intent and staffing level required the Forward Commander to adopt a community policing approach with a low Police presence. However, if in the circumstances he decided he needed to deploy more staff or put one of the Response Teams on foot in Albert Park, he had the ability to raise this with the Operation Commander.
228. Three Police Field Intelligence Officers had been at the park since before 8am reporting observations to the operation staff using the Webex message group. Kelly Minshull was scheduled to arrive at 11am.
229. The following sequence of events is recorded in the Police system:
- At 10am Field Intelligence Officers reported that approximately 20 to 30 protestors had arrived and were setting up by the fountain. Soon after they reported 12 to 15 LWS participants were at the rotunda.
 - At 10.17am they reported 25 to 30 protestors were outside the fenced-off area, seven to eight people were inside the fenced-off area for LWS attendees, and four contracted security guards were inside the rotunda.
 - At 10.23am they reported there had been "some heated exchanges on the fringes with skin-head types confronting protestors".

- At 10.39am they reported the crowd was getting larger and soon after the Forward Commander reported *“the noise has started”*.
- At 10.49am a group of trans allies were reported to be moving towards the rally.
- At 10.53am it was reported that the crowd that had gathered by the fountain was now moving towards the LWS rally. Officers at the event were asked, *“Do you sense any rising tension?”* A Police Negotiation Team (PNT) officer responded, *“No rising tension yet, however Ms B called me in a flap asking me to come to the stage”*.
- At 10.55am the Forward Commander reported that the mood of the crowd *“appears ok just a lot of noise”*.
- At 10.56am a PNT officer reported that Ms B had told them she had a pot thrown at her and *“needs Police between them and protestors now”*.
- At 11.00am a PNT officer reported that the rotunda was surrounded and *“the majority of protestors are making a lot of noise but nothing more”*.

230. At 11.02am the Forward Commander reported that Kelly Minshull had arrived.

231. The Forward Commander told us that immediately prior to Kelly Minshull arriving, even though a lot more people had arrived than expected and had encircled the rotunda, he still did not think that the event would escalate into violence. He told us:

“My feeling on the ground was yes it was loud, there was a lot of noise... They were both kind of yelling at each other... but there was no point up until [Kelly Minshull] turned up that I felt like... it was escalating to that point...I felt like the fence was doing the job it needed to keep both crowds apart...It was loud... They were banging drums and making lots of noise... It was simply protestors peacefully protesting saying their part...”

232. Officer D was walking in the park as part of the Venue Group. He also told us that, prior to Kelly Minshull arriving, the crowd was quite emotional but *“I wasn’t concerned for anyone’s safety... they weren’t violent people”*.

Conclusion

233. The question, then, is whether the officers on the ground, in the light of the information known to them, responded appropriately to the unfolding events in the period leading up to Kelly Minshull’s arrival. In answering that question, we must make two preliminary points:

- We have already concluded above (see paragraph 126), that if all the known risks had been properly assessed, this might have resulted in a Commander’s Intent that dictated a different approach to the event and potentially a bigger Police presence on the ground in Albert Park. But the actions of the officers on the ground must be assessed in the light of the strategy adopted by the Operation Commander and their knowledge of what was happening on the ground.

- Caution should be exercised in assessing actions with the benefit of hindsight: risks are inherently uncertain, and a bad outcome does not necessarily signify a poor prior judgement. We must determine whether the actions of the officers can be justified in the light of what they perceived and should have anticipated at the time, not what we now know.

234. Notwithstanding those qualifications, we have concluded that Police decision-making was deficient. The Commander's Intent resulted in a decision that the two teams in the Response Group should stay in their vans so as to be available for rapid deployment to either Albert Park or Aotea Square if any problems arose. We doubt the wisdom of that decision. Even on the basis of the intelligence information that was taken into account at the time, it should have been anticipated that there was a greater risk of disorder at Albert Park than at Aotea Square, and that a more visible Police presence at the latter was desirable. But we are satisfied that this was certainly required when the number of protestors began to swell and the events outlined in above unfolded (see paragraphs 188-232), including the concerns raised by Ms B. It should have been clear that, although there was no apparent threat of violence, the overall risks were such that the number of officers on the ground was simply insufficient and needed to be supplemented by the deployment, at the least, of the team from the Response Group who were in their van on Princes Street. The officer in charge of the Response Group, and the sergeants in the Princes Street Team, both gave some support to this when they told us that having extra staff in the park could have acted as a deterrent. We acknowledge that the Forward Commander had no public order policing experience, but both the Operation Commander and Forward Commander should nevertheless have recognised the need for extra officers in the park and discussed options for utilising the resources available from the Response Group.

235. We have not been able to determine how those resources would have best been deployed or whether they would have been able to reduce the disorder and violence that occurred. We have considered whether, with the support of the Response Group, officers should have been deployed to stand in the area between the two lines of fences that were designed to separate the LWS supporters and the protestors. The Forward Commander said that, even with the Response Group members, there would have been too few officers to comprise a tightly formed 'skirmish line' in the 'no-go' zone, and without that officers would have faced undue danger. However, the Forward Commander has no public order policing training or experience and his stated position is inconsistent with the fact that he did not perceive a sufficiently high level of risk to be calling for reinforcements at all. Nevertheless, the officer in charge of the Response Group (who is trained in public order policing) agreed that he would not have deployed the officers by placing them between the two fences. We have therefore concluded that we cannot go further than to find that the Operation Commander and the Forward Commander should have deployed additional staff from the Response Group to protect LWS supporters and keep them apart from protestors. It is not possible for us to determine in hindsight how the additional staff should have been deployed.

236. We also reiterate that this might not have made any difference. Even with the addition of one of the Response Group teams, or both, Police staff at the scene would have been vastly outnumbered and may not have been able to prevent what occurred.

Should Police have taken action to reduce the noise level?

237. It is clear that many more protestors arrived than anyone anticipated. Their known objective was to prevent the LWS speakers from being heard and using noise to drown them out. LWS supporters have complained to us that Police did not intervene to reduce the noise, with the consequence that even if Kelly Minshull had been able to address the supporters, she could not have been heard.
238. Excessive noise levels are addressed in the Resource Management Act 1991.⁷² Section 327 gives a designated local authority enforcement officer, or a constable acting on the request of an enforcement officer, the power to direct that a person emitting excessive noise immediately reduce it to a reasonable level. An enforcement officer may also issue an abatement notice under section 322. Council bylaw also applies where there is excessive noise in a public place.⁷³
239. Under these provisions, Police constables have no independent power to act. They can only take action on their own initiative if the behaviour constitutes disorderly behaviour or a breach of the peace.
240. The Forward Commander told us that a Council noise control enforcement officer did come and speak to him at the event and advised him he would not be taking any enforcement action because of the difficulties faced by Councils enforcing the powers they have. In Chapter 3 of the main report, we cover some of these difficulties, notably the absence of a power to issue infringement notices and the lack of resources and trained enforcement staff to undertake prosecutions.
241. The Forward Commander recalled that Ms B had explained to him how protestors overseas were using noise to drown out the event. The Forward Commander told her that Police had no power to deal with the noise unless it was extreme to the point it was an offence and that he would not be able to act if each side was each trying to be noisier than the other.
242. We agree. Before Kelly Minshull arrived, the Operation Commander was advised by staff in the park that there was no increase in tension and the crowd were simply making a lot of noise. One of the LWS organisers standing in the rotunda and a person in the crowd attending the event also came to the same conclusion: that the crowd were expected to continue to be noisy but were not expected to become violent.
243. In the light of that, there was no obligation on Police under the Bill of Rights Act to take positive steps to ensure that the LWS speakers were able to be heard (see also paragraph 68). Even if they had determined that the level of noise represented the offence of disorderly behaviour or a breach of the peace, it would have been reasonable for Police not to take any enforcement action because that could have provoked a violent response from the crowd and Police did not have the resources available to manage that potential response.

⁷² Sections 326 to 328 of the Resource Management Act 1991.

⁷³ Clause 6(1) of the Auckland Council Public Safety and Nuisance Bylaw 2013.

Was the Police response to events as they unfolded after protestors surrounded the rotunda adequate?

- 244. Protestors broke through the fence line and surged towards the rotunda soon after Kelly Minshull arrived. Let Women Speak were no longer able to hold their event and Kelly Minshull decided to leave. She was escorted through the crowd by security guards, with assistance from Police, and left the park.
- 245. We received a number of complaints that, after protestors surged towards the rotunda, people attending the LWS event were threatened and assaulted, some were trapped in the rotunda, and Police failed to protect them and did not respond to requests for help.

What do Police say?

- 246. When Kelly Minshull arrived, the Forward Commander was standing in the tree line between the rotunda and Princes Steet entrance to the park. He told us he was standing in that position because he could see both the front and back of the rotunda and this was an area where he had the best phone reception with less noise, thus enabling better communication with other staff.
- 247. The Forward Commander told us that communicating with staff was a big problem at Albert Park because the equipment they have is inadequate and ineffective in a noisy environment. He told us this has been an issue for staff for a while and can also create problems at other large events such as sporting events. The Webex messaging also had a significant delay and he was not receiving messages in a timely manner.⁷⁴
- 248. The Operation Commander also told us they were policing a challenging environment exacerbated by the difficulties officers had communicating with each other.
- 249. In the Event Debrief form, the Operation Commander recorded the problems they had with communication as follows:

“There are issues with Police comms in particular operational earpieces. The crowd noise would often drown out our communications between teams and Ops command. Communication inability also contributed to confusion with deployment, albeit minor....”

- 250. The Forward Commander told us he doesn't recall seeing Kelly Minshull arrive, but he knew by the reaction from the crowd she had arrived. Kelly Minshull made her own way into the park and the rotunda with her security guards. The Forward Commander told us they did not approach Police to ask for assistance or consult in any way. Immediately prior to her arrival, the situation had not been escalating, but when Kelly Minshull entered the park *“...things started heating up... All the anger was directed towards her”*. He said it was at this point that he started having conversations with the Response Group and the Operation Commander. His view was that things were getting a bit heated and PNT should talk to Ms B to evaluate if they needed to get everyone out.

⁷⁴ Police no longer use Webex

251. While he was having these conversations, he could see he was missing calls from Ms B and receiving messages advising him that she was being attacked. Ms B then arrived to speak to him while he was standing at the back of the rotunda with PNT staff. He recalls Ms B saying to him, *“you need to do something; people are getting assaulted in there”*. The Forward Commander says he told Ms B he did not have enough staff to do what she wanted (which was to surround the rotunda in order to protect Kelly Minshull and those immediately in her vicinity. Ms B replied by asking, *“you’re not going to protect me?”* The Forward Commander says he responded by saying the event organisers needed to re-evaluate the event and get people out safely and quickly.
252. The Forward Commander told us that he was trying to advise Ms B that the best course of action was for people to leave, and that Police would assist with that, but Ms B did not want to do that. The Forward Commander said, *“that’s what she had issues with, she wanted us to stay and be her protection and continue on with the rally”* but *“it was clear to me that the situation was getting to boiling point and the only option I could see was to get people out”*.
253. The Forward Commander told us that while he was still talking to Ms B, one of their security guards spoke to him and asked Police to help them assist Kelly Minshull to leave. The Forward Commander spoke with the officer in charge of the Response Group, and they made a plan for the response teams to enter the crowd. The Response team met Kelly Minshull as she was walking through the crowd towards Princes Street, assisted by her security guards and police officers from the Venue Group, and helped her leave the park.
254. The Forward Commander told us it was at this point that he started getting reports from the Communications Centre that they were getting calls advising people were trapped in the rotunda and injured. The Forward Commander says he briefed the Venue Group staff to go and look for people who were injured and needed help. He told us the officers came back and advised him, *“there’s no injured people in the rotunda, no-one’s putting their hand up to us and they want to stay there”*. The Forward Commander told us they were also having difficulty identifying people. He said the people wearing hi-vis vests were easy to identify but otherwise supporters and protestors could not be distinguished from each other.
255. After Kelly Minshull left the park, the Forward Commander told us he instructed officers to check everyone around the rotunda and escort them out of the park to the point where they were able to leave:

“It was getting too heated... There were people yelling abuse, essentially standing over people and yelling abuse at them and pointing fingers and megaphones in faces and I was thinking this is getting too much... I had to direct staff to go in and identify Let Women Speak people and individually get them out ... I didn’t know who was who until I saw counter-protestors basically following them around and just abusing them... Could not negotiate with the counter -protestors. They just would not listen to Police at all. It went from a peaceful protest to full blown hatred... so went through and checked on every LWS person I could identify and the ones that wanted help we get them out and the others who said ‘no I want to stay’ what else could I do? I couldn’t just form a wedge [to protect them] because there were a number of people we had to go and assess.”

256. Officer C, the officer in charge of the Venue Group, told us that after helping Kelly Minshull leave, his team walked around the park looking for people who might need assistance. He told us it was hard to identify anyone needing help and some of the people they spoke to did not want help and did not want to leave.
257. He recalls he was told that a woman had been assaulted and found a lady sitting on the ground being verbally abused. She was wearing a t shirt that clearly identified her as being a Let Women Speak supporter. Officer C asked her if she needed help, and she replied that she was fine and didn't need any help. Officer C says he told her that they had been told she had been assaulted and they were there to help her leave, and when she declined help he told her they would be standing nearby if she needed help.
258. A short while later Officer C was advised the lady had been assaulted again and he made the decision he was going to remove her from the area. He told us:

"That's what we did, she didn't want to go but we pretty much led her out... She wasn't causing a problem in anything she was doing but she was causing the problem... by who she was representing. I thought that to defuse the situation... we would ask her to leave... Some of them were very aggressive towards this lady and other people... Their aggression was quite severe verbally and there had been some assaults... My appreciation was that it was safer and more likely to defuse the situation by removing that one person than to try and disperse the rainbow community crowd."

259. Officer C told us that several people approached him telling him that people were being assaulted. He tried to find the people they were referring to but the only person he found requiring assistance was the lady that he asked to leave as referred to above (see paragraph 257).
260. Between 11.09am and 11.39am Police received 18 calls via the emergency 111 line requesting Police assistance in Albert Park. Some calls were from people at the event, some were from people watching the event live on social media.
261. The Forward Commander told us that, when the Communication Centre rang him and told him they were getting calls that people were in the rotunda and injured, he responded by arranging for officers to go and check the remaining crowd for injured people.

What do complainants say

262. We spoke to Mr E who attended the event, he told us:

"I didn't see Posie Parker [Kelly Minshull] until she entered the front of the rotunda... Then the crowd went nuts started yelling and screaming... at that point I would have expected a couple of sections of Police to move in and form a barrier between them and us. That didn't happen... I told my wife to grab my belt and I led her out... We went through the crowd... On the way out there were fists being thrown we were kicked, punched, spat at, we got liquids poured over us... I just barged through."

263. After escorting his wife out of the crowd, Mr E said he returned to the rotunda to help a pregnant friend who he thought was potentially trapped in the crowd. He told us he saw a line of Police entering the crowd and thought they were going to the rotunda to help, so joined the back of the line thinking this would be a good way of reaching the pregnant lady at the rotunda. He told us that when they reached the part of the crowd in line with the front of the rotunda, instead of walking to the rotunda, the officers kept walking. He told us:

“The rotunda had been basically mobbed and there were quite a few activist groups yelling and screaming... I spoke to the [officer] who was leading the group and said, ‘what are you doing? Why aren’t you going in there to help the women trapped in the rotunda?’ He replied, ‘No not our job, we’re not doing it. That’s not what we’re here to do.’”

264. Mr E told us he told the officer he was an ex-police officer and ashamed of the officer’s attitude. Mr E returned to the rotunda through the crowd and with the help of another person who had been attending the event helped some women who were trapped in the rotunda and “petrified and in tears” leave the rotunda and the park.

265. The line of Police walking through the crowd was captured on a recording subsequently posted to social media. We interviewed the officer who was leading the group, Officer D.

266. Officer D’s usual role is in Community Policing. He recalls being asked by either his sergeant or the Forward Commander to go and look to see if any people needed assistance. He told us a group of four of them weaved their way through the crowd in a single file line and couldn’t find anyone. He told us he did not recall any interaction with an ex-police officer.⁷⁵ He also told us that if he had been told there were people injured in the rotunda he would have reported that to the Forward Commander. He said:

“When we were walking through the crowd there was no animosity towards us... It was just loud and boisterous. There wasn’t anything being thrown and I didn’t see any violence directed at anyone. It’s just a crowd of people... If I saw anyone that needed help I would have helped them. And someone coming up to me telling me that I need to do something and they’re ex police, I try not to offend anyone but I’d already been through there and made my assessment and I didn’t see anyone I felt needed my help.”

267. Ms B told us that after Kelly Minshull arrived, she ran through the crowd to Princes Street to ask Police for help. She told us that she found a Police van on Princes Street with officers sitting inside. The officers were one of the Response teams who subsequently left the van and formed a line on Princes Street after Kelly Minshull arrived.

268. They told her she needed to speak to the Forward Commander and pointed him out to her.

⁷⁵ The person we spoke to identified the officer he spoke to from footage posted on social media. The officer we interviewed acknowledged he was the officer in the photograph.

269. Ms B says she asked the Forward Commander for help, telling him that he needed to come to the rotunda because women were being hurt. She says that at this time Kelly Minshull was still in the rotunda. The Forward Commander told her that they were formulating a plan.

270. Ms B returned to the rotunda where she was grabbed, threatened and shouted at by protestors. Some men she did not know helped her safely leave the rotunda and she returned to Princes Street to ask Police for help. She told us:

“As soon as I cleared the mob I walked over to the Police standing by the edge of the park on Princes Street and again begged for help for any women still trapped. I moved from one Police officer to another and those that did speak could only say we are not here to protect you.”

271. When we spoke to the Forward Commander, he acknowledged that after Kelly Minshull left, he was approached on several occasions by women asking for his assistance. He told us:

“I certainly didn’t meet their expectations. They told me a number of times how I’d let them down, but I couldn’t change that because of the dynamics of the situation... We were paper thin and I’d always said safety in numbers and if my teams go into a hostile situation I wanted at least two people... and if you break it down I had four groups and there were a lot more than four groups getting abused... saying we couldn’t protect them... It wasn’t through a lack of desire. It was just the numbers weren’t there to be able to.”

272. The Forward Commander also told us that when he was approached and asked for assistance he was unable to enter the crowd by himself to assist, because he needed to ensure he retained the ability to perform his role as the Forward Commander for the entire operation.

273. The Forward Commander told us he has reflected on whether he should have done anything differently at Albert Park and says that due to his inexperience at the time he could have asked others for their opinions about the tactics but feels he would not have done anything differently based on the information he had at the time. He told us:

“When things don’t go well I’m like ‘what could I have done differently?’ But there isn’t something I can put my finger on and go, ‘that’s what we should have done’... The topic brought out the nasty sides of people... It was like a pack mentality. I saw people that were great in the crowd and as soon as one person kicked off they jumped on the back of that, there was a lot of pack mentality stuff that was hard to predict.”

274. The officer in charge of the Response Group for the operation, comprising two teams, told us he recalls that when the officers were standing in Princes Street several people approached them and said, “you’d better go down there”, meaning into the park. He told us he did not hear anybody telling them people were being attacked and did not hear or see anybody being hurt. He said:

“My response to that was I couldn’t see what was happening... My team is always contingency, so I’m not going to commit my team just because a person is saying you better go down there... My team goes in to do tactical movements... We wait

for the trigger. We stay disciplined and the trigger for me is a direction from the Forward Commander.”

275. The officer in charge of the Response Group also told us that his role is to corroborate the information and then respond, and his assessment of the situation at that time was that the situation was escalating but not out of control and that there were *“resources forward of my location able to respond”*.
276. The Sergeant in charge of the Response Team sitting in the van in Princes Street told us he recalls that *“two or three elderly ladies came towards us saying, “you need to get in there because we’re being assaulted”*.
277. He told us that, because he only had four or five staff in his team, he did not have sufficient staff to go into the park as a tactical unit. He says he spoke to the officer in charge of the Response Group who then contacted the other Response Team to come and join them so they could go to the rotunda. He told us that when they contacted the other team, that team was either at Aotea Square or the other side of Albert Park.
278. He told us that when some ladies approached them on the second occasion they were standing outside the van and told the ladies they were organising more staff before they went into the park. He said:

“The ladies that were coming up to us, that was obviously urgent we need to get in there, but we only had a team of myself and 4 or 5, we don’t have the capability... Even with the other team we probably didn’t have the capability of going in there... We just weren’t staffed well enough”.

279. The Sergeant in charge of this Response Team also told us that only a few of the officers assigned to the Response Group were public order trained staff, so that even when both teams were combined the team was *“compromised with the tactics they could deploy”* and that *“in my opinion this was the most significant issue of the day”*.
280. He told us that they entered the crowd to go to the rotunda within minutes of the second team arriving and came across Kelly Minshull being escorted out by her security and they helped her leave.

Conclusion - was the Police response adequate?

281. The mood of the crowd did not change until Kelly Minshull arrived, and when it did change it did so very quickly. The Police tactic at the event was to keep a low profile. When the mood of the crowd changed there was only a small number of officers walking around the park and they were on the periphery of the crowd. The Response Group was located outside the park and at two different locations. Police were not able to prevent the crowd breaking through the fences and surging the rotunda.
282. It is clear that Police officers in Albert Park, including the Forward Commander, were told by many people that there were people in the park who needed Police assistance. While Police had insufficient staff to manage the general disorder in any meaningful way and there is no

suggestion that officers failed to help anyone they directly witnessed being assaulted or threatened, the responses Police gave to the people who approached them were inadequate.

283. For example, footage posted on social media of Officer D walking through the crowd in a line of officers, after the rotunda is surrounded, clearly shows Mr E following behind, as Mr E described it to us (see paragraphs 258-260). Furthermore, Officer D's response (see paragraph 266), suggests Mr E did in fact do what he says: he told Officer D there were people needing his help in the rotunda and Officer D was dismissive of his concerns and took no further action. We acknowledge that Officer D is a Community Constable and not a response officer or an officer who normally works in this type of environment, but his dismissive attitude to the information being provided did not have sufficient regard for the safety of members of the public.
284. Similarly, given the sense of urgency being conveyed by Ms B when she approached members of the Response Team on Princes Street and then the Forward Commander for help (see paragraphs 263-272), a different and more urgent response was required. It was inappropriate for an officer to tell her to go and find the Forward Commander, and the Forward Commander's response that he was formulating a plan was equally inadequate. The leader of the Response team and the Forward Commander both acknowledge they were approached by people requesting urgent assistance and should have taken immediate action to deploy at least one, if not both, Response Teams. Their relatively passive response showed an apparent lack of concern for public safety.
285. In short, all of the Police responses were inadequate given the urgency of the situation advised to officers by the people who approached them in Albert Park and to Police via the 111 line.

FINDINGS ON ISSUE 3

The Operation Commander and the Forward Commander did not properly respond to unfolding events by deploying additional staff protect LWS supporters.

There was no obligation on Police under the Bill of Rights Act to take positive steps to ensure that the LWS speakers were able to be heard, and Police had no power to control noise levels unless the noise reached the threshold of an offence.

The Police response after protestors surrounded the rotunda was inadequate, and did not have sufficient regard to public safety.

Appendix B – Unlawful arrest of counter-protestor during Palestine Solidarity Network Aotearoa protest in November 2023

1. On 25 November 2023, the Palestine Solidarity Network Aotearoa (PSNA) held a public rally in Aotea Square, Auckland. This was followed by a march along Queen St, protesting in support of Palestinian human rights.
2. As protestors arrived, Mr N stood waving an Israeli flag near the intersection of Queen Street and Wakefield Street, approximately 150 metres from where protestors were setting up a speaking area.
3. Police told Mr N to leave and stay away from the rally *“to prevent a potential breach of the peace”* and said he would be arrested if he did not comply.
4. Mr N left as requested but returned soon after without his flag and with his face covered. He stood in Aotea Square next to the stage where speeches were taking place.
5. Mr N saw an officer walking towards him and left quickly on a scooter. He was stopped by Police on Greys Avenue as he was leaving Aotea Square, arrested and charged with intentionally obstructing a Police Officer acting in the execution of his duty because he failed to comply with the officer’s lawful instruction to leave and not return.
6. Mr N complained to us that:
 - He had been asked to remove his Israeli flag and leave or be arrested, when there were many Palestinian flags. He added, *“I understand that the Israeli flag upsets the Palestinian flag but why can they have one and I can’t?”*
 - Police arrested him when he returned even though he was no longer carrying the Israeli flag or wearing any clothing to indicate his support for Israel, he was not saying anything to the protestors, and the protestors did not know who he was and were not paying him any attention.

THE AUTHORITY’S FINDINGS

Issue: Was the arrest of Mr N for obstruction lawful?

The arrest for obstruction was unlawful because there was no reasonable apprehension of a breach of the peace. Officer O was not acting in the execution of his duty when he told Mr N to leave and not return.

ANALYSIS OF THE ISSUES

What are the relevant legal provisions?

7. Section 23 of the Summary Offences Act 1981 provides that it is an offence to obstruct a Police officer in the execution of their duty.
8. Two of the statutory functions of Police are to keep the peace and maintain public safety⁷⁶.
9. Therefore, in circumstances where Police believe a breach of the peace is imminent, they have a duty to act and arguably that includes giving reasonable instructions to avoid that breach. If a person does not comply with those instructions, Police arguably have the power to arrest them for obstruction under section 23 of the Summary Offences Act 1981.⁷⁷
10. In the protest environment Police can therefore issue instructions to counter-protestors for the purpose of maintaining the peace and, if the counter-protestor fails to comply, an officer would have the power under section 23 to arrest them for obstruction.
11. An officer's actions in such a scenario must be weighed against the counter-protestor's rights, and any restriction must be a reasonable limitation under the New Zealand Bill of Rights Act 1990.
12. Officers are only acting in the execution of their duty if they have reasonable grounds to believe it is necessary to issue the instruction.⁷⁸

Interaction between Police and Mr N at previous protests

13. In this section we will describe the background circumstances and the context in which Police told Mr N to leave and restricted his right to protest.
14. Police had been attending weekly PSNA organised protests in Auckland following the attack on Israel by Hamas on 7 October 2023.
15. Mr N had come to the attention of Police as a counter-protestor at a number of earlier PSNA organised protests and had been arrested a few weeks prior to his arrest at this rally.

What do Police say about Mr N's attendance at earlier protests?

16. By 20 October 2023 Police had created a profile document with information about Mr N for staff awareness at subsequent protests.
17. Together with a photograph of Mr N, information recorded in the profile is:

⁷⁶ S9 Policing Act 2008

⁷⁷ *Minto v Police* (1991) 7 CRNZ 38 (HC)

⁷⁸ *Police v Ross* (1996) 4 HRNZ 502

- Mr N is a vocal opponent of pro-Palestine supporters.
 - He attempted to disrupt a vigil in Aotea Square on 18 October 2023 by using a loud-hailer to drown out speakers and express his own opposing religious views.
 - Mr N has been visited by Police and has indicated his intention to attend and protest against further pro-Palestine rallies.
18. If Police are aware of a large protest ahead of time, a written Operation Order will often be produced.⁷⁹
19. An Operation Order was produced for a PSNA protest held on 12 November 2023. The Operation Order included information about Mr N's previous interactions with Police at protests as follows:
- 14 October: Counter-protestor who walked in front of march with a megaphone yelling mildly right-wing religious sentiment, escorted by Police, not arrested as no identified offence. A few younger members from the pro-Palestine group were separated from Mr N.
 - 18 October: Candle-lit vigil. Mr N counter-protestor with a megaphone. A group of younger protestors tried to apprehend him, but he was able to leave.
 - 28 October: Aggression between Palestine and Israel supporters. A counter-protest group on the march along Queen St required Police intervention to separate the two groups. Mr N was observed during the initial rally.
 - 4 November: Rally in Auckland Domain. Mr N had attended and left after verbal interaction with a pro-Palestine person of interest.
20. Mr N's profile document was attached to the Operation Order.
21. Mr N attended the protest on 12 November wearing clothing to demonstrate his support for Israel. He wore a white T-shirt with a large blue star on the front, blue and white shorts and had blue paint covering half of his face. He carried an Israeli flag and a megaphone.
22. Mr N was arrested at the rally for breach of the peace. Police recorded at the time that Mr N told officers he intended to go to the rear of the stage to disrupt the speakers and was arrested because *"his intention was to deliberately confront pro-Palestine march protestors, coupled with this potential to create a breach of the peace."*

What does Mr N say about his interactions with Police at earlier protests?

23. Mr N told us that the first time he attended a protest was on 14 October 2023. He says he was wearing normal clothes and using a megaphone to relay his support for Israel. He says he did

⁷⁹ The Operation Order is a plan for the purpose of conveying to staff detailed instructions about the Police role at an event and how that will be achieved.

not swear or put anyone down but was broadcasting that Hamas is a terrorist organisation and should release the hostages.

24. He told us the Palestinian protestors got aggressive towards him and Police held them back. Police told him he needed to go home and that if he said anything else he would be arrested.
25. On another occasion he was in Queen Street with a number of other people, counter-protesting at another PSNA organised march.
26. He told us the Palestinian protestors did not like the group's presence. Police formed a line but the protestors broke through the Police line and hit a young person and knocked over an elderly lady. Mr N decided his group of counter-protestors needed to leave and told us *"Police were not controlling it well, they did not have enough people and were not ready for what was happening."*
27. Mr N told us that on 12 November, he arrived at the protest and Police told him they didn't want him there. He told Police he was meeting some people on the other side of Aotea Square and asked if they could go and stand there peacefully with flags. Mr N says Police told him if he went there he would be arrested. Mr N told Police *"It's my right to protest"* but when he turned to walk down a back street, he was arrested and put in the back of a Police van.
28. Mr N also told us that at the protests he has attended, the Palestinian protestors have been the violent, aggressive and abusive people, not the counter-protestors. He says they yell out abusive remarks and pretend to shoot you. On one occasion three protestors got out of a car and were going to attack him but *"luckily Police were there to tell them to get back into the car."*

Issue: Was the arrest of Mr N for obstruction lawful?

29. In this section we describe what happened on 25 November 2023 when Mr N was asked to leave the area and arrested when he returned. We then assess whether the arrest was lawful.

Police operation on 25 November 2023

30. Police planned an operation for the weekend of 25 and 26 November 2023, Operation Barometer, in response to protest activity signalled by PSNA. PSNA advised Police they expected around 7,000 people to attend the protest.
31. Operation Orders were prepared by the Tamaki Makaurau Operations Planning Group and officers briefed before the rally started.
32. The mission for the operation was *"To police the rally and march in a manner that enables all people to be safe and feel safe and minimise disruption to the Auckland CBD."*
33. The Police objectives included to:
 - Observe and protect the right to lawful protest.

- Take lawful and positive action if it is believed a situation will escalate into disorder and or the safety of an individual will be compromised.
 - Prevent an escalation of disorder and ensure that the protest proceeds without issue.
 - Maintain a safe separation of any groups in conflict with each other.
34. The “Commander’s Intent” for any police operation is the operational strategy used to meet the objectives.
35. The Commander’s Intent for this operation was “to maintain a safe and secure environment by separating any groups who conflict with each other and using negotiation and if necessary Public Order Policing Teams as the principal method of creating and preserving that separation.”
36. The Operation Orders also stated:
- “The recent events within Israel and the Gaza Strip have polarised members of our community who have diverging views on this event.*
- This has been recently demonstrated overseas in countries such as the UK and Australia where there have been heightened tensions during pro-Palestine marches. This has the potential for highly emotionally charged individuals from both sides of the argument, if left unchecked, to escalate a crowd into disorder.*
- Freedom of expression and speech is an important part of our democracy and Police needs to play its part regardless of our views on the topic at hand.*
- The police role in this operation is to keep the peace and uphold the law which includes allowing the exercise of freedom of expression, a right upheld by the NZ Bill of Rights Act 1990. In short, people are free to say what they wish providing it is within the bounds of the law.”*
37. Officers were advised there was a “likely possibility of counter protests from pro-Israel supporters” and “It is likely that the use of the Israeli flag will be a trigger for the Palestine protestors to escalate tension between the groups.”
38. Under the heading Other Protest Activity, staff were provided with the following information about Mr N:
- “...Has indicated to Police that he will not attend the rally in counter protest. While he has indicated this, it is likely that he will still attend to observe which was noted last weekend. Mr N has been previously arrested for breach of the peace at an earlier protest and is currently on bail with a condition to not threaten or use violence against anyone.”*
39. The profile document for Mr N was appended to the Operation Orders. He was the only individual identified as a risk in this manner.

What happened when Mr N was asked to leave?

What does Mr N say happened?

40. Mr N told us he was standing at the bottom of Wakefield Street where it intersects with Queen Street, on the grass area opposite Aotea Square, when Police first spoke to him. He was holding an Israeli and a New Zealand flag. He was wearing normal clothing and did not have a megaphone with him because *"I already knew Police were against it"*.
41. He says three Police officers arriving at the protest saw him, came over and shook his hand and told him he was allowed to stand where he was, and that as long as he did not go over to the rally in Aotea Square, he would be fine.
42. The rally had not started but protestors were starting to arrive. Mr N says he could see some of the protestors had noticed him and knew he was there, but no-one said anything to him.
43. About five minutes later, the same three officers came back and told him he had to put his flag down, go home and not return.
44. Mr N says:

"When they told me to leave there was just me, and look where I was, I'm not in their faces, I'm not causing violence, I told the Police I won't even speak, I was already scared they would arrest me because that's what they had done before."
45. Mr N told us he decided to go home *"because I'm tired of being arrested for this sort of stuff"*.
46. As he started to walk away, a Senior Sergeant spoke to him and said *"Don't you dare return with this flag and if you put it up down there we'll come down in the Police truck and arrest you."* Mr N replied saying, *"Which country are you from?"*
47. Mr N says he went home to his nearby flat and returned about an hour later on his scooter. He was dressed normally but decided to put a bandana around his face. He says he covered his face because a lot of the protestors were wearing face coverings, and he would blend in and could attend as a citizen just to see what was going on. He also told us he knew that if Police saw him, it would look suspicious, and he didn't want Police to see him.
48. Mr N says when he returned to Aotea Square the rally was still going and he did a few laps of Aotea Square on his scooter amongst the crowd. He says that during this time *"no-one reacted or talked or approached me, no-one knew who I was on my scooter"*.
49. Mr N stopped where the speeches were taking place and stepped onto the side of the stage to have a look at the crowd. He says he did not stand out because there were a lot of people on the stage doing speeches. No-one reacted to him because they did not know who he was.
50. Mr N says he did not go back intending to disrupt or interrupt. He went down as a citizen to see how many had turned up to protest.

51. Mr N told us he was on the stage for only a couple of minutes. He would have stayed longer but he saw an officer point him out to the senior sergeant who had told him to leave. He then saw the S/Sgt walking towards him. Mr N told us he could see the officer was angry so decided to leave. He says, *"I thought if I leave the area he won't arrest me, so I did, but what I didn't expect was all the Police officers in the truck"*.
52. Mr N was arrested as he passed a Police truck. He was taken to the Police station and charged with obstructing the officer who initially told him to leave, Officer O.

What does Officer P say happened?

53. Officer P was the Mentor Forward Commander for the operation. His role was to provide support and advice to the Forward Commander and assist with decision-making during the operation, if required.
54. Officer P was aware of Mr N prior to the start of the protest. He knew Mr N was a supporter of Israel who had attended previous protests and made his presence known by waving a large Israeli flag. On occasions he had used a megaphone to say what he wanted to say. He was aware Mr N had been arrested previously at a protest but was not aware of the circumstances of the arrest or what he had been charged with.
55. Officer P walked to Aotea Square after the briefing with the Forward Commander of the operation and the Public Order Policing Commander, Officer Q.
56. Officer P told us Mr N approached them as they were walking into Aotea Square and he heard him have a conversation with the Forward Commander. Mr N was asking what he could and could not do by way of a counter-protest. He was asking the Forward Commander, *"can I do this, can I do that, what if I do this?"* The Forward Commander told Mr N it was difficult to discuss hypothetical situations because it depended what else was happening at the time.
57. After speaking to the organiser of the PSNA protest (PSNA Protest Organiser), Officer P and the Forward Commander stood in Aotea Square watching the protestors arrive and set up speakers for speeches.
58. Officer P says a short time later he saw Mr N standing opposite Aotea Square, where the protestors were gathering.
59. Officer P told us, *"He was wearing khaki pants, a blue top and holding a large Israeli flag with a smaller secondary flag, but no megaphone. He stood there ... minding his own business and we were just monitoring."*
60. Approximately 10 to 15 minutes later, they were approached by the PSNA Protest Organiser who told them, *"There are a couple of younger people in the group .. that are feeling agitated that [Mr N] is across the road"*.
61. Officer P told us that at this point a crowd of approximately 1000 people had gathered. He says while this was an early protest and feeling was quite high, the general feel of the crowd was

pretty good, but there were elements within the crowd he had identified as needing to be watched:

"I wouldn't say it was on a knife edge and I wouldn't say it was a real, look out, something's gonna happen, but there were elements within the crowd ..."

62. Officer P says Mr N was standing waving his flag. He may have been talking to passers-by but wasn't yelling. Officer P could not hear him. A few people in the crowd were watching Mr N and taking an interest but no one was taking any action. No-one was abusing him.

63. Officer P told us he decided Mr N needed to leave because:

- There were a couple of people in the crowd identified in the Police documents as being risks with violent histories and they were taking an interest in Mr N. His thoughts were that if these people decided to take action into their own hands, Police would not be in a position to protect Mr N and he could see the agitation starting to grow.
- The PSNA Protest Organiser was coordinating the PSNA protests but did not have control of the group. There were a lot of splinter groups within PSNA, with the Youth Group being one of them, and they were far more confronting.
- When the PSNA Protest Organiser told Officer P about the young people becoming agitated, he also told Officer P that the Israeli flag was deemed offensive by the Palestinian people because the Israelis painted it on their bombs and weapons. Officer P considered this added to the risk given the proximity of Mr N and because feelings were still raw from the recent attack by Hamas
- At a previous protest a male had assaulted a young child and when Police moved in to deal with it, the Palestinian group thought Police were dealing with a Palestinian person and *"they pretty much went at Police"*:

I didn't want to get to that stage. If this group decided they were gonna have a crack at [Mr N] and we had to go hands-on and deal with it there was gonna be a risk to DM, .. a risk to the Palestinians and .. a risk to staff. It came down to a safety issue and my view of the world it's better to prevent things rather than react to them.

64. Officer P tasked two constables to speak to Mr N. He says he told them to tell Mr N to leave for his own safety and explained to them the reasons why.

65. Officer P told us:

I said to the staff what I want you to do is I want you to go across to [Mr N]. I want you to speak to him and I want you to ask him to move along, I want you to advise him that he will be arrested for obstruction. I said to staff the reason I'm saying obstruction is because our mission is to make people safe and keep people safe. I'm anticipating that if he remains here there is going to be a breach of the peace. Section 42 of the Crimes Act says prevention of a breach of the peace so he's not allowing us to execute our duty. He's obstructing us in the execution of

our duties, which is maintain the peace so I'm asking him to move along or he'll be arrested for obstruction.

66. Officer P also tasked Officer Q to go and speak to Mr N to ensure he knew he had to leave and the reasons why. He told us that officers spoke to Mr N, Mr N left, and everyone calmed down. Officer P did not see who spoke to Mr N and was not told what officers had said to Mr N.
67. We asked Officer P if he thought, in hindsight, that Police could have done anything differently. Officer P told us:
- While he could have placed four staff around Mr N to provide protection, that's four staff taken away from their role at the rally and is a high number of staff with a lot of other things to manage. He told us he didn't think that was an option at the time because it would have taken staff pulled from all over the operation and because the events were still relatively new and raw, he didn't want to commit staff. Officer P said *"What happens if we put four staff on [Mr N] then someone else turns up. We put four staff on them and suddenly we're diffusing our ability to respond to anything else."*
 - He would not have the capacity to protect Mr N if a group of people decided to "deal to him" because Mr N was antagonising and upsetting a group of people including a small number with a history of violence.
 - *"It came down to a safety call. I made it. I deemed him being there was a risk to him, potentially a risk to the Palestinians, certainly a risk to my staff."*

68. Officer P says:

"I'd much rather have done that than us be sitting here talking about how he almost got killed because we didn't prevent anything, and we sat back and watched until something untoward happened."

What does Officer O say happened?

69. Officer O is a Community Constable who works in a small rural station. This was the first protest he had ever been rostered to attend. His role was to monitor what was happening in the rally and provide operational support as directed by the Operation Commander.
70. Officer O recalls being advised at the briefing that Mr N was a 'person of interest' for Police at this rally due to his actions at previous protests and that he usually arrived *"waving a flag and yelling stuff in a megaphone"*. He was aware he had been arrested at an earlier protest.
71. Officer O arrived at Aotea Square with two colleagues and recognised Mr N from the briefing. He was standing by himself opposite Aotea Square waving an Israeli flag. The officers introduced themselves to Mr N then carried on walking into Aotea Square. Officer O doesn't recall any of the officers saying anything to Mr N other than introducing themselves.

72. When Officer O arrived in Aotea Square, Officer P confirmed it was Mr N the officers had been speaking to, then told them to go back and tell Mr N that *“he needs to leave the area because he can potentially be breaching the peace by being here.”*

73. Officer O returned to speak to Mr N and told him:

“Due to what was going on and his previous .. you could be breaching the peace by standing here with the flag. You need to leave this area, take your flag back to where you stay and stay there while this is going on”.

74. Officer O told us Mr N told him he had been advised when he was arrested previously that he could attend the protests as long as he didn't have his face painted and didn't use a megaphone, but he was going to leave because he didn't want to be arrested again.

75. Officer O says that when he spoke to Mr N he was standing waving his flag but not saying anything and there was no-one with him. The Palestinian protestors were still gathering. He could see and hear the protestors from where Mr N was standing but no-one was paying Mr N any attention.

76. Officer O told us:

“to be fair ... honestly at that stage I couldn't see a problem. He was a stirrer I suppose but at that time he was just standing there with this flag. I remember him saying to me, “Well what am I doing wrong? I've got my flag and there's 120 flags over there”, which to me was probably correct. ... At that stage I couldn't see what he was doing wrong.... He wasn't yelling out stuff but I wasn't au fait to his previous things. ... “ [the rally] hadn't started as such, so right then possibly [there was] no risk, people were still converging on the square for the rally ... Everybody was just arriving. We were just arriving to take up our positions... I think maybe as was happening then, we were taking a side. Whether that was correct or not, but he wasn't doing anything. It might have been better for me to have spoken to him and just said “okay, what you are doing is all right but if anything changes it ain't going to be alright.”

77. Officer O told us he felt, however, that he should follow the instruction he had been given because:

“I didn't know what he was capable of, I hadn't witnessed what he was doing previously, and I just took it that they wanted him to leave before something happened and it probably was the best opportunity before something did happen.”

78. Mr N left as instructed and Officer O didn't see him again.

What does Officer Q say happened?

79. Officer Q was the officer in charge of all the Public Order Policing Teams for this operation. He has extensive experience in Public Order Policing in command-and-control roles as a sergeant and senior sergeant.

80. He recalls at the briefing staff were advised that Mr N had been arrested two weeks earlier at a protest and that his behaviour was becoming more heightened each week:

“We spoke about contingencies that if he was going to cause violent issues then he would be warned not to come back and if he did he could be arrested for obstruction”

81. Officer Q told us he believes that Mr N knows that the Palestinians find the Israeli flag offensive and by carrying it he is outwardly trying to provoke a violent response from the Palestinians.
82. When Officer Q arrived at Aotea Square he was aware Mr N had already been spoken to by other officers. Officer P asked him to go and speak to Mr N to ensure he understood he had been told to leave and warned he would be arrested if he came back, which he did.

Footage

83. Before leaving the area Mr N used his phone to record a short interaction with Officer O, with the latter’s permission. The footage is around 1 minute long. Mr N is standing on the corner of Queen Street and Wakefield Street, opposite Aotea Square. He is facing Aotea Square and while talking to Officer O pans the immediate area. This shows what was happening in the immediate vicinity when he was asked to leave.

What does Mr N’s footage show?

84. The footage records the following conversation with Officer O:

Mr N: Got the three gentlemen, officers, in front of me. Got a bit of a Palestinian protest over there. Just come down here today because I was told that if I showed up without my megaphone and I didn’t have my face painted that I would be allowed to stand over here with my Israel flag down here in the middle of Auckland City, but now I’m being told I must take it down and I must leave the premises or I’ll be arrested, is this right?

Officer O: A potential for a breach of the peace with you being here with the flag flying, so we’re asking you to leave the area.

Mr N: So that’s what it is folks, it’s a breach of the peace, I’m being told to leave the area because I’ve got.

Officer O: There is a potential for a breaching of the peace.

Mr N: There’s a potential because I’ve got an Israel flag that’s a breach of the peace, but they’re over there with about 100 Palestinian flags and there’s no breach of the peace and it’s just me so I just wanted to make that clear.

Officer O: Appreciate your co-operation.

Mr N: Put it out there for everyone to see. Thank you officers. I’m going to make a note I’m going to obey because I’m tired of being arrested for this sort of stuff.

Officer O: Thank you.

Mr N: Thanks.

85. The screen shot below is taken from Mr N's footage and shows Queen Street with Aotea Square in the background. The view is consistent with the rest of the footage as it pans up and down Queen Street and illustrates what was happening in the immediate environment when Mr N was told to leave.



86. We showed the recording to Officer O and asked him if there was anything else happening at that time, not recorded, or not properly captured in the footage, that could impact on any risks if Mr N had been allowed to remain where he was. Officer O confirmed there was nothing else happening nearby and the footage is an accurate recording of the situation when Mr N was told to leave.

What does Officer Q say happened when Mr N was arrested?

87. Officer Q was advised by Officer P that Mr N had returned. He was in disguise and standing by the stage near the protestors, who were still listening to speeches.
88. Officer Q told us that the protestors were not reacting to his presence, saying, *"they probably couldn't see him because he's got his disguise on"*.
89. Officer Q says he was worried Mr N was going to be assaulted:

"I don't know what they [the protestors] are thinking but we know what his intent could be. ... If he's gone through to disguise himself and then he's trying to interrupt their lawful protest we're worried he's going to get himself stabbed or injured".

90. When asked what the risk was if the protestors did not know who he was, Officer Q replied, *"well the risk is he might just go up and do something to them."*
91. Officer Q told us he was concerned that Mr N was going to be seriously assaulted and Police needed to act when they did for the following reasons:

- He had purposely injected himself into the rally up by the speakers.
 - Prior to this, his behaviour got worse to the degree that a car had been driven behind Police which nearly drove into Mr N and three others. Police had to put themselves in harm's way to physically stop the Palestinian protestors from getting to Mr N. His behaviour had escalated where now he was putting Police staff at risk. Even though Police had locked him up previously, he kept coming back week after week.
 - His prior behaviour in the protest beforehand showed he was potentially going to incite a riot so it was a prevention measure. Officer Q's experience told him Mr N was going to get beaten up, so Police were de-escalating the situation. All the time Police were thinking what the safest way was to de-escalate the situation before it escalated to the point where they had to take some action.
 - A few weeks prior they had seen a male carrying a spade and he used it to hit a child. They could have arrested that guy for carrying an offensive weapon in a public place, but they didn't. They were now asking themselves "why didn't we act?" If they had acted they would have stopped the assault
92. When asked why they told Mr N to leave instead of focussing their attention on anyone who might threaten him, Officer Q said that it was necessary to de-escalate the situation before that occurred, because otherwise it would be dangerous for staff.
93. Officer Q approached Mr N. Mr N saw him, jumped on his scooter and rode off.
94. Officer Q could see that he was travelling towards one of his teams sitting in a van waiting in reserve. He radioed the team and arranged for Mr N to be arrested as he rode past.
95. When asked why they didn't just let Mr N leave, Officer Q told us he decided Mr N needed to be arrested because he had already ignored a lawful order from Police and gone to the trouble of disguising himself and could potentially return if allowed to leave:

"If we charge him, he's out of the way and safe and we have prevented an assault."

What does Officer P say happened when Mr N was arrested?

96. Officer P told us that approximately 30 minutes after Mr N left, he saw him standing on a wall by one of the raised gardens in Aotea Square videoing the crowd on his camera.
97. Mr N had gone to the effort of disguising himself and was now wearing camouflage pants, a camouflage top, a balaclava on his face and sunglasses. Officer P told us if Mr N was recognised by the Palestinian protestors, he *"could absolutely get dragged in and given a hiding because he was now so close to them. ... He's been warned and now put himself in a position of risk"*.
98. Officer P told Officer Q that he thought it was Mr N on the wall and that *"we need to go and deal with that"*. As Officer Q walked towards him, Mr N jumped on an electric scooter and left. As he rode past a group of officers waiting in reserve in a nearby van, he was arrested for obstruction.

99. Officer P told us:

“The other reason for the obstruction charge was that I wanted to have bail conditions put on him not to return to these protests, so while he has the right to counter-protest there is a concern that the way he was carrying it out was putting himself at risk, putting staff at risk and my view is action needed to be taken”.

Arrest, obstruction charge and bail conditions

100. Mr N was arrested as he rode past the Police van and taken to the Police Station. Custody records show he was in custody for 90 minutes before being released on bail.
101. Mr N was charged with intentionally obstructing Officer O, a constable acting in the execution of his duty.
102. Mr N was released on Police bail to appear in Court on 30 November. Police imposed conditions on his bail that he was not to attend any pro-Palestine Rally and not to go to Aotea Square.
103. The charge was subsequently withdrawn. Mr N obtained legal advice through the Legal Aid Scheme and was charged \$1,250 for that advice. His legal aid fee was paid by an associate who had also been attending the PSNA organised rallies as a counter-protestor.

Conclusion

104. As set out in paragraph 7, section 23 of the Summary Offences Act 1981 provides that it is an offence to obstruct a Police officer acting in the execution of their duties.
105. Mr N was arrested for not complying with an instruction from Officer O to leave the rally and not return.

Was Officer O acting in the execution of his duty when he instructed Mr N to leave the rally?

106. Officer O needed to have reasonable grounds to believe it was necessary to require Mr N to leave the area before he could be regarded as acting in the execution of his duty.
107. Officer P and Officer O variously refer to anticipated breach of the peace, the potential for a breach of the peace and section 42 of the Crimes Act 1961 (preventing breach of the peace), as justification for the action taken.
108. If the officers had arrested Mr N for breach of the peace under section 42 of the Crimes Act 1961, the arrest would have been unlawful. This is because that power is restricted to situations where the breach of the peace has already occurred and is either ongoing or likely to be renewed. Unlike jurisdictions such as the UK, the power does not extend to anticipated breaches of the peace.⁸⁰

⁸⁰ Attorney-General v Reid HC Auckland M920/85, 23 May 1986

109. However, Mr N was not arrested for a breach of the peace but was arrested for obstructing a Police officer because he failed to comply with an instruction to leave, purportedly issued in the fulfilment of the officer's statutory functions under the Policing Act 2008. Two of those, set out in section 9 of the Policing Act 2008, are to keep the peace and maintain public safety. These duties under the Policing Act are broadly drafted, uncertain and leave a great deal of discretion with officers to decide what is required to keep the peace.
110. In the main report at paragraphs 155 to 159 we refer to the need to address the vagueness of this legislation.
111. However, we are satisfied that the statutory functions set out in the Policing Act must be confined to actions necessary to deal with an immediate and imminent threat to safety and disorder. Section 6 of the New Zealand Bill of Rights Act provides that where an enactment can be given a meaning consistent with the rights and freedoms set out in that Act, that meaning shall be preferred. When using a coercive power to require someone to refrain from doing something that is a legitimate right under the Bill of Rights Act (here, freedom of expression and peaceful assembly), it cannot be intended that officers rely on a power to avert a perceived risk
112. Officer O told us that when he told Mr N to leave Mr N wasn't saying anything to the protestors and the protestors were not paying Mr N any attention. This is supported by Mr N's recording showing the circumstances when he was told to leave.
113. There was no immediate threat, and no more than a low risk to safety or disorder when Mr N was exercising his legitimate right to protest and told to leave.
114. Officer O was therefore not acting in the execution of his duty when he told Mr N to leave and not return.

Was the arrest lawful?

115. When Mr N returned to the rally, officers failed to recognise the need to evaluate the ongoing circumstances balanced against Mr N's rights under the NZ Bill of Rights Act.
116. When Police saw Mr N in Aotea Square, he was no longer carrying his flag and was not wearing or carrying anything to indicate he opposed the views being expressed at the rally. The protestors did not recognise him and were paying him no attention. In short, Mr N was arrested for returning.
117. In our assessment, his arrest was unlawful and at best undertaken without any consideration for Mr N's rights under the Bill of Rights Act.
118. We accept that Officer P and Officer Q were genuinely concerned about the possibility of having to respond to violence based on their previous experiences at similar protests with Mr N. However, while the officers themselves appear confused about the legal justification for what they were doing and the legislation is also vague and uncertain, it is also clear that the circumstances of this case could not be sufficient to justify instructing Mr N to leave while he was exercising his rights protected by the NZ Bill of Rights Act and arresting him for returning.

119. It should not be lost sight of that Mr N responsibly approached Police at the start of the rally in attempt to clarify what Police viewed as acceptable behaviour, to enable him to exercise his right to protest. Police were unable to provide that advice.
120. Police have then not only unlawfully arrested him in circumstances where there was not more than a low risk to safety or disorder, but further unreasonably limited his right to protest by releasing him on bail on condition he not attend further protests. Even if the risk had not been low, it was not imminent, so that intervention would not have been justified in any event.
121. Because the arrest was manifestly unlawful and at best undertaken carelessly without any consideration of Mr N's rights under the New Zealand Bill of Rights Act 1990, in our view Police ought to reimburse the legal aid costs and we invite Police to consider reimbursing the costs.

FINDINGS

Officer O was not acting in the execution of his duty when he told Mr N to leave and not return.

As a result, Mr N's arrest for obstructing Police is unlawful.

Appendix C – Unlawful use of force and unlawful arrest of Lucy Rogers at Palestine Solidarity Network Aotearoa protest in November 2023

1. Lucy Rogers was arrested for breach of the peace during the march organised by Palestine Solidarity Network Aotearoa that followed the rally in Aotea Square on 25 November 2023 (refer Appendix B). Thousands of protestors marched from Aotea Square to the United States Consulate, then back to Aotea Square along Queen Street.
2. The protestors had been marching peacefully for around an hour when Lucy was arrested.
3. Police officers accompanying the march saw Lucy standing on the footpath holding a sign stating, “selective condemnation of genocide is evil” and decided that to keep everybody safe, Lucy needed to move further away from the protest. Officers pushed her to the back of the footpath and, for a while, prevented her from moving from that position.
4. An officer removed Lucy’s sign by ripping it out of her hands because he thought the sign had the potential to antagonise the protestors and cause a riot. As the officer was removing the sign, a protestor and marshal were walking towards Lucy holding a large Palestinian flag intending to use it to prevent her sign being seen by other protestors.
5. The officer walked away from Lucy still holding the sign. Lucy followed him a few metres along the footpath trying to get her sign back. Police told Lucy she could remain where she was to protest, but her sign was gone. Lucy did not want to stay where she was because the protestors could not see her without her sign. She attempted to push through the line of Police officers and, when this was unsuccessful, stepped to the side of the line of officers, moving quickly towards the march.
6. Police arrested Lucy for breach of the peace. They told us they believed she intended to enter the march, and that if she was allowed to do so she would be assaulted and could cause a riot.
7. They say that it was necessary to push Lucy away from the protestors to keep everybody safe. The sign was removed to further de-escalate the situation. They believed that if they did not prevent Lucy from entering the protest this would result in a breach of the peace, riot or serious assault and they did not have sufficient staff safely to retrieve Lucy from the crowd.
8. The Free Speech Union complained that Lucy’s arrest was unlawful and a breach of the right to freedom of expression because Lucy was not violent and did not threaten violence. They state that the protestors were peaceful, and no Police action was warranted. They also maintain that, if Police feared violence or disorder by protestors in response to Lucy’s sign, the protestors ought to have been the target of any action they took.

THE AUTHORITY'S FINDINGS

Issue 1: Were Police justified in pushing Lucy to the rear of the footpath and removing her sign?

The use of force to push Lucy to the rear of the footpath was unjustified.

Removing the sign was unjustified and aggravated the situation.

Issue 2: Was the arrest of Lucy Rogers for breach of the peace lawful?

The arrest for breach of the peace was unlawful because there was a very low probability that Lucy's safety was at risk, so the interference with her right to protest is unjustified.

ANALYSIS OF THE ISSUES

Background

9. In this section we will cover what was happening in Queen Street before Police saw Lucy to describe the circumstances in which Police decided they needed to act to keep the peace.

Recordings

10. We have two recordings taken during the march by Mr P and Lucy. They include footage of the Police interaction with Lucy. We refer to the recordings to describe what happened.
11. Mr P attended the march to protest. The first four minutes of the footage he provided records the front of the march. The next four minutes is focussed on Police interactions with Lucy. The latter part of the recording is taken partly from the rear of the footpath, meaning it records not only Police interactions with Lucy but also what the protestors are doing and their reaction to Lucy's protest. The last minute of the footage records the protest as it continues along Queen Street.
12. Lucy has also provided us with footage she recorded after her sign was removed.

What was happening before Police saw Lucy?

13. The march along Queen Street obstructed the entire road.
14. Two Police motorcycles and a Police car led the march. Police blocked off intersecting streets as the march passed by. Five Police Officers walked at the front of the march in a line stretching across the road, with two officers, including the Forward Commander for the Police operation, walking immediately behind those five officers.
15. A group of approximately 20 protestors, mostly young men, marched directly behind the Police officers, followed by a line of marshals in green vests stretched across the road and holding hands. The remainder of the march walked behind this line of marshals.

16. Many protestors were wearing a keffiyeh (traditional Middle Eastern scarf) with some using it to cover their faces.
17. The protest was very large and very loud. Officers we spoke to estimated the crowd to be more than 2000 people. The crowd was chanting loudly in response to someone yelling into a megaphone. The chanting was accompanied by loud drumming and the noise was constant. There were numerous signs and flags being waved.
18. Police officers were walking on the footpath alongside the march, on both sides of the road.
19. The footpath on the left-hand side of the protest, the side where Lucy was standing, is very wide and in places more than 5 metres wide. There are two rows of large concrete planting boxes positioned along the footpath, with one row near the kerb and another row down the middle of the footpath.
20. A line of marshals and some protestors had encroached onto the footpath and were walking on the footpath between the kerb and the first line of concrete flower boxes. Police accompanying the protest on this side of the footpath were positioned somewhere near the middle of the footpath.
21. Officer Q was walking on the left-hand side footpath in line with the front rows of protestors. Walking in a line behind him were Officer R, the Sergeant in charge of a Public Order Policing Team, and three officers from his team, Officer S, Officer T and one other. They were accompanied by an ambulance officer.
22. Because it was Saturday afternoon, there were also many people unconnected to the protest walking on the footpath. A large proportion of them were standing watching the protestors go past, with some recording the protest on their phones.
23. Footage we have been provided starts with a view of the march approaching. The first two rows of protestors are smiling and laughing. The mood of the group appears jovial, and they were complying with Police instructions. Two young male protestors had walked ahead of the march by several metres. Officer Q spoke to them and gave them the thumbs up, and they walked back to rejoin the march. A female marshal instructed the front row to stop walking, and they did. The marshal then encouraged the protestors in the front row to form a straighter line. She took two young children wearing keffiyeh from the edge of the front line and guided them to the middle. When the marshal was satisfied that the line was straight, she signalled them to continue walking, and they complied. The marshal was also encouraging the front row to try and march in unison with each other. The protestors were trying their best to comply and they were smiling and laughing with each other.

What do officers say about the context of the march?

24. Officer S told us the Police role during the march was “to allow for a peaceful protest and ensure that the public were safe and felt safe whilst also ensuring that the Auckland CBD wasn’t overthrown by protest.” In practice this means the team “usually marches beside the protestors

just keeping eyes up and making sure there is no disorderly behaviour or anyone initiating any violence within the march and making sure the public on the outskirts are safe”.

25. Officer S described the march as being *“quite emotionally charged”*. The officer could not recall any specific incidents occurring during the march but felt, based on the demeanour of the protestors, there was quite a bit of tension towards Police.
26. Officer S had been at a protest two days earlier in Mechanics Bay. She said that that protest had got *“a bit heated”* and some of the same people involved in incidents two days earlier were now marching at the front of this protest, so she was *“going in there already with the knowledge that it could potentially get heated”*.
27. Debrief notes by the Forward Commander, collated two days after the march, described a marshal using a microphone and encouraging the crowd to become heightened. One officer was moved from one side of the march to the other side because a protestor was *“trying to get a rise out of the officer”*.
28. Officer S recalled there were a lot of bystanders watching and interested in the march and thought this was probably because it was one of the very early marches and very big.
29. Officer Q was the officer in charge of the Public Order Policing teams working that day.
30. He told us that he had been at a couple of pro-Palestinian protests that had turned violent. This included one on 28 October 2023 when a peaceful protest had quickly *“turned”* and escalated, resulting in 15 people fighting and punching each other. He had not been at the protest two days earlier in Mechanics Bay that had become violent. However, he was aware from the briefing for this operation that the group of men at the front of this march included several people who had been involved in incidents at that protest..
31. He described this march as being *“really loud and heightened.”*
32. The protestors had been marching for around an hour before Police saw Lucy. There had been no incidents during the march prior to Lucy’s arrest and no other incidents that day. Officers we interviewed and Lucy all say they did not see any other counter-protestors during the march. Police have said that there had been an earlier incident that morning which may have influenced officers’ actions. However, as we discuss in Appendix B of the main report, that incident involved no disorder and officers’ actions in response to the circumstances were unlawful. It should, therefore, have had little bearing on the decision-making of officers in this context.

How did Lucy become involved?

33. Lucy was at work. She became aware of the march when she left the office for a coffee break and heard the chanting. She decided she wanted to express her opinion that any protest should condemn the behaviour of both sides involved in the conflict. She purchased a large piece of paper from a nearby store to use as a sign and wrote on it *“selective condemnation of genocide is evil”*.

34. Lucy then walked towards the oncoming march along the footpath, holding the sign above her head, *“to find a good spot where they would have a good view of my sign.”*
35. Lucy says that a few people walked past her, including one person wearing a keffiyeh, and read her sign but did not react.
36. She says Police approached her within seconds of her arriving at the spot where she wanted to display her sign.

Issue 1: Were police justified in pushing Lucy to the rear of the footpath and removing her sign

37. In this section we describe what happened when Police saw Lucy on the footpath. We assess whether Police were justified in pushing Lucy away from the march to the rear of the footpath and removing her sign.

What happened?

What does footage provided by Mr P show?

38. When Mr P noticed Police interacting with Lucy, he stopped recording the front of the march and focussed his recording on Lucy and the Police.
39. Lucy was standing between one and two metres behind the first row of concrete flower boxes, towards the middle of the footpath. She was between two and three metres from the road. She was in line with the front row of the march.
40. Police, marshals, a few protestors and the PSNA Protest Organiser, were also walking on the footpath. Lucy was to the left of the officers, while the marshals were walking on the right-hand side of the officers, nearer the kerb.
41. Officer Q walked past Lucy, gesturing towards the rear of the footpath with his hand as he passed. It is unclear from the recording whether he said anything to the other officers or to Lucy, but he didn't stop walking.
42. Officers following closely behind him immediately began pushing Lucy towards the rear of the footpath. Lucy was standing with both arms raised above her head, holding her sign. Officer S placed a hand on Lucy's waist and Officer T grabbed hold of Lucy's left arm. Together they pushed Lucy along and towards the rear of the footpath, away from the march. Officer R signalled with his hand for the officers to move Lucy towards the rear of the footpath and followed them accompanied by one other officer.
43. Lucy resisted being pushed by the officers by leaning into them and pushing back.
44. The recording shows that the officers were talking to Lucy while they were pushing her. It is not possible to hear what was being said over the background noise of the march, except that a male officer can be heard, providing a warning related to arrest.

45. The group of officers stopped moving after pushing Lucy several metres along the footpath. Lucy was by then in the middle of the footpath, facing the protest with her sign still held above her head. Officers S and T and the third officer were standing directly in front of Lucy, facing her. Officer R was directly behind them facing the march. Lucy was leaning into the officers; resisting being pushed further. The footpath is very wide at this point and Lucy was approximately 5 metres from the road.
46. Mr P was, by this stage, standing behind Lucy facing the protestors, meaning his footage records both the police interacting with Lucy and the protestors walking past.
47. After being stationary for 12 seconds, Lucy tried to move past the officers back towards the march. Officer S prevented Lucy from moving by placing her hands on her waist area. The group then remained in this position for approximately half a minute before Officer Q returned to the group.
48. During this time, the protest continued moving past. No-one left the march to approach the group. A few people were looking to see what was happening, but no-one was reacting, making any gestures, or otherwise engaging with what was occurring. A marshal and the PSNA Protest Organiser were standing between the officers and the march, facing the march and can be seen encouraging the line of protestors that were already walking on the footpath, to continue walking past.
49. Mr P lowered the video recorder for a few seconds to take photographs with a camera and during this time the group can only be seen from the shoulders down. As Officer Q returned, Mr P raised his video recorder again and continued recording with everybody in full view.
50. Officer T approached Officer Q, and they had a discussion which was not captured by Mr P's recording due to the background noise from the protest.
51. While Officer Q and Officer T were having this discussion, the PSNA Protest Organiser and a marshal walked over to the march and obtained a large Palestinian flag from a protestor. They return to where Police were still talking to Lucy and, standing behind the line of officers in front of Lucy, held the Palestinian flag in front of her sign so it could not be seen from the march.
52. The PSNA Protest Organiser had advised Police earlier in the day, while the marchers were congregating in Aotea Square, that there were a number of groups attending the protest and some of the younger members had become agitated by the presence of a counter-protestor in Aotea Square and he did not have control of this group (see Appendix B of the main report).
53. As they approached, Lucy turned her head and looked at Officer Q. He was standing to her left and slightly behind. The footage records that during this time she was not speaking to anyone, or yelling, and neither was the PSNA Protest Organiser or the marshal holding the flag. Lucy had by then been stationary holding her sign above her head with a line of officers in front of her for just over one minute.
54. As the PSNA Protest Organiser and the marshal approached Lucy, Officer Q ripped Lucy's sign from her hands and immediately walked away still holding most of the sign.

What does Lucy say happened?

55. Lucy told us the footage captures the start of her interaction with Police:

"I have just stopped, and they instantly see my sign, read it and then walk up to me and start pushing me. The only thing I remember about the conversation at this point is they threatened to arrest me. I didn't want to move so I put my foot back and try to resist being pushed backwards."

56. Lucy told us that the officers did not speak to her or ask her to move before pushing her. She resisted because she was not obstructing the footpath and therefore had the right to stand wherever she wanted to on the footpath and did not want to be "dictated to" and told where to stand.
57. She says she tried to move past the officers and towards the marchers because "I'm thinking to myself these guys are blocking the protestors' view of my sign and I would prefer to stand to one side of them. ... where I could ... have an unobstructed view and they can see my sign."
58. Lucy says that while they were standing here, she did not say or yell anything towards the protestors.
59. Regarding the response by the protestors to her sign, Lucy said:

"A few people read my sign. Nobody said anything, nobody threatened me, nobody tried to attack me. One person came and got his Palestinian flag and held his flag in front of my sign so it could not be seen. So they had noticed me but no one threatened me with violence and there was no indication whatsoever that I was going to be assaulted. ... no one showed the slightest inclination to assault me, the worst they did was hold a flag between me, my sign, and the protest. I was confident that what they're trying to do is obstruct people's view of my sign with their flag. They were not saying anything to me. I was not feeling threatened or intimidated."

What do Police say?

60. Officer Q says he saw Lucy on Queen Street holding a sign that stated, "*selective condemnation of genocide is evil*", which he understood to mean the protestors were not acknowledging the Hamas attack on Israel on 7 October. He told us there was "*in my view the potential this sign would antagonise the Palestinian people with the potential to start serious violence between [Lucy] and Palestinian rally attendees*".
61. Officer Q recorded in his notebook that Lucy was shaking the sign and yelling out words to the protestors, but he could not hear what she was saying. He recorded "*My initial impression of Rogers was she ... suffered from mental illness due to her heightened and irate behaviour she was displaying towards the Palestine people*". He says he spoke to Lucy and asked her to move back from the roadside and place her sign down because her behaviour was "*highly antagonising the Palestinian people, that her actions were potentially going to start a riot*". He told us that while no-one was shaking their fist or swearing at her, "*everyone was looking at her with a disdainful look on their face*".

62. He also recorded in his notebook that Lucy responded to him saying, “I don’t care, I can stay here, let them come to me”, or words to that effect. He also wrote, “this dialogue continued for approximately 1 minute. [Lucy’s] behaviour was heightened to a degree of excited delirium. She refused to comprehend her actions were antagonising the Palestinian crowd.”
63. He says his assessment of the situation was that if Lucy didn’t put her sign down and move back away from the side of the road, she would incite a riot. He says this was based on his previous experience at pro-Palestinian rallies where a peaceful rally had quickly turned and resulted in physical altercations between protestors and counter protestors.
64. When asked why he thought that protestors looking at Lucy with disdain might be a precursor to violence and harm in this situation, Officer Q told us:

“there were lots of people singling her out in a very short space of time. I was scanning for threats for the purpose of preventing them and looking at body language, the staring .. why did you cover yourself up like that .. and I’ve been around long enough to know when you can sense something is potentially gonna put someone else in danger... you’ve just got to be able to read the crowd and I could read it, whether they’re hostile, they were looking hostile towards her .. as someone who’s been there and seen the laughing and smiling like a week before and seen it turn very violent. ...you’ve just got to feel the crowd and because of my experience, lots of it, it turns very fluid very quickly. So, while they’re smiling, I’m going, this could still kick off.”

65. Officer Q says he therefore believed it was necessary to remove the sign to de-escalate the situation and as a preventive measure and that Police action was justified under section 39 of the Crimes Act 1961.
66. Officer Q told us he does not recall what was discussed with Officer T before removing the sign. There is no record of the conversation in the notebook entry or statement of either officer. Officer T is no longer employed by New Zealand Police and does not live in New Zealand, and we have been unable to interview him.
67. Officer S told us she noticed Officer Q speaking to a lady and thought she would go and see if he needed any assistance:

“He said to us “she can protest but just ask her to move back”. I told her that we needed her to move back for her own safety.”

68. Officer Q does not recall asking the other officers to move Lucy back away from the march but accepts that if the officers recall him saying that to them, then he would have.
69. Officer S told us she also thought it would be better if Lucy moved back nearer the shops, so there was a clearer line between Lucy and the protestors and Police would better be able to protect her if they needed to:

“There’re not many Police officers in comparison to the crowd, so not going to be able to stop all these people just for one person, I didn’t think it was worth it. There were a couple that were coming toward her, I can’t remember exactly what

was being said because it was so loud. The crowd started to notice her, I wouldn't say they started to aggressively advance towards her, but they were coming, the ones to the outside were kind of moving towards her and even that alone, I didn't feel good about it, I felt like she needed to get back because at the prior protest we saw how heated the situation can get in a small amount of time."

70. Officer S told us that Lucy was not saying anything to the crowd and was just standing there. However, she says Lucy was *"absolutely terrified, she was clammy, sweaty and shaking"* and she did not want to leave Lucy because *"It was like if we leave you here, I don't know what's going to happen."*
71. Mr P's footage shows that Lucy was physically shaking when Officer S prevented her from moving on the footpath, before her sign was removed.
72. Officer R told us that Lucy *"popped up out of the blue"*. The officers didn't know who she was, it was the first time they had interacted with her and *"we didn't know what her intent was"*.
73. He told us they instantly formed a line as a safe haven and said to her, *"it's pretty spicy, can you just move over, even if it's just a couple of metres to an area where you can still see, you can still hear, you can still send your message safely"*.
74. Officer R reported that Lucy's presence caused heightened tensions in an already charged environment and that rally attendees were yelling aggressively at her, and she was yelling back in close proximity. He also reported that Lucy was *"talking over the top of us, yelling over the top of us, not engaging, pushing into us."*
75. Officer T reported he saw Officer Q engage with Lucy, encouraging her to move to a side street so as not to agitate members of the pro-Palestinian march.
76. He states Lucy refused to move and he warned her she was inciting a breach of the peace and that she would be arrested if she continued, and he could hear the crowd becoming agitated and beginning to surge towards Lucy.

How does section 39 of the Crimes Act 1961 apply in these circumstances?

77. Section 39 enables Police to use *"such force as may be necessary"* to overcome any force used in resisting an arrest or the execution of any sentence, warrant, or process. *"Necessary"* force in this context is generally accepted as meaning *"reasonable"* and *"proportionate to the degree of force being used to resist"*.
78. In this situation Police are relying on section 39 as justification for the use of force to execute a lawful process. Section 9 of the Policing Act 2008 provides that Police have a statutory function to keep the peace. Section 39 therefore allows officers to use necessary and reasonable force when they are acting in the execution of a lawful duty to keep the peace.
79. Officers say it was necessary to push Lucy away from the protestors and remove her sign, to prevent a breach of the peace.

80. The law relating to breach of the peace is covered in Chapter 3 of the main report.
81. In summary:
- In R v Howell [1982] QB 416 (CA), the Court of Appeal held that a breach of the peace constitutes “...an act done or threatened to be done which either actually harms a person or in his presence his property, or is likely to cause such harm, or which puts someone in fear of such harm being done...”
 - While a threatened act may constitute a breach of the peace, mere anticipation by the Police of a disturbance, without reasonable grounds, does not.
 - The conduct in question does not itself have to be disorderly or a breach of the criminal law. It is sufficient if its natural consequence would, if persisted in, be to provoke others to violence, so that some actual danger to the peace is established.

Conclusion

82. Lucy’s conduct did not need to be threatening or violent for Police to rely on section 39 to justify pushing her away from the protestors and removing her sign, but it did need to be reasonably likely to give rise to harm to the detriment of public order.
83. Police were already engaged with Lucy when Mr P started recording the interaction.
84. We accept that, when Police first saw Lucy, she was holding a sign above her head and shaking it as Police describe, because she wanted the protestors to notice her and read her sign. That’s why she was there. Being noticed is the purpose of any protest or counter-protest.
85. Officer Q goes substantially further in attempting to justify his actions. He says that when he saw Lucy she was yelling to the protestors and her behaviour was elevated to the degree of “excited delirium”, so that her behaviour was unpredictable.
86. Officer R says Lucy was yelling at the protestors and the protestors were yelling “aggressively” back at her.
87. In contrast, Officer S told us that Lucy was not saying anything but looked terrified. Similarly, Mr P told us that he did not observe Lucy yell or say anything to the protestors.
88. It is clear from the video and audio footage that the accounts of Officer S and Mr P are the more accurate. There is no evidence to support the suggestion that Lucy and the protestors were yelling at each other or showing any other signs of aggression or hostility. We do not accept that Officer Q or Officer R could have believed what they have said in their reports. We also note that the protestors at the front of the march who Police were concerned about had passed by the time Police resorted to the use of force.
89. When the Palestinian flag is being held in front of Lucy’s sign, the footage shows the parties were not speaking to or yelling at each other. Lucy was standing passively behind a line of officers holding her sign above her head and the protestor and marshal holding the Palestinian flag were

also doing no more than holding up their flag. They were not speaking or gesturing or otherwise exhibiting any sign of aggression or ill will.

90. There is also no evidence on the footage of any other threat or disturbance resulting from Lucy's presence. The protest organiser and marshal with the Palestinian flag were already walking on the footpath before they approached Lucy. No-one left the march to approach Lucy. A few people looked over to see what was happening as they walked past, but they kept moving. The protestors who were already walking on the footpath continued to move past, encouraged to do so by the PSNA Protest Organiser. Officers S and T were facing Lucy so that they were not able to see what was happening behind them, but Officer Q was standing to the left of and behind Lucy, facing the march, and therefore in a position to observe how the protestors were reacting to Lucy's presence.
91. The reasons given by officers for wanting to restrict Lucy's movement and remove her sign are:
- The sign had the potential to antagonise the protestors and start serious violence.
 - While no-one was shaking a fist or swearing, people were looking at her with a look of disdain on their face and previous peaceful pro-Palestinian rallies had quickly turned and resulted in violence. Officers didn't know who Lucy was, had not previously interacted with her and did not know what her intent was.
 - Lucy's demeanour indicated to Police that her behaviour was unpredictable.
 - Lucy needed to move back for her own safety and to provide a clearer line for Police to protect her if they needed to.
 - The crowd were not aggressively advancing but some were moving towards Lucy, and officers had witnessed a prior pro-Palestine protest become heated in a small amount of time.
 - The environment they were working in was loud and emotionally charged. All the ingredients for a rapid change in crowd behaviour were present and the volume of chanting increased because of Lucy's presence, with members directing their chanting towards Lucy.
92. The reasons provided for needing to act are consistent with a mistaken belief among some officers that their powers extend to the ability to arrest for anticipated breach of the peace.
93. It is clear that officers were very conscious of the possibility of this protest becoming violent. The march was a very large event soon after the attack on 7 October. Police officers at this protest had recent experiences with violent incidents at pro-Palestine marches involving people who Police knew were also protesting at this march.
94. However, while the description of events provided by Officer Q and Officer R suggest that Lucy and the protestors were heightened to the point they were behaving aggressively towards each other, their descriptions are directly inconsistent with the evidence of other officers and what we can see on the footage. It is nothing short of extreme hyperbole to suggest, as Officer Q has

done, that Lucy was heightened to the degree of “excited delirium”. It is equally implausible to suggest that protestors and Lucy were shouting at each other.

95. Officer Q argues that protestors were looking at Lucy with looks of disdain on their faces. He infers this means they were showing signs of hostility, and because a crowd can turn very quickly from being smiley to violent, Police needed to act first to prevent violence or disorder.
96. The conduct does, however, have to be “*severe enough to cause alarm to ordinary people and threaten serious disturbance to the community*”, so the nature and quality of the conduct itself, as well as the likely consequences of that conduct in the particular circumstances, are all relevant considerations. An entirely peaceful counter-protest in circumstance where there is no evidence that protestors are alarmed or distressed cannot in our assessment constitute a breach of the peace.⁸¹ The circumstances in this case did not meet the necessary threshold, as the footage shows the behaviour from both the protestors and Lucy was nothing more than behaviour to be expected at a peaceful protest.
97. We acknowledge that the safety of individual members of the public is an important concern that Police must have regard to. But it is not an all-consuming concern: the possibility that a person’s safety will be in jeopardy must be balanced against other rights – in this case Lucy’s right to freedom of expression and movement. There was no reason for Police to apprehend that disorder was likely or imminent if they did not take action to prevent it. In fact, in our estimation the risk to the safety of Lucy or any other person, while not non-existent, was low. Police were therefore not executing a lawful process when pushing Lucy and removing her sign and therefore cannot rely on section 39 of the Crimes Act as justification for the use of force.
98. Police submit that the officers could also rely on section 42 of the Crimes Act to justify their use of force. That provision provides that Police may use reasonable force to stop a breach of peace from continuing or restarting. The nature of the test is set out more fully in the main report at paragraphs 136 to 142. Importantly, in New Zealand section 42 is restricted to situations where the breach of the peace has already occurred and is either ongoing or likely to be renewed. The power does not extend to anticipated breaches of the peace.⁸² The same reasoning we have applied in considering the use of force under section 39 in paragraphs 82 to 97 above applies here. In our view there had been no breach of the peace at the time officers pushed Lucy away and removed her sign.
99. In addition to this, Police unreasonably prevented Lucy from exercising her right to protest by removing her sign and aggravated the situation by doing so.

FINDINGS ON ISSUE 1

Using force to push Lucy to the rear of the footpath was unjustified.

Removing the sign was also unjustified and aggravated the situation.

⁸¹ Dyer Brady, Bullen, Jones and Munro [2006] HCJAC 72, [226] SCCR629

⁸² *Attorney-General v Reid* HC Auckland M920/85, 23 May 1986.

Issue 2: Was the arrest of Lucy Rogers for breach of the peace lawful

100. In this section we describe what happened after Police removed Lucy Rogers' sign and arrested her for Breach of the Peace. We then assess whether the arrest is lawful.

What happened after Police removed Lucy's sign?

101. Mr P and Lucy have both provided footage taken after Police removed Lucy's sign.

What do the recordings show?

102. After removing Lucy's sign, Officer Q continued walking alongside the march holding most of the ripped sign. Lucy followed him trying to retrieve her sign. She was followed by Officer S, Officer T, Officer R and one other officer. Mr P walked alongside the group continuing to record the interaction. the PSNA Protest Organiser and the marshal walked along the footpath and continued to hold the Palestinian flag up, seemingly to shield what was happening from the view of the marchers.

103. After a few seconds Lucy gave up trying to retrieve her sign, stopped, and started recording the faces and identification details of the police officers. At this point, Lucy was standing near the middle of the footpath.

104. The officers formed a line between Lucy and the protestors. Officer Q kept walking. the PSNA Protest Organiser and the marshal also stopped and stood behind the line of officers holding their flag to obscure the view from the march.

105. Mr P's footage shows that protestors walking past were looking over to see what was happening. No-one was leaving the march and no-one walking past was yelling or gesturing at Lucy or the Police. Likewise, Lucy was not yelling at or making any gestures to the protestors as they passed.

106. After recording the details of the officers standing in front of her, Lucy walked up the footpath to record and speak with Officer Q, and the other officers. Lucy asked Officer Q to confirm he had removed her sign, but he did not respond.

107. Everyone was now standing nearer to the kerb and protestors. The PSNA Protest Organiser tried to move closer to Lucy and was prevented from doing so by Officer Q, who used his hand to push him away from Lucy. Another officer stepped in-between the PSNA Protest Organiser and Lucy to separate them further. Officer Q gestured to the PSNA Protest Organiser to leave and keep moving, and he complied.

108. This left Lucy standing near the planter boxes near the kerb with officers S, T and R in front of her. The officers are facing Lucy with their backs to the march. Officer Q was no longer in view. Mr P recorded the interaction, but the dialogue cannot be heard over the background noise of the march.

109. Officer S was speaking to Lucy, and their interaction can be heard on Lucy's recording as follows:

Lucy: Give me back my sign

Officer S: It's gone, you've got the badge number (referring to Officer Q's number)

Lucy: it's not your prerogative

Officer S: the sign's gone.

Lucy: I don't care

110. Lucy was standing directly in front of Officer S and tried to push through Officer S towards the march

Lucy: I'll stand here (meaning closer to the march but on the footpath).

Officer S: no, no, you won't" (and prevents Lucy from pushing through her)

Lucy: so what are you going to do, tell me I can't stand on the footpath, where does it say that in the law.

Officer S: no cos they're gonna get upset

Lucy: I don't care

Officer S: well then it's gonna start a riot so we're just gonna sit here

Lucy: then let them assault me

Officer S: you can stand here, no we're not going to do that (referring to letting Lucy be assaulted)

Lucy: I'm not going to attack anyone, if they assault me that's on them

Officer S: so that's what you want to happen? you can stand here; we're not stopping you from standing here

Lucy: I can't believe, I cannot believe

111. Lucy then stepped to the side of the line of officers, moving quickly towards the march.
112. Officer T followed Lucy and grabbed her arm to prevent her moving closer to the march. He then escorted her to the rear of the footpath assisted by Officer S.
113. Officer T advised Lucy she was under arrest for breach of the peace and placed her in handcuffs.
114. Lucy was put into a Police van following the march and released after approximately 15 minutes when the march had finished.

What does Lucy say?

115. Lucy told us that after Police removed her sign, she was asking for the sign to be returned and thinking about how she could keep protesting without it. She decided that she wanted to stand where Police were not obstructing her view of the crowd and where their view of her was not

obstructed: *"It was the best I could do, but I was going to do that much and not be intimidated into silence or leaving. That is what was running through my mind"*.

116. She says she was not going to run into the crowd and did not tell the Police that she intended to do so. She was several metres away from the march when arrested and *"where they grabbed me is the spot I intended to stand"*.

117. When asked why she moved past the Police line Lucy said:

"... The reason I took exception to being dictated to where I can stand on the footpath was because by this time, I didn't have a sign."

118. Lucy also says when she was arrested the people who saw her sign had already walked past her and the people walking past when she was arrested had not seen her sign and were not paying her any attention: *"I didn't want to walk into the crowd, I had no intention of walking into the crowd, but even if I had does that mean they are justified in arresting me.... Nobody in the crowd would have known who I was."*

What do Police say?

119. Officer T recorded in his notebook that after Officer Q removed her sign, Lucy told Police she intended to enter the crowd and was warned several times not to. He says he could hear the crowd becoming agitated and beginning to surge towards Lucy. When she stepped around the Police line and moved rapidly towards the crowd, he arrested Lucy because he believed a breach of the peace, riot or serious assault was imminent if he did not intervene, *"given the demeanour of the crowd and their level of agitation, combined with Lucy's attitude"*.

120. He says Lucy had also said, *"I'm not violent if they assault me that's on them"*, but Officer T says, *"with the staffing numbers available, we would not have been able to readily retrieve Lucy from the crowd."*

121. Officer T did not enter any information about the arrest into the Police database and has not recorded anywhere the observations that led him to believe the crowd was becoming agitated and beginning to surge. We have not interviewed Officer T for reasons set out in paragraph 66.

122. We make the obvious point here that Lucy's non-compliant attitude, relied on by Officer T as a reason for needing to act to prevent disorder, was created by Police's unlawful actions a few moments earlier.

123. Officer S told us that Lucy told her she was going to go into the crowd. Officer S warned her she would be assaulted and Lucy replied, *"that's on them"*.

124. Officer S told us when Lucy tried to move past Police she was thinking, *"this is going to get out of control, it's not alright"*. This was in part because of the protest she had attended two days earlier that had become violent.

125. Officer S told us she did not discuss the arrest with Officer T. They had discussed the fact the Lucy was allowed to protest, but as soon as she tried to step around them and go into the protest they agreed *“that can’t happen”*.
126. Officer S told us she agreed with Officer T’s decision to arrest Lucy and supported him with the arrest. She says that while neither of them felt good about the arrest *“her safety and our safety is paramount above all else.”*
127. When asked why Police did not wait and deal with any protestors who might become aggressive, Officer S says:

“Because there were so many protestors, we’ve been told that it is better to gain evidence of offending and deal with it later as opposed to in that moment because if things kick off there are only so many of us and way more of them. We have to bite the bullet sometimes and not escalate things that can be dealt with later.”

Conclusion

128. Officer S and Officer T both say that before Lucy sidestepped Police and moved towards the march, she had told them she intended to enter the crowd and had been warned not to. Lucy denies saying this. She says she did not intend to enter the march and intended to stop at the point where she was arrested to continue to protest as best she could without her sign.
129. Regardless of whether Lucy told Police she intended to enter the march; the footage confirms that Lucy sidestepped the officers and moved rapidly toward the march. Police say they could not allow her to enter the march because this would result in her being assaulted and potentially serious disorder, which they did not have the resources to deal with.
130. We accept that the officers were genuinely concerned about the potential for violence informed as they were by their recent experience at an earlier pro-Palestinian protest. We accept they genuinely believed that allowing Lucy to enter this march could result in some form of harm or disorder, and they felt they needed to act because their primary role is to keep everyone safe and prevent harm before it occurs.
131. Under s 42 of the Crimes Act Police have the power to arrest someone to prevent a breach of the peace from continuing or restarting.
132. However, Mr P’s footage shows that prior to being arrested the protestors marching past Lucy were doing nothing more than looking at her. Lucy was not saying anything to the protestors. She was not holding her sign at this time or wearing or holding anything to indicate she was a counter-protestor. The protestors at the front of the march who had previously been involved in violence had walked past. Lucy’s actions when Police first encountered her did not suggest that she intended physically to mingle or engage with the protestors.
133. On the basis of the available evidence, we have concluded that, while it was possible Lucy would enter the march, there was nothing in her prior actions to suggest this was likely, and little reason to believe that she was going to engage in behaviour which would put her at significant

risk of physical harm. The remote or residual risk that may have existed did not warrant Police interference with her right to protest.

134. In our assessment Police should not have tried to restrain Lucy or act coercively until she got sufficiently close to the march and any threat was higher than that which was being manifested at that time.

FINDING ON ISSUE 2

The arrest for breach of the peace was unlawful

About the Authority

WHO IS THE INDEPENDENT POLICE CONDUCT AUTHORITY?

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

We are not part of the Police – the law requires us to be fully independent. The Authority is overseen by a Board, which is chaired by Judge Kenneth Johnston KC.

Being independent means that the Authority makes its own findings based on the facts and the law. We do not answer to the Police, the Government or anyone else over those findings. In this way, our 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?

Under the Independent Police Conduct Authority Act 1988, the Authority receives and may choose to investigate:

- complaints alleging misconduct or neglect of duty by Police;
- complaints about Police practices, policies and procedures affecting the complainant in a personal capacity;
- notifications of incidents in which Police actions have caused or appear to have caused death or serious bodily harm; and
- referrals by Police under a Memorandum of Understanding between the Authority and Police, which covers instances of potential reputational risk to Police (including serious offending by a Police officer or Police actions that may have an element of corruption).

The Authority's investigation may include visiting the scene of the incident, interviewing the officers involved and any witnesses, and reviewing evidence from the Police's investigation.

On completion of an investigation, the Authority must form an opinion about the Police conduct, policy, practice or procedure which was the subject of the complaint. The Authority may make recommendations to the Commissioner.

THIS REPORT

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



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