

# ***Police Act*** ***Review***

*Building for a modern  
New Zealand Police*

## ***Issues Paper 1: Principles***

***June 2006***

***BUILDING  
FOR A MODERN  
NEW ZEALAND POLICE***

*Staged approach to be taken to the  
Police Act review*

*First, views will be sought on how  
key issues are framed for discussion*

## 1. Introduction

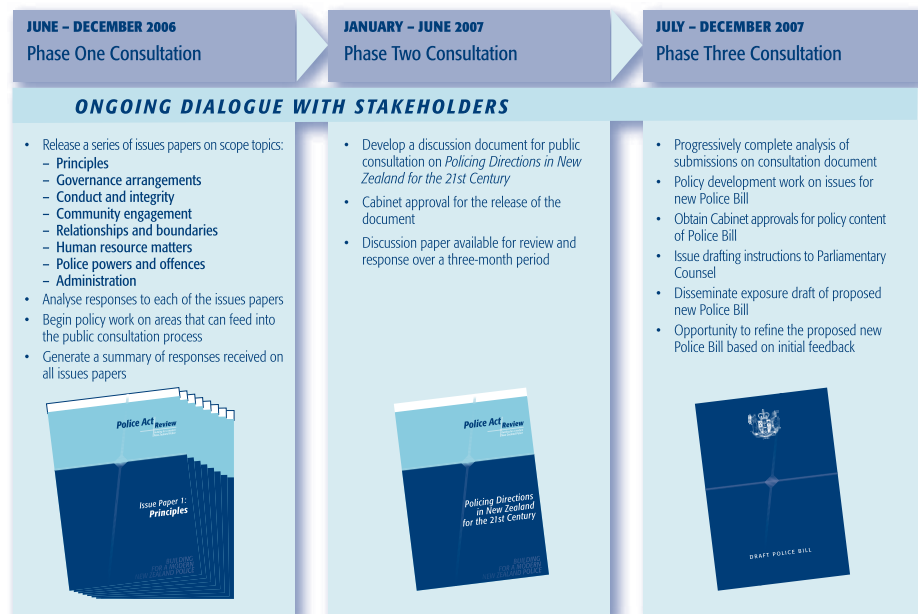
In March 2006, the Police Act Review Team began a project to review and rewrite the legislative framework for policing. The project is an opportunity to create a strong and durable platform for the New Zealand Police into the 21st century.

To ensure the new legislation has the broadest possible support, the Police Act Review Team is taking a staged approach. At the outset, careful attention was paid to the scope of the review, consulting key groups and individuals on the issues that should be looked at when drafting a modern legislative framework for policing. The resulting list of topics was mandated by the Minister of Police, Hon Annette King, in early June 2006.

The next stage in the process is to prepare a series of issues papers, giving a chance for early input on how key topics are dealt with in the review. If there is broad agreement on how certain issues should be framed, this can be factored into the write-up of those issues in a full discussion paper (*Policing Directions in New Zealand for the 21st Century*) to be published next year. Responses to this discussion paper will inform the government's proposals for an updated Police Act. An exposure draft of a new Police Bill will be consulted on and refined before its introduction to Parliament in 2008.

This is the first of the intended series of short issues papers. Subsequent papers will cover topics like governance and accountability arrangements, conduct and integrity, community engagement, and Police administration.

## High-level Timeline



## 2. Principles: two dimensions

There could be several starting points for identifying the most appropriate legislative arrangements for policing in New Zealand. The chosen approach is to look for underlying principles.

There can be value in making such underlying principles explicit, rather than taking them for granted, because there is less room for misunderstandings about what we are trying to achieve. Ideas that come up in the review can also be checked against the guiding principles, to see how they measure up.

Principles can be relevant in at least two senses: procedural and substantive. Firstly, the process of developing legislation can be guided by a set of principles which spell out how it is intended to go about drafting legislation for Police.

### ***Principles for the process of developing a new Police Act***

In terms of process, we have already put some initial stakes in the ground. For example, the task of developing a new Police Act will be guided by an inclusive, consultative approach, enabling constructive relationships to be built with stakeholders, including groups that represent Police employees. Our commitment to this approach is outlined in a charter document, entitled *Principles of Participation and Consultation* [which is accessible online at - <http://www.policeact.govt.nz/consultation-principles.html>].

### **OPENNESS AND CLARITY**

A new Police Act should be a source of information that allows the community to understand Police's role, key relationships and the services Police delivers. It should provide a framework to enable public dialogue and scrutiny. A new Police Act can assist in this, by taking advantage of improvements to the way that modern legislation is drafted, such as using everyday language instead of 'legalese'.

### **FLEXIBILITY THROUGH A 'BROAD PRINCIPLES' APPROACH**

The amount of material in an Act and the way it is organised can also affect a reader's ability to understand the content. More detailed matters are now commonly contained in schedules to Acts or Regulations. An overly prescriptive drafting approach can also lead to inflexibility, limiting the ability to adapt to changing circumstances without amending legislation. (This issue has bedevilled the current Police Act, resulting in 26 separate Amendment Acts since 1958.) A trend evident in more contemporary drafting is to 'future proof' Acts as much as possible; for example, by providing that a statutory list can be changed by regulation, if appropriate, rather than requiring a full Amendment Act to be taken through Parliament.

When it comes to writing a new Police Act, a better way forward may be to aim for an enabling piece of law setting out broad principles, with matters of detail contained in secondary or tertiary legislation (that is, regulations or general instructions issued by the Commissioner of Police).

This would enable the Act's overall structure, and its most important provisions, to be more easily understood. Flexibility to evolve non-controversial aspects of the Act without separate amending legislation could also be explored (eg., a new policing function could be added to a statutory list in a new Act by means of regulation).

*A good place to start is to look for key principles*

*Process-wise, we are committed to a participatory and consultative approach*

*The style that the new Police Act is drafted in will be important*

*We are aiming for an 'open' and uncluttered Act, that allows us to continue evolving*

*We might also look to opportunities  
for consolidation*

*A new Police Act should have an  
indigenous feel, reflecting the  
New Zealand way of policing*

## CONSOLIDATION OF POLICE-RELATED LAW

Another goal that might be furthered with a new Police Act is to pull together, in a single statute, police-relevant aspects of other legislation. This would help address a complaint that is sometimes heard that there is no 'one-stop shop' statute where the main police powers are spelt out. Instead, statutory powers able to be exercised by members of Police are scattered through an array of legislation.

It may be more helpful, and certainly more transparent, if some of these powers were consolidated in a new Police Act, especially if the new legislation seeks to clarify Police's roles and responsibilities. By way of example, if clarifying emergency management functions of Police, it might be worthwhile bringing across section 342A of the Local Government Act 1974 into a new Police Act. This section provides that a senior police officer may temporarily close a motorway or road where public disorder exists or is imminent, or where a danger to the public exists or is reasonably expected.

Other aspects of the statute book could also be consolidated. For instance, does there need to be a stand alone United Nations (Police) Act 1964 and Crimes and Misconduct (Overseas Operations) Act 2004? These small Acts, each containing only eight sections, are principally concerned with ensuring that Police staff serving offshore are subject to the jurisdiction of New Zealand Courts for any offences against domestic law committed overseas, and to ensure that such staff are subject to standard New Zealand Police disciplinary processes. However, it is increasingly common for such matters relating to international service to be dealt with in other nations' Police Acts. Development of a new Police Act in New Zealand may give a useful prompt to ask whether a similar approach should also be followed in this country.

## REFLECTING THE SPECIAL CHARACTER OF NEW ZEALAND POLICING

Conversely, new Police legislation should properly reflect New Zealand issues and experiences, rather than simply being an amalgam of ideas taken from overseas. Any new Act should describe the New Zealand way of policing, taking inspiration from the acknowledged strengths of policing in this country - for instance, policing in partnership with Māori. This Kiwi flavour should come through in the legislation, emphasising the history and context of policing in New Zealand. Areas where this principle might find expression in the new Police Act include describing New Zealand Police's commitment to practices such as restorative justice and policing with the community.

**Question 1:** Do you agree with the suggestion that the new Police Act be an enabling piece of law that sets out broad principles, whilst matters of detail are saved for secondary/tertiary legislation?

**Question 2:** Are you in favour of the new Police Act being a logical place to consolidate police-relevant aspects of other legislation?

**Question 3:** Do you support drafting the new Act in a way that emphasises the special character of New Zealand policing? If so, are there specific ways you would like to see this expressed?

**Question 4:** Apart from those already suggested, are there any other process-type principles you think should be taken into account when new Police legislation is drawn up?

## **Principles of policing**

In addition to process-oriented principles relevant to the task of rewriting the Police Act, it is useful to seek agreement on more substantive principles. These principles are foundations that New Zealand Police has relied on for the past 160 years, and which will help to support it into the future. If we can be clear about what these principles are - about what it is we expect a police service to do, and how it goes about doing it - then we will be in a much better position to spell this out in new legislation.

Beyond this, a well-articulated set of policing principles could also act as a compass for New Zealand Police, members of the public, and various interest groups, that can be used to regularly check that policing remains 'on course'. Such principles could also help individual Police staff members to navigate their way through their day-to-day work; perhaps as the centrepiece for an organisation-wide code of ethics that contributes to the ongoing professionalisation of policing in New Zealand.

Internationally, there is a long tradition of discussing principles of policing. One of the most influential descriptions continues to be the nine principles laid out by Sir Robert Peel in 1829 for the establishment of London's Metropolitan Police. It is still worth reflecting on these principles, as an understanding of policing history offers a useful benchmark for the future. 'Bobbies' walking the beat in mid nineteenth century London were instructed:

- To prevent crime and disorder, as an alternative to their repression by military force and by severity of legal punishment.
- To recognise always that the power of police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.
- To recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in securing the observance of laws.
- To recognise always that the extent to which the co-operation of the public can be secured diminishes, proportionately, the necessity of the use of physical force and compulsion for achieving police objectives.
- To seek and to preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to law, in complete independence of police and without regard to the justice or injustices of the substance of individual laws; by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing; by ready offering of sacrifice in protecting and preserving life.
- To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public co-operation to an extent necessary to secure observance of law or to restore order; and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.
- To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen, in the interests of community welfare and existence.
- To recognise always the need for strict adherence to police executive functions, and to refrain from even seeming to usurp the powers of the judiciary or avenging individuals of the State, and of authoritatively judging guilt and punishing the guilty.
- To recognise always that the test of police efficiency is the absence of crime and disorder, and not the visible evidence of police action in dealing with them.

Peel's principles emphasise crime prevention as a core police responsibility, alongside protection of life and property, and preservation of the peace. Policing by consent, using minimum force necessary, and avoiding criticism of laws, legislators or the judiciary, are all important Peelian themes.

*Identifying key principles for policing helps lay the groundwork for the review*

*Peel's principles of policing still endure today*

*Over the years, there has been a widening of the police mission, to take account of new dynamics and complexities*

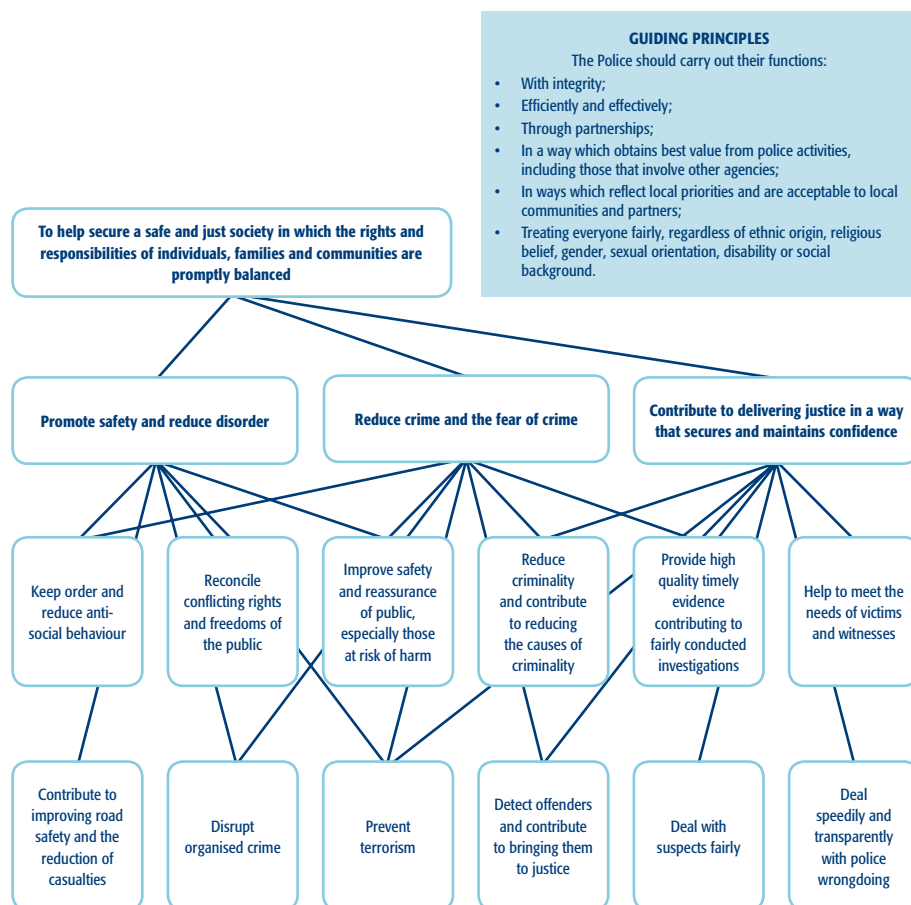
*The story is one of continuity as well as change, with a defining feature being the maintenance of the office of constable*

This nineteenth century view of the police mission has evolved over time, to recognise police's more general service function of assisting citizens in need, and to acknowledge the role police play in responding to emergencies and threats to national security. Increasingly, police roles of order maintenance and reassurance are also being given recognition, as is the interdependence with a growing network of public and private agencies that contribute to crime prevention and safety and security.

Modern policing is also being influenced by globalising influences - such as the search for international 'best practice' policing approaches; the trend towards common standards; and working across borders, particularly in light of United Nations, regional and subregional agreements.

While much has changed in the policing environment between the 1800s and today, there are also important continuities. One of these is the special status of the office of constable. This means every police officer is not just an employee or a public servant, but has the constitutional position of an office holder under the Crown. (The intricacies of the office of constable, and its implications for police powers, human resource management and governance and accountability will be drawn out in other *Issues Papers*.) The independence required of, and guaranteed by, the office of constable can be viewed as a particular strength of police services like New Zealand's.

As a demonstration of how the basic tenets of policing have evolved since Peel's time, the following aims and objectives for police forces in England and Wales were identified by Her Majesty's Inspectorate of Constabulary in the late 1990s:





Another contemporary example of agreed principles for policing came out of the multi-party talks on Northern Ireland in 1998. Relevant sections of the 'Good Friday Agreement' dealing with policing issues stated:

- The participants .... believe that this agreement offers a unique opportunity to .... inform and underpin the development of a police service [which is] representative in terms of the make-up of the community as a whole and which, in a peaceful environment, should be routinely unarmed.
- The participants believe it is essential that policing structures and arrangements are such that the police service is professional, effective and efficient, fair and impartial, free from partisan political control; accountable, both under the law for its actions and to the community it serves; representative of the society it polices, and operates within a coherent and co-operative criminal justice system, which conforms with human rights norms.
- The participants also believe that those structures and arrangements must be capable of maintaining law and order, including responding effectively to crime and to any terrorist threat and to public order problems. A police service which cannot do so will fail to win public confidence and acceptance.
- They believe that any such structures and arrangements should be capable of delivering a policing service, in constructive and inclusive partnerships with the community at all levels, and with the maximum delegation of authority and responsibility, consistent with the foregoing principles.
- These arrangements should be based on principles of protection of human rights and professional integrity and should be unambiguously accepted and actively supported by the entire community.

Closer to home, the former Police Board of Victoria, Australia, proposed a number of foundations for modern police, which it saw as translating into key principles. Notably, these included:

1. That the independence, powers and accountability of the office of constable be maintained.
2. That policing of Victoria be recognised as a community responsibility.
3. That the role, functions and responsibilities to be discharged by Victoria Police be clearly promulgated.
4. That public respect and confidence in Victoria Police be fostered and preserved through pursuit and maintenance of exemplary standards of professionalism, conduct and personal behaviour.
5. That Victoria Police treat all people fairly, safely and with dignity regardless of circumstance.
6. That Victoria Police be responsive to changing community needs and expectations, and that it strive for continuous improvement in policing.
7. That such mechanisms and procedures be put in place as are necessary to satisfy the public with regard to police honesty, integrity and accountability.
8. That the managerial and employment principles applicable to other public sector employees in Victoria be generally applicable to Victoria Police.

Even more recently, the Australasian Police Ministers Council endorsed a set of guiding principles for New Zealand and Australian policing agencies. *Strategic Directions in Australasian Policing 2005-2008* emphasises that, to be effective, police must enjoy the confidence, trust, cooperation, and active support of the community. It also stresses the importance of police providing public reassurance and developing initiatives that respond to the community's fear of crime. In seeking to achieve the vision of a safe and secure Australasia, the strategy mandates the following four areas of focus:

- *Innovation in Policing:* Using innovative methods to uphold community safety and well-being, and anticipating and responding to emerging policing issues.
- *Leadership and working together:* Providing leadership, adopting a partnership approach, and consulting with key stakeholders on critical issues affecting well-being, including community safety and security and criminal justice reform.

*The police role in balancing rights and responsibilities is also increasingly being recognised ...*

*...including the need for citizens to help support police, whereby policing is seen to be a shared responsibility ...*

*... along with an express recognition of human rights in understandings of the police mandate*

*These efforts have drawn several 'golden threads' through from the historical notions of Peel and others*

*Accepted norms for other state sector agencies have also been grafted on to the police mission*

*A recent theme is moving from a 'passive' model of policing by consent to exploring ways of more actively engaging citizens in partnership with police*

*There appears to be a fair degree of consensus on the principles that guide policing*

*It is an open question whether such principles should be included in a new Police Act*

- *Professionalism and accountability:* Enhancing confidence in, and respect for, the police.
- *Cooperation and coordination in policing:* Improving effective and efficient use of resources through cooperation and strategic partnerships within and between local, Australasian, regional, and international jurisdictions.

In summary, there appears to be a reasonable level of consensus over the types of principles that underpin policing. While they might carry high-level descriptions like 'respect for human rights', they contain a range of themes like policing in a consensual and community-oriented style, using the minimum force necessary, protecting the vulnerable, valuing diversity, and so forth. At the summary level, however, these basic principles include:

- impartiality
- openness
- accountability
- respect for human rights
- partnership
- representativeness
- a commitment to effective, efficient and ethical service delivery.

If such principles are accepted as relevant to the New Zealand situation, it might be desirable to give such principles statutory recognition. This would be consistent with a trend in modern New Zealand statutes to spell out the rationale for state involvement in such areas (eg., section 6 of the Corrections Act 2004: "principles guiding the corrections system").

By way of example, if the Peelian principle of policing by consent was to be captured in a new Police Act, a clause might be added that "members of Police shall, so far as is practicable, carry out their functions in co-operation with, and with the aim of securing the support of, the local community" [similar to section 32(5) of the Police (Northern Ireland) Act 2000]. There might also be value in further locating this principle within a New Zealand context, by referring to active partnership with Māori as tangata whenua.

If it were thought appropriate to reinforce the sense of reciprocal obligations that exist between police and the people they protect and serve, a new Police Act could include a clause similar to section 6(2) of Queensland's Police Powers and Responsibilities Act 2000, which expressly provides that: "it is not the purpose of this Act to affect the principle that everyone in the community has a social responsibility to help police officers prevent crime and discover offenders".

**Question 5:** Would it be worth including in a new Police Act a set of guiding principles for policing? If so, what principles should be included? Are any principles more important than others?



### 3. Clarifying the purpose of New Zealand Police

The current Police Act 1958 also contains no explicit statement of the role or functions of New Zealand Police. This is at odds with more contemporary police legislation overseas. At present, the underlying purpose of New Zealand Police is perhaps best drawn from the constabulary oath contained in section 37 of the Police Act. The oath provides that a police officer will:

without favour or affection, malice or ill-will ... see and cause ... peace to be kept and preserved, ... prevent ... all offences against the same, ... [and] discharge all the duties legally imposed ... faithfully and according to law.

Corporate documents such as the *Police Statement of Intent* and case-law offer more insight into the rationale for, and reach of, New Zealand Police. These sources emphasise that New Zealand Police has a vision of building safer communities together, aspiring to serve the community via a mission of reducing the incidence and effects of crime; detecting and apprehending offenders; maintaining law and order; and enhancing public safety.

This meshes fairly closely with the functions of police recognised in other common law jurisdictions, notably:

- *public order and safety* - including crowd control and road safety;
- *crime prevention* - including visible policing in communities, and work with other agencies to deter offending and reduce risks of victimisation;
- *law enforcement* - including detecting and bringing offenders to justice;
- *emergency management* - including the planning, coordination, response, recovery and prevention of a wide range of emergencies;
- *community support and reassurance* - including a range of activities sought by the community, such as locating missing persons, handling lost property, contacting next of kin of injured and deceased persons, and generally assisting those in need of help.

Where New Zealand's current Police Act stands apart from police legislation in other common law countries is the lack of any role or function statement. For example, section 7(1) of Ireland's Garda Síochána Act 2005 states that:

The function of the Garda Síochána is to provide policing and security services for the State with the objective of -

- (a) preserving peace and public order,
- (b) protecting life and property,
- (c) vindicating the human rights of each individual,
- (d) protecting the security of the State,
- (e) preventing crime,
- (f) bringing criminals to justice, including by detecting and investigating crime, and
- (g) regulating and controlling road traffic and improving road safety.

Likewise, most Australian police services have statutory expressions of their role/function in their equivalent legislation at federal, state or territory level. The key difference between these provisions is the degree of generality used. For instance, section 5 of South Australia's Police Act 1998 provides:

*Another area of debate is whether a new Act should seek to include a statement on the role/function of New Zealand Police*

*At present, Police's role/functions are not clearly spelt out*

*This places New Zealand at odds with most other jurisdictions*

*Overseas models of such role/  
function statements vary in their  
degree of specificity*

*England and Wales use a different  
model again, that seems to relate to  
the way its police forces operate*

The purpose of the SA Police is to reassure and protect the community in relation to crime and disorder by the provision of services to -

- (a) uphold the law; and
- (b) preserve the peace; and
- (c) prevent crime; and
- (d) assist the public in emergency situations; and
- (e) coordinate and manage responses to emergencies; and
- (f) regulate road use and prevent road collisions.

By contrast, Queensland's Police Service Administration Act 1990 offers a more detailed description of police functions. Section 2.3 of the Act states:

The functions of the Police Service are -

- (a) the preservation of peace and good order -
  - (i) in all areas of the State; and
  - (ii) in all areas outside the State where the laws of the State may lawfully be applied, when occasion demands;
- (b) the protection of all communities in the State and all members thereof-
  - (i) from unlawful disruption of peace and good order that results, or is likely to result, from-
  - (ii) from commission of offences against the law generally;
- (c) the prevention of crime;
- (d) the detection of offenders and bringing of offenders to justice;
- (e) the upholding of the law generally;
- (f) the administration, in a responsible, fair and efficient manner and subject to due process of law and directions of the commissioner, of -
  - (i) the provisions of the Criminal Code;
  - (ii) the provisions of all other Acts or laws for the time being committed to the responsibility of the service;
  - (iii) the powers, duties and discretions prescribed for officers by any Act;
- (g) the provision of the services, and the rendering of help reasonably sought, in an emergency or otherwise, as are -
  - (i) required of officers under any Act or law or the reasonable expectations of the community; or
  - (ii) reasonably sought of officers by members of the community.

It is worth noting that a different model again exists in the United Kingdom. To an extent, this is understandable given the tripartite governance structure for policing in England and Wales, with 43 individual force areas. Rather than attempting an overall statement of the roles and functions of United Kingdom police, the Police Act 1996 and Police Reform Act 2002 provide for a system of area-based policing, underpinned by an annual *National Policing Plan* and area-level strategic planning documents issued by local police authorities.

## POSSIBLE ARGUMENTS AGAINST INCLUDING A PURPOSE STATEMENT

Despite these overseas precedents, the inclusion of a broad purpose statement in the new Police Act may achieve little real or practical difference. A legislative statement is likely to be framed in broad terms, and its inclusion in the Act may provide only general guidance and direction for New Zealand Police.

The lack of detail in the present Act, preferring to describe Police's role and functions in corporate documents, allows for Police to be flexible in its operations, and responsive to changing community and government expectations over time. In contrast, including an overly detailed purpose statement in the new Act could impede Police's operational flexibility and its ability to evolve in response to changing needs.

Inclusion of even a broad purpose statement is unlikely to prevent the need to adjust its scope to meet changing demands; for instance, to take account of the growing call for New Zealand Police involvement in international peacekeeping operations, or delivering training to police staff in the Pacific and elsewhere. Including roles and functions in Police's legislation may also create a perception that non-legislated roles and functions are incidental to policing, which in turn could improperly limit the services provided by Police.

Some may see other potential risks in trying to identify the role and functions of New Zealand Police. For instance, some traditional functions, such as routine patrolling of the streets, may not be the exclusive domain of a 21st century police organisation, leading to debates about 'core' and 'ancillary' police services. Similarly, the desire to point clearly to the purpose of Police in a new Act may spark disagreement about the adequacy of the resources available for New Zealand Police to carry out its many functions.

### ARGUMENTS IN FAVOUR OF INCLUDING A PURPOSE STATEMENT

As a matter of principle, it seems unsatisfactory that the role and functions of an agency as significant as New Zealand Police are not set out in its enabling legislation. Including such a purpose statement in a modern Police Act would allow democratic input into describing Police's role and functions. It may also help in assessing the performance of Police, as the lack of agreed roles and functions can make it more difficult for both Police and government to clearly understand and act appropriately within their respective areas of responsibility. Furthermore, a purpose statement would provide a firm bedrock upon which Police can build with confidence in a range of other areas - for example, development of strategy and policy.

It is not anticipated that wholesale changes would need to be made to Police's mission as currently expressed in its *Statement of Intent* and other corporate planning documents. New Zealand Police's purpose statement could also evolve over time, in the light of changing circumstances. The flexibility to allow for different Police roles or functions could be provided for quite readily, by allowing changes by regulation to any statutory provisions.

**Question 6:** Would it be a good idea to spell out New Zealand Police's role and functions in legislation? If so, how detailed should this description be?

## 4. Conclusion

This first *Issues Paper* asks whether identifying basic principles could help inform the development of new police legislation. The Police Act Review Team poses this question with an open mind. This and subsequent Issues Papers is intended to test the waters. We hope to generate discussion around key topics, and to detect any general consensus that exists on how these issues could be presented in later phases of the Police Act Review. So, if you have any suggestions or reactions, we encourage you to let us know. Options for how to make us aware of your views are provided on the back page of this document.

*Arguments can be made both for and against seeking to include such a role/function statement in a new Police Act*

*On balance, the pros may outweigh the cons*

*We have an open mind, and want to hear what you think*

## How to make your views known

We are inviting written responses to this *Issues Paper* by 14 August 2006.

Responses can be sent by post, fax, or by using the web form provided on the Police Act website [[www.policeact.govt.nz/consultation.html](http://www.policeact.govt.nz/consultation.html)].

Faxes should be sent to: (04) 474 2342. Responses can also be posted to:

Police Act Review Team  
Office of the Commissioner  
New Zealand Police  
P O Box 3017  
WELLINGTON

Consultation on this *Issues Paper*, together with consultation on all further *Issues Papers* during this project, is a public process. Responses provided will be subject to the Official Information Act 1982, so please identify any information in your response which you would like treated as confidential.

If you have any questions relating to this *Issues Paper* or the consultation process, these may be emailed to the Police Act Review Team using the dedicated channel on the [www.policeact.govt.nz](http://www.policeact.govt.nz) website, or you can ask to speak to a Police Act Review Team member by calling (04) 474 9499.

**Police Act Review Team  
Office of the Commissioner  
New Zealand Police  
PO Box 3017  
Wellington  
New Zealand**

**[www.policeact.govt.nz](http://www.policeact.govt.nz)**