

Precis of a paper by the Public Issues Committee on the Police Complaints Authority

A paper prepared by the Public Issues Committee of the Auckland District Law Society comments on the need for reform in the way the Police Complaints Authority carries out investigations into police actions. This issue is topical in light of the enquiries into the former Police Commissioner, Peter Doone, and the Waitara shooting.

The paper considers the fact that, as the Authority is the principal avenue for complaints against the police, it is important that the public can have confidence that the Authority's investigations are fair and thorough. In particular, the public must be satisfied that no bias in favour of the police is built into the investigation process.

The paper discusses the concern that investigations are carried out by other police officers, who are often the officers carrying out any criminal investigation into the incident.

The Committee suggests that consideration be given to establishing an investigation team that is totally independent of the police force and adequately funded to ensure that complaints can be thoroughly investigated.

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THE POLICE COMPLAINTS AUTHORITY

1. The purpose of this paper is to investigate whether it is in the public interest to establish a fully independent Police Complaints Authority (“PCA”) that has its own separate powers of investigation, *and* its own separate independent investigating team.
2. The PCA is established by the Police Complaints Authority Act 1988. Under the Act, the PCA responds to complaints alleging any misconduct or neglect of duty by any member of the police or concerning any practice, or policy of the police. It may also investigate of its motion, where it is in the public interest to do so, any incident involving death or serious bodily harm notified to the Authority by the Commissioner. Under section 13 of the PCA Act the Commissioner is obliged to notify the Authority of such an event. An investigation of the Authority is conducted totally in secret. Its investigation is limited to an enquiry as to whether or not the action that is under investigation was “contrary to law, unreasonable, unjustified, unfair or undesirable” (section 28). The Authority can recommend that disciplinary or criminal proceedings be considered or instituted against any member of the police.
3. After giving the Commissioner of Police the opportunity to make comment and to agree or disagree with the Authority’s finding, where the Commissioner has not accepted any recommendations made or no action has been taken, the Authority may send its decision to the Attorney General and the Minister of Police, together with the comments of the Commissioner of Police. The PCA does have the power in appropriate cases to also require the Attorney General to table the decision in the House of Representatives. This would only, however, occur if the Commissioner had not accepted the recommendations of the PCA, or had failed to act on the recommendations.

4. There are other requirements in the Act that require the PCA to act fairly and to give persons who are affected the opportunity to comment and to make submissions.
5. The *New Zealand Herald* reported on 13 May that the Attorney General, Margaret Wilson, will be suggesting a review of the PCA. The Public Issues Committee supports such a review, particularly concerning the use of police officers to carry out the PCAs investigations.
6. It is our view that the public may lose confidence in the police and in the legal system if we do not have an entirely independent investigation team. This would involve appropriate funding so that the PCA has its own separate staff and is not required to call on police officers to conduct its enquiries. It may be that in individual cases police officers who are assigned to investigate enquiries act professionally. The risk however is that the public of New Zealand remains dissatisfied with a procedure that involves police officers investigating other police officers, even if the controlling office is an independent office.
7. In the recent report of the PCA concerning the actions of the former Commissioner of Police, Peter Doone, the PCA stated the following (at paragraph 2.3):

The investigation, which you [Deputy Commissioner Robinson] had commenced continued, both as the original criminal investigation and as an investigation under the Police Complaints Authority Act. We met and conferred regularly throughout that process.

8. The Public Issues Committee does not suggest that in this case the PCA Judge Jaine did not act independently or did not give an independent opinion. Our concern however is that the collection of evidence for an investigation which is being undertaken by the PCA involved the collection of evidence by the police concerning matters involving the police, but simply under the supervision of the PCA. In other words, the

evidence collected by the police was also the evidence collected by the PCA – under a different name. The two investigations were one and the same.

9. We are concerned that at the stage of collecting evidence, individual police officers, even if they are working under the direction of the PCA, might influence the evidence that is gathered. This might be done sub-consciously or consciously. During an enquiry the extent and nature of the evidence that is brought forward depends entirely on what steps are taken and methods used by the person collecting the evidence. Decisions are made about who to interview. Decisions are made about how to interview the person, what questions to ask and so on. The matter can be pursued vigorously or with a lack of interest. The questioner can be biased or impartial. The questioner can feed information to the person making the statement by asking questions that suggest a particular answer. Statements are seldom produced independently by witnesses. Statements are often produced by an exchange between the enquirer and the statement-maker. There will always be the opportunity to shape or influence the actual evidence that is produced during an enquiry.
10. It should be stated by the committee that we do have every confidence in the police and indeed in the PCA that every step is taken to establish the true facts in any enquiry in which they are involved. The public debate however, which has arisen out of the Waitara shooting clearly suggests that the public is not satisfied with a PCA that does not truly stand alone in terms of the personnel who carry out its investigations. We believe that it is vital that the people of New Zealand do have confidence both in the police and in the findings of the PCA. It is our submission that this confidence can only be guaranteed if changes are made to the current circumstances in which the PCA, by necessity, is required to conduct its enquiries using investigators from within the New Zealand police.
11. The fact that the PCA had been unable to identify grounds on which to conclude that any police officer had been guilty of misconduct or neglect

of duty in the David Small case is of concern. The High Court recently awarded damages of \$20,000 against the police for searching his home in breach of the Bill of Rights Act. This suggests that the PCA enquiry had failed to ascertain the facts later found by the High Court.

12. It was stated by the Attorney General in defence to questions asked by the *New Zealand Herald* (May 13) that the PCA although utilising serving police officers from a different region, maintained responsibility for the diligence and integrity of the investigation. We suggest that this might be the intention of the PCA but that in practice it would almost be impossible. We do not think that an enquiry can ever be perceived as totally independent where one police officer investigates and is charged with collecting evidence concerning the possible committal of a crime of another police officer.
13. Individuals who work within any particular hierarchy, whether it is the New Zealand police or a major corporation or company, or any other large organisation may always be influenced in their day to day activities by the self-interest of the company or group itself. People within a hierarchy are normally expected to support each other. Individuals within any hierarchy typically have aspirations for their future promotion and career development. Whether subconsciously or unconsciously such factors can affect the way in which a person acts or fails to act, when dealing with another person within the same hierarchy.
14. A totally independent investigation team would involve people with appropriate powers of enquiry whose police careers would not be affected by either a positive or a negative outcome concerning any particular enquiry or any aspect of a particular enquiry. Powers of enquiry may need to include the requirement that police officers must answer any questions put to them.
15. This paper is not written because we wish to undermine the public's confidence in the investigation that is currently underway with regard to

the unfortunate death of a member of the public at Waitara recently. Nor do we in any way impugn the findings of the PCA in the Peter Doone enquiry, which led to the Authority's conclusion that Peter Doone had acted undesirably.

16. It is our conclusion however that the review suggested by the Attorney General should examine fully the question of whether or not the public can ever be confident in the independence of decisions of the PCA where investigations are carried out by other police officers and not by independent investigators employed by either a separate body or from within the PCA itself. It is our view that the PCA should be given the resources to enable it to function as a truly independent body both in *practice* and in theory.