Police Act Review

Building for a modern New Zealand Police

Issues Paper 3: **Employment arrangements**

August 2006

BUILDING FOR A MODERN NEW ZEALAND POLICE

1. Introduction

Views are being sought on how some major issues in the Police Act review are framed for discussion

A project to rewrite the legislative framework for policing in New Zealand was launched in March 2006. This is the third in a series of *Issues Papers* allowing for early input on how key topics are dealt with during this project. It focuses on the way New Zealand Police organises its human resources (HR). Key topics this paper will explore include:

- Principles that might serve as building blocks for Police's HR framework
- The range of duties and functions of different categories of staff
- Appointment, transfer and deployment provisions, including secondment of staff to and from overseas posts, and to and from other agencies
- Professionalism, skill portability and career transitions
- Secondary employment
- Representation of employees
- Agreeing on staff pay and conditions, and superannuation arrangements
- The process for dealing with employment problems and industrial action
- End-of-employment provisions (including for very senior Police staff).

This paper poses questions about how new legislation might best support good HR practices

The paper identifies several options to enhance Police's HR arrangements. It proposes how these could be expressed in new policing legislation, but responses are invited on any aspect of HR policy the paper touches upon.

An important point to note at the outset is that this *Issues Paper* does not address conduct and integrity, nor command and control matters. These related topics will be dealt with in separate *Issues Papers* in due course.

2. Setting the scene

Before getting to those questions, though, they must be put into context

The inner-workings of Police's HR arrangements are not widely known, and there can even be misperceptions when people try to put different pieces of the puzzle together by simply looking at the Police Act 1958 and the Police Regulations 1992. To help inform consideration of some of the choices facing Police in the employment arena, it is necessary to provide some brief background information about Police's current HR environment, as well as highlighting some of the challenges (now and in the future) that influence how a modern police employment relations framework is designed.

One important context is Police's current legislation, and the extent it allows for modern and enabling HR practices

A good starting point might be to set out some challenges and constraints seen in Police's current legislation. These include:

- a divide between sworn and non-sworn staff members that inhibits organisational cohesiveness, limits flexible opportunities for career development between the two categories, and limits deployment options
- a quasi-military disciplinary system that does not cater for performance management, nor reflect modern employment practice
- an arbitration model that reflects a style of industrial management last seen in New Zealand around 20 years ago.

A quick overview of some of the key influencing factors will be provided…

In tackling these challenges and constraints, the following discussion is far from exhaustive, and it must inevitably deal in short order with some fairly significant issues. The intention is to convey enough introductory information to provide a high-level context, as well as a flavour of the types of pressures that impact on Police's HR landscape.

Those seeking more detail are invited to undertake wider reading around New Zealand Police's HR environment (e.g., reviewing employee projection information from *Police Annual Reports* and commissioned documents, like the 2001 *People in Policing HR Strategy*; all of which are accessible from the www.police.govt.nz website), and to familiarise themselves with relevant overseas writing (e.g., Jessica Lynch, *Looking to the future: Implications of emerging trends for police workforce planning* [Adelaide: ACPR, 2005]; Barry Loveday, Workforce Modernisation: Implications for the police service in England and Wales, *The Police Journal*, vol 79 [2006], pp 105-124; etc.).

… but people are encouraged to seek out more detail if they have a special interest in certain topics

Police's current HR environment

With over 10,000 staff, Police is one of New Zealand's largest state sector employers. The Police workforce is set to grow further still, as plans to recruit an additional 1,250 staff are implemented over the next two years.

The workforce profile is dominated by police officers, known as "sworn members of Police", who make up over three quarters of total Police personnel. At the end of June 2006, there were 7,763 sworn members; complemented by a further 2,564 "non-sworn members of Police".

The New Zealand Police employee base is large and diverse, and is set to get even more so

For non-sworn staff, general employment law has an important role to play. But for sworn staff, the main HR policies and practices are defined by the Police Act and Regulations. In particular, the Police Act:

- Sets a framework for sworn and non-sworn employment arrangements, including details relating to appointments, reviews and transfers, as well as the process for collective wage bargaining, employment agreements and representation
- Codifies the oath of office to be sworn by every constable
- Establishes superannuation arrangements and specifies methods of exit ("disengagement" and resignation)
- Defines procedures for resolving employment grievances, complaints of sexual harassment, and managerial action to address disciplinary issues.

Looking back: Origins of Police's HR framework

Police's HR management practices have evolved over more than 160 years. It is interesting to reflect on this evolution, as there are still some significant echoes from the past embedded in the HR environment of today's Police.

Police has its foundations in the Armed Constabulary model

The first New Zealand legislation to govern policing was enacted in 1846. The Police Ordinance 1846 was largely based on Irish and Australian colonial policing systems. Later, during the 1860s, New Zealand incorporated English concepts from Sir Robert Peel's 'new police'. Together with the formation of a single national police force in 1886 (following the abolition of provincial government in the 1870s), this combination of frontier-style policing from Ireland and London's unarmed prevention-focused police still forms the basis for how policing is organised in New Zealand today.

Enduring HR characteristics from these early policing arrangements include:

- A quasi-military rank structure
- A predominantly uniformed service
- Employment based on 'fit and able' criteria
- Appointment of senior officers under warrant by the Governor
- Access to policing powers through taking a constabulary oath of office
- Dismissal based on breach of legislatively-defined standards.

The influences of history can often still be seen today

Throughout these developments the office of constable has remained an important anchor point

The first half of the 20th century saw developments in police HR practices codified via legislation in 1913, 1947 and 1958. The key HR characteristics listed above have remained constant throughout the years, while integrating new policies such as allowing for employee advocacy groups to represent members, providing for women to serve alongside male officers, and allowing for serving civilian staff to be employed by the Commissioner as non-sworn members of Police (a development that only occurred in 1989).

In summary, the New Zealand Police of 2006 has carried through many of its formative HR characteristics. Perhaps most importantly, the office of constable remains the centrepiece of New Zealand Police. The constable is broadly empowered to exercise a range of common law and specific powers on the state's behalf. Related to this broad empowerment has been the long-standing policy that all constables are trained so they can carry out, at some level, every role for which they may be responsible.

Looking forward: Influences on Police's HR framework

While strong connections to the past offer stability and other values, police forces around the world are being confronted with an ever-more demanding environment; one that asks searching questions of traditional ways of doing things, including in the HR arena. To borrow a hackneyed phrase, standing still is simply not an option. Illustrating this reality, the next section of the paper outlines some of the key challenges facing Police as it looks to position itself to deliver the best policing services for New Zealanders in the 21st century.

A NEW OPERATING ENVIRONMENT

The modern environment is encouraging Police to think about the nature of its human resources...

The current operational environment for police is more complex than it was when the current Police Act was passed. Policing today is much more than catching crooks or preventing those with 'evil designs' committing crime - as talked of in founding Police Acts and Ordinances. There have been a variety of policing services and techniques introduced since 1958, many of which require a wider police mandate or staff with special skills. These include:

- increasing requests from overseas law enforcement agencies to cooperate against international crime
- growing demands for search and rescue and related safety, prevention and reactive services (e.g., pandemic response planning)
- cyber-crime and other technology-based crimes requiring specialist understanding or technical skills
- licensing, vetting and other regulatory services that range from security guard vetting, to preventing convicted sex offenders gaining employment in roles where they may have access to children
- increasing links to international crime groups within New Zealand, leading to more protracted and complex organised crime investigations
- integrating road policing as a core police function
- providing youth education and other more long-term crime prevention or safety promoting services
- developing crime and safety policy advice for government
- the increasing role of police as 'peacekeepers' in overseas environments as support to New Zealand foreign policy objectives.

...and how best to meet new and changing demands for police services

Across government there have also been significant changes in the way Police operates and interacts with the justice, transport and other sectors; with local government; and with partner agencies in the private, community and voluntary sectors. (This theme will be more fully developed in a subsequent *Issues Paper* on relationships and boundary issues).

Modern policing requires strong networks between co-operating agencies

As a result of increased diversity and complexity in the police environment, there has been an increased need for specialisation in some areas of policing, as well as an enhanced need for flexibility in deployment to meet changing crime patterns.

A CHANGED AND CHANGING WORKFORCE

Greater specialisation and skills required for some policing roles, an ageing population, and increased competition from other employers in a shrinking youth labour market are just some of the features that mean Police has to compete harder to attract top-quality employees.

Police staff are currently streamed according to their sworn or non-sworn status. Positions are designated as being available to sworn, non-sworn or, in limited cases, both types of employee. As people (not positions) hold this status, there is an impact on organisational design and career development. While all Police staff are unified by being "members of Police", a continuing sworn/non-sworn division sits at the heart of how Police organises its people. There is no intermediate step in status; all sworn members take the statutory oath of office, and in doing so access the powers of a constable.

Distinctions based on sworn or non-sworn status can act as a barrier

The following examples draw attention to the current 'one size fits all' sworn member model, and some of the practical consequences that flow from this:

- Specialists needing constabulary powers (e.g., the power to search for or seize exhibits, or legally detain somebody) are only recruited from serving sworn members of Police
- There is no entry provision enabling civilian recruitment and targeted training for specific technical roles requiring constabulary powers
- There is limited lateral entry of former staff, or experienced sworn members from other jurisdictions, to sworn roles
- Police has almost no ability to employ people in a limited powers capacity (this has been highlighted by the swearing in of temporary staff to work as jailers and prisoner escorts in some parts of the country)
- Sworn members can only select from designated sworn positions when considering career development options; while non-sworn jobs are only available if sworn members first exit through resignation or retirement and then seek reemployment as non-sworn members of Police
- There is confusion around the 'real' level of Police resourcing, as public perceptions are built almost solely around the number of sworn staff.

Several constraints flow from the simplistic sworn/non-sworn staffing model

GENERALISTS VERSUS SPECIALISTS

Police need to maintain a body of appropriately trained staff who can draw on general skills and powers to provide effective policing coverage across the country, as well as staff who can undertake more complex and/or highly technical tasks, sometimes backed by special powers or protections.

Police require both generalist and specialist skills

The traditional policing model has been to have all constables trained to the same standard in as many aspects of policing as possible. This offers a solid base of employees with core policing skills, with the ability for members to develop specialist skills as required. However, trying to turn generalist Police staff into specialists across an increasing array of specialist areas is becoming increasingly unsustainable.

How Police attracts and retains a workforce of generalist and specialist staff is an important part of this discussion

Further, attracting specialists into policing, but requiring them first to train as a generalist constable, limits Police's ability to attract staff with sought-after technical skills. Examples where the pinch is being felt include the areas of electronic crime, forensic investigations, financial crime and intelligence analysis. Some argue Police is being left at the margins of more sophisticated crime investigation due to its inability to support a pool of specialists with technical expertise in such areas.

Internationally, police forces are looking to meet such challenges with a greater mix of employees; where an increasing range of police staff, with and without designated powers, support attested officers in a more seamless fashion. This represents a shift from the omni-competent constable as the only key actor, to a more sophisticated team approach to policing that seeks to apply the requisite skills and powers to the task in hand. In this regard, it is worth noting that teamwork is already a highly valued component of the New Zealand policing style, and in limited ways the 'mixed team approach' is already a feature of the New Zealand Police workplace.

WHERE TO FROM HERE?

Given the breadth of changes in Police's operating environment, the options for change are also likely to be broad.

How new legislation can best support this process is key

Some feel a more contemporary approach would allow greater flexibility to engage staff across a range of functions within a single employment framework. Such an approach would not diminish the office of constable, but could enable specific policing powers to be provided to specialists. These members could enter Police via a more responsive training and development system. In such an environment it could be possible to hold both sworn and non-sworn positions during a career without exiting Police. Powers and/or warrants would be based on requirements of specific roles, as well as preserving the important flexibility that comes from the traditional general duties constable.

Others fear that increasing the mix of staff types within Police (i.e., potentially reducing the number of fully sworn generalist constables) will reduce the overall capacity of Police to respond to a large-scale emergency.

While some may see risks in this area, others will recognise important opportunities

These and other strategic choices are facing New Zealand Police right now. They are choices the Commissioner of Police is already actively talking to government about, in order to most strongly position Police into the future. And there is matching interest from government in ensuring that Police can continue to provide a workforce which has high standards of ethics and integrity, delivering services that meet the expectations of New Zealanders.

It is these choices which are the focus of the remainder of the *Issues Paper*.

3. Agreeing on principles

Identifying key principles can help lay the groundwork for the review

Choices are made within a context, but they can also be guided by principle. Before outlining some of the legislative design options available for Police's HR arrangements, it might be useful to test if there is agreement on what principles could valuably assist consideration of the various options.

More closely aligning to the state sector standard

One starting point might be the Police HR environment should reflect the conditions applying to the rest of the state sector, unless there are good reasons for placing Police outside this common framework. To this end, while some variations to the State Sector Act 1988 model seem necessary (notably, to acknowledge and preserve the unique position of staff who hold the office of constable), beyond these limited exceptions, there seem to be no compelling arguments why standard rights and obligations applying to other state sector employees should not also apply to the Police workforce.

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If such a principle were accepted, it would represent an important change to the approach expressed in the current Police Act and Police Regulations; which for sworn staff diverge from mainstream HR-related provisions in the State Sector Act and Employment Relations Act 2000. Currently the effect of this is to treat police officers differently to the vast majority of New Zealand employees. Some areas where these differences are most pronounced include approaches to wage bargaining, representation, access to employment institutions, and management of employment issues (e.g. disciplinary processes).

Internationally, it is possible to detect a move to apply general employment rights to police officers, as a way of 'normalising' their relationship with their chief officers, who in practical terms take on the functions of employers. As a fairly recent report on London's Metropolitan Police Service concluded:

> It is clear that there is ample precedent to demonstrate that police officers can be made subject to legislation which applies to employees without compromising the office of constable. In our opinion, therefore, there is no reason why employment law could not be extended to the office of constable in the same way as it is in respect of other issues, such as health and safety, equal pay and discrimination.
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> Sir William Morris et al., *The case for change: People in the Metropolitan Police Service* (London: Morris Inquiry, 2004), p 52.

Extending standard employment law arrangements to police officers could be desirable

Extending standard employment law arrangements to police officers is also seen as a way of promoting convergence of officers' terms and conditions with those of other police staff. This has been viewed as helpful in unifying police organisations, by removing a structural source of differences between sworn and non-sworn staff.

At the level of principle, therefore, and subject to the need to identify and preserve special aspects of the office of constable, there may be support for all Police staff being subject to general employment legislation, unless there are compelling reasons for differential treatment.

Question 1: Do you think new Police legislation should reflect the principle that whatever employment arrangements apply to rest of the state sector should also apply to Police?

Greater flexibility, reduced complexity

Police's current legislative framework for employment matters is marked out by its prescriptiveness, which contrasts sharply with arrangements for the wider state sector. Policing could benefit from a closer alignment with the less rule-bound state sector environment (with any necessary modifications: e.g., to be able to quickly deploy staff to deal with a large-scale emergency or to make provision for overseas operations).

Police's current legislative framework for employment matters is marked out by its prescriptiveness

If a less complex and unique set of legislative arrangements were designed, Police managers could be given greater flexibility to fill vacancies and deploy staff. This prospect may cause concern in some quarters. However, mainstreaming Police

employment arrangements would ensure there continues to be transparent and fair processes in Police's employment environment, and that the merit principle still applies to Police appointment and transfer decisions. Although issues of detail would need to be discussed with groups representing Police staff, it may be possible to agree in principle that HR elements of new Police legislation should aim to be as simple and flexible as possible.

Commitment to act as a good employer

At present, Police is subject to a different "good employer" provision than other state sector organisations

Another starting point might be that new Police legislation should reflect the importance of staff to the effective and efficient delivery of policing services, perhaps by reinforcing the commitment of the Commissioner of Police to act as a "good employer". There seems no necessary legal impediment to such a commitment, despite the fact that the Commissioner is not an "employer" of sworn officers in the orthodox sense of the word, given police constables are understood to be independent holders of public office under the Crown.

The principle that every state sector employer should be a "good employer" is recognised in sections 56 and 58 of the State Sector Act, with parallel requirements to be a "good employer" found extensively in the statute book - covering staff in agencies as diverse as the Māori Television Service and the New Zealand Defence Force.

While reasons for this divergence have been suggested, they may be seen as less than compelling

At present, Police is subject to a different "good employer" provision than other state sector organisations, as under section 7 of the 1958 Police Act the Commissioner is only obliged to act as "…as closely as possible…" to the "good employer" benchmark. This somewhat unusual qualification - which has few precedents elsewhere in New Zealand legislation (one of the few being section 24 of the Clerk of the House of Representatives Act 1988) - was introduced in 1989 for reasons which are not entirely clear. Anecdotally, it has been suggested the standard "good employer" obligation was qualified to afford additional protection to the Police Commissioner, who on occasion may be required for operational reasons to direct staff to intervene in dangerous and/or traumatic situations, such as disaster victim identification work after the recent tsunami in Southern Thailand. A more routine example would be attending armed offender callouts.

Taking a principled approach to the "good employer" question may suggest a different way forward

Again, as a matter of principle, it might seem strange that the head of the New Zealand Police is asked in legislation to aspire to a lesser standard than other state sector employers, many of whom have to ask a lot of their staff (e.g., doctors working extended hours in hospital emergency departments; firecrew putting themselves in danger to suppress fires, clean up toxic spills, etc.). Indeed, the Police Commissioner may well invite a higher threshold, in helping play his part to realise the state services' development goal to be recognised as an employer of choice.

Removing the existing "…as closely as possible…" qualification from a new Police Act might also send a positive signal about the value the organisation places on protecting the interests of its staff. Arguably, then, the only reason not to fully transit to the "good employer" norm is that this would expose the Commissioner to as yet unidentified legal risks.

Question 2: Do you favour a new Police Act reflecting the same "good employer" principles that other state sector employers follow?

4. Options for addressing specific Police HR issues

The principles listed above can be viewed as building blocks upon which to design a contemporary Police HR environment. If they attract broad-based support, they could act as cornerstones for new Police legislation. Even if the principles are widely supported, there are a number of issues of detail in Police's employment arena where it would be useful to seek direction on. This next section of the *Issues Paper* introduces these issues for discussion.

Staffing options

The omni-competent constable has long been the centrepiece resource used to respond to the many and varied demands for policing services. In more recent times, it has been recognised that a range of other Police staff have critical roles to play in the effective delivery of frontline policing services, as well as being able to release police officers from desk-bound duties into more operational roles in the community. The following assessment of workforce modernisation trends, written from a United Kingdom viewpoint, offers much of value in thinking about options that may be available in this area:

The constable is the centrepiece resource called upon to respond to the many and varied demands for policing services

> Policing is now highly complex and spans a massive spectrum of activities requiring a similarly extensive range of skills and competencies in those taking up the challenge. The omni-competent officer has been a traditional icon and supposed mainstay of the service. It is debatable whether effective omni-competence has ever actually been achieved but it is now abundantly clear that such an aim is no longer viable, or indeed appropriate, for 21st century policing needs …. The technical skills required to tackle complex fraud or internet crime, the need to deploy increasingly sophisticated counter-terrorist strategies and the particular skills required to deal with child protection issues are ample evidence of the futility of trying to train each officer in every discipline. However, this phenomenon is perhaps evidenced most clearly in the increasing specialisation within community policing, previously the core domain of generalist staff, but now requiring significant specialised skills in negotiation, mediation, resource management and multi-agency working. The emerging of 'streaming' of the key roles of community policing, crime investigation and response looks set to establish particular skill sets that will allow greater focus and more realistic spans of expectation.
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> Her Majesty's Inspectorate of Constabulary, Modernising the Police Service (London: HMIC, 2004), pp 173-174.

New Zealand Police already uses a blended workforce of sworn and non-sworn members, but the majority are sworn members. Generally speaking innovations on the traditional model of policing have been developed using local initiative: for example, the success being achieved in trials of hybrid roles, such as Crime Scene Attenders (CSAs) now working in Auckland. These specialist staffing developments are by no means unique to New Zealand, but they do beg the question whether reliance on the traditional staffing model remains the best way forward.

New Zealand Police uses a blended workforce of sworn and non-sworn members

Overseas experiences of finding ways to achieve the right balance could be instructive. For instance, the introduction of Police Community Support Officers (PCSOs) in the United Kingdom demonstrates trained civilian staff can be an effective foil for fully-warranted officers. PCSOs are uniformed staff who provide a visible police presence on the streets, and who discharge a range of operational responsibilities using a specific category of policing powers. In London, for example, the authorised powers include: the ability to issue infringement notices for offences such as underage drinking or anti-social behaviour; the power to detain someone for up to 30 minutes pending the arrival of a police officer; and the power to enter premises to protect life or limb, or prevent serious damage to property.

Indications are a richer blend of skills is required

Variations on the PCSO model exist in a number of other jurisdictions, with defined-powers patrol functions existing in countries such as The Netherlands. Other jurisdictions have extended the CSA model. For instance, the San Diego Police Department deploys non-sworn staff as police investigative aides and community service officers in various operational capacities. Such staff are empowered to detain suspects and make arrests for misdemeanour-type offences.

It should be recorded, however, that introduction of the PCSO role has not attracted universal support. Some fear that the limited role/limited power PCSO is simply 'policing on the cheap', and may be confusing for members of the public who could reasonably expect every uniformed officer to be omni-competent. This parallels recent concern with the deployment of uniformed scene guards in New Zealand, and highlights the need to carefully consider how such a model might work in the New Zealand context.

While the flexibility of the omni-competent constable is likely to guarantee they remain in a central role in the New Zealand Police, it may be beneficial to allow for further innovation in the Police workforce

While the flexibility of the omni-competent constable is likely to guarantee such officers retain a central role in the New Zealand Police of the future, it may be beneficial to allow for further innovation in the Police workforce, by designing legislation that enables a more diverse mix of staff to perform police functions. The legislative framework for assigning policing powers to PCSOs - section 38 of the Police Reform Act 2002 (UK) - suggests a way this could be achieved. The provision reads:

38 Police powers for police authority employees

(1) The chief officer of police of any police force may designate any person who-

(a) is employed by the police authority maintaining that force, and

(b) is under the direction and control of that chief officer,

as an officer of one or more of the descriptions specified in subsection (2).

(2) The description of officers are as follows-

(a) community support officer;

(b) investigating officer;

(c) detention officer;

(d) escort officer.

…

(4) A chief officer of police .... shall not designate a person under this section unless he is satisfied that that person-

(a) is a suitable person to carry out the functions for the purposes of which he is designated;

(b) is capable of effectively carrying out those functions; and

(c) has received adequate training in the carrying out of those functions and in the exercise and performance of the powers and duties to be conferred on him by virtue of the designation.

(5) A person designated under this section shall have the powers and duties conferred or imposed on him by the designation.

Question 3: Do you support new Police legislation making more staffing options available than currently exists? If so, do you have any views on how increased flexibility could be introduced to this area, and what 'checks and balances' there might need to be?

Entry points to Police

Flexible pathways might also be imagined that enable staff to seamlessly move between roles, subject to them satisfying requisite qualifying criteria. This option would address one of the peculiarities of Police's current legislation, whereby sworn members must formally resign before they can (re-)join as non-sworn members

of Police, and vice versa. It is difficult to understand the rationale for such a bureaucratic requirement when the employer and employee are not changing; all that changes is the designation of the staff member.

Many of Police's recruitment practices remain unchanged from the earliest days

Many of Police's recruitment practices remain unchanged from the earliest days, when a body of 'fit and able' constables was put together as a police force. Most sworn members are still inducted as recruits and trained initially as generalist constables for a lifetime career as police officers. Specialisation for specific sworn roles largely occurs by training existing members, rather than recruiting in skills from outside. Lateral entry is not specifically barred by the current Police Act, but it is not a strong feature of current practice.

Lateral entry is not prevented, but is not a strong feature of current practice

While accelerated development schemes have been implemented at times (e.g., to bring experienced overseas-trained officers into New Zealand Police) there has essentially remained a single point of entry for all police officers as probationary constables. For non-sworn staff, greater flexibility has been shown, with external appointments made into senior roles in areas such as policy, information and communications technology, finance and legal services. Such developments have been careful to balance the virtues of adding to Police's talent pool with the need to ensure existing staff have access to career development opportunities.

Question 4: Should new Police legislation make clear provision for direct entry of suitably-qualified staff?

Apart from the potential for direct entry into Police for specialised positions, consideration might also be given to the ability to facilitate secondments. There are at least two contexts within which such secondments might occur: to and from overseas police agencies, and to and from non-police agencies.

In recent years, New Zealand Police staff have increasingly been sought out for overseas postings, in part to meet foreign policy commitments to multinational peace-keeping and capacity building missions, but also for criminal investigation and liaison roles. This trend is expected to continue and potentially develop even further. At present, expressions of interest are called for to participate in such overseas posts, with placements dealt with somewhat outside the standard employment framework provided for in the Police Act and Regulations. This is done with the consent of members.

Putting secondments on a statutory footing allows for greater certainty about the process

One option would be to give such arrangements a statutory basis, as has been done in a number of other jurisdictions. For example, the Garda Síochána Act 2005 contains detailed provisions that deal with international service (section 51), appointment (section 52) and secondment (section 53) of Police Service of Northern Ireland officers to the Garda Síochána, and secondment of officers from the Garda Síochána to the Police Service of Northern Ireland (section 54). The foreign policy aspects of international placements, in particular, are given recognition in the Irish Act by making the Garda Commissioner's power to assign staff to overseas roles "subject to the agreement of the Government" or "with the consent of the Minister", depending on the nature of the particular post [see section 51(2) of the Act].

Examples such as the secondment provisions of the Garda Síochána Act offer a useful precedent for how such matters might be dealt with in a new Police Act in this country. Putting such secondments on a statutory footing allows for greater certainty about the processes that will be followed to give effect to such placements, as well as the status of the members seconded.

Overseas precedents suggest ways that this might be done

In the Irish model, appointments made to the Garda Síochána from the neighbouring Police Service of Northern Ireland are limited to senior ranks, at Superintendent level and above [section 52(2) of the Act]. Moreover, the Act requires "appropriate recognition be given to the rank, experience and qualifications that would be

required for appointment to an equivalent rank in the Police Service of Northern Ireland" [section 52(3)], presumably to avoid arbitrage between the two job markets, and clarifies that members "shall compete in a merit-based selection procedure with other applicants for appointment to the rank in the Garda Síochána concerned" [section 52(4)].

Secondments are an increasing reality of modern policing, and might usefully be dealt with in a new Police Act

Similar clarity might be welcomed in the New Zealand policing environment, where a trans-Tasman and possibly even more international competition for senior police roles may emerge in the future. Similarly, even now there are officer exchanges that regularly occur with Scotland's Strathclyde Police and the South Australia Police, which are dealt with by temporarily swearing in the seconded officers as New Zealand Police constables. This artificiality could be avoided if there was a clear empowering provision in legislation, equivalent to section 53 of the Garda Síochána Act. It clarifies, for instance:

> (4) A person appointed under this section shall, during the appointment -
>
> (a) be under the direction and control of the Garda Commissioner; and
>
> (b) …have the powers, immunities, privileges and duties of a member of the Garda Síochána of the rank to which he or she was appointed.

Clarity may be welcome if requests from overseas police forces were received to station staff in New Zealand for a particular event

Such clarity might be especially welcomed in the future, if requests are received from overseas police forces to temporarily station their officers in New Zealand, to help safeguard foreign nationals who might have particular security concerns (eg, as might be reasonably expected in the context of events like the International Rugby World Cup to be held in New Zealand in 2011). In this regard, a notable development in recent times has been the extent to which event-specific overseas assistance has been provided by the police of visiting sports teams and spectators at significant tournaments. German authorities, for example, empowered a squad of British Transport Police to work in Germany to help police English fans at the 2006 Football World Cup.

Question 5: What are your views on the appropriateness of legislation expressly allowing overseas police to work in New Zealand, under the authority of the New Zealand Police Commissioner?

Secondments to and from non-police agencies is also a growing trend

A related point of discussion is whether New Zealand's policing legislation should make specific provision for transfers to and from non-police agencies. At present, any such secondments are arranged on a fairly ad hoc basis, usually in the interests of the individual staff member's career development. With the increasing emphasis on whole-of-government and multi-agency approaches to achieve outcomes, it might reasonably be foreseen that the demand for such placements will only increase in future. A topical example is the across-government work on Effective Interventions, where Police staff might be seconded to work within the Ministry of Social Development or the Ministry of Justice; equally, a dedicated Effective Interventions unit might be established in Police National Headquarters, involving representation from a range of other departments or possibly even non-government organisations.

At present, secondments are arranged on a fairly ad hoc basis, usually in the interests of the individual staff member's career development

Mindful of such possibilities, and acknowledging the value of flexibility to be able to support the career development aspiration of staff members both within Police and also partner agencies, there may be interest in adapting a provision like section 24 of Tasmania's Police Act 2003. That section reads:

> **24. Transfer to and from Police Service**
>
> (1) The Commissioner, by written agreement with the Minister responsible for the administration of the State Service Act 2000 and an employee or officer within the meaning of that Act, may arrange for that employee or officer to be transferred to the

Police Service if that employee or officer satisfies the requirements for appointment as a police officer.

(2) The Commissioner, by written agreement with the Minister responsible for the administration of the State Service Act 2000 and a police officer, may arrange for the police officer to be transferred to the State Service.

(3) A transfer under this section is subject to the terms and conditions as agreed to between the Commissioner and the Minister responsible for the administration of the State Service Act 2000 and by the employee, officer or police officer concerned.

(4) A police officer who is transferred under subsection (2) does not retain any of the powers of a police officer on that transfer, unless the Commissioner determines otherwise.

A feature of the Tasmanian model worth highlighting is its anticipation that a state services employee might be transferred across to the police service as a warranted officer, so long as he or she satisfies the requirements for appointment as a police officer, and such a move is agreed to by the Police Commissioner and the responsible Minister. This chimes with the earlier discussion of lateral entry, and the possibility of a future HR framework that provides for a more finely calibrated set of warranted roles. It certainly offers a different window for what might be possible in this area when up-to-date police legislation is crafted for New Zealand.

The demand for such placements seems likely to increase in future

Question 6: Do you have a view on whether new Police legislation should make explicit allowance for transfers of staff to and from non-police agencies?

Supporting senior staff

Senior managers within Police, unlike their state sector colleagues, have term-limited appointments. Section 76(6) of the 1958 Act - which applies to Superintendents, Assistant Commissioners and non-sworn members at equivalent levels of seniority - limits appointments to a maximum of five years, with eligibility for re-appointment. This provision was enacted to reflect the Senior Executive Service (SES) environment established within the core public service in the late 1980s. With the repeal of the SES provisions in the State Sector Act, continuation of the term-limit concept in the Police Act puts Police senior managers out of step with their state services peers.

Senior managers within Police have term-limited appointments

Section 76 term-limits apply to a maximum of 20 positions, although others can be included with the agreement of defined service organisations (the New Zealand Police Association and the Police Managers' Guild Inc.). Currently, there are over 50 senior staff on finite contracts, in roles that would otherwise be permanent, establishment, positions.

Under general employment law, before agreeing on a fixed-term appointment, the employer must have genuine reasons based on reasonable grounds for specifying that the worker's employment is to end at a pre-determined point. In 2004, section 66 of the Employment Relations Act was strengthened to require the justification for fixed-term employment to be recorded in writing in employment agreements. This could be seen as reinforcing the presumption against fixed-term employment agreements, which some might interpret as relevant to the senior Police employment environment.

This is at odds with the general approach under mainstream employment law

Alternatively, if term appointments are to remain, one option would be to broaden their scope to include all senior Police positions (for a 10,000+ size organisation, likely to total more than the 50 currently identified 'section 76 positions'). A further option would be to dispense with the need for service organisation agreement to lift the specified number, should it be appropriate to bring further roles within this framework (a possibility, given the anticipated boost to total Police staffing in the coming years).

Nonetheless, retaining such fixed-term appointments may be favoured

A counterview would be senior Police management roles do not have any inherent characteristics which justify treating them differently from other senior management positions in the state sector. Instead of imposing term limits for senior Police roles, a more constructive move may be to require the Commissioner of Police to maintain a programme to develop senior management leadership and capability, consistent with the State Sector Act [see sections 46 to 48 of the Act].

Question 7: **In your view, should legislation for Police continue to limit senior managers to five year terms of appointment?**

Question 8: **Do you think it would be worthwhile to make it a legislative requirement for the Commissioner to build management and leadership capability within Police, or is this something that can be left unspecified and/or left to others (e.g., the State Services Commission's Leadership Development Centre)?**

Professionalism and skill portability

A modernised Police employment framework could also support a professionalised policing model

Continuing this theme, a modernised Police employment framework could also support a professionalised policing model, and potentially 'accreditation'. In such a model, Police staff would be required to demonstrate and maintain the skills and competencies demanded of their roles.

Some Australasian work is already underway

Some Australasian work is already underway to understand how a professionalised employment framework could help to structure police workforces. This framework would allow grouping of tasks at a similar skill/competency level, and potentially allow better task-to-resource matching. Through the framework, career pathways should become clearer; incentivising a move away from a reliance on generalist skills (omni-competence) towards ever greater specialisation of skills. Staff members would need to take ownership of their professional development, to best support themselves in areas of policing practice they wish to specialise.

The concept of accreditation and registration holds potential lateral entry and workforce mobility benefits...

Under such a model, once a staff member is accredited as being competent for their role, they could enter a register of accredited police practitioners. A complementary registration system would ensure individuals not only maintain their competence, but continue to develop skills and knowledge. To remain on the register, staff would be expected to evidence continuing competence, similar to the way staff currently maintain firearms currency, or other staff safety and tactical options. To develop skills and knowledge and to keep up to date with developments in their role, staff would be expected to complete continuous professional development activities.

The concept of accreditation and registration holds potential lateral entry and workforce mobility benefits. Developing an Australasian professional policing model could facilitate greater movement between Australasian law enforcement, investigations and security agencies, although it is also important to acknowledge that staff flows might not always work in New Zealand's favour.

...but some feel that a move to a 'profession of policing' model could spell the end of a connected and disciplined police service

The cultural impact of any move to a professional policing model is uncertain. One prediction is that allowing for membership of a profession would have a cohesive effect, supporting a view of policing as a vocation that helps bring members of the profession closer together. Conversely, some feel that a move to a 'profession of policing' model could spell the end of a linked and disciplined police service. This concern is based on a professional status promoting a more individualised view of each member's role within policing. In other words, professional police may not only become more mobile within the profession, but the Police organisation could become less structured and connected.

Question 9: In concept, do you support the suggested move towards a professional policing model? If so, do you think such a model should be put on a statutory footing, potentially through the new Police Act?

A flip side of workforce mobility, and seeking to offer multiple entry points into Police, is that flexibility works both ways; with an expectation created that multiple exit points will exist for staff who wish to go in other directions. The dynamics of the labour market suggest that today many people are less willing to commit to a long-term career. Modern employees are often more mobile and want to make an impact over a shorter timeframe than the 30 year commitment to one employer that many fresh-faced recruits once aspired to on entering the Royal New Zealand Police College. Some employees will be looking at Police as a second or even a third career. One of the ways Police can be made more attractive to this type of employee is to pay careful attention to areas of the HR framework that can be barriers to entry or exit.

The Police Act Review allows consideration of other potential barriers to entry and exit

Medical standards and fitness requirements

For example, should new legislation for Police continue to enable the Commissioner to prescribe minimum standards of fitness? During the 1980s, following identification of health issues during operational deployments for the 1981 Springbok Tour, Police introduced early retirement provisions as part of a new employment package. The provisions enabled the Commissioner to set standards of fitness, and for staff who could not competently undertake the duties of their rank to disengage or medically retire. These disengagement provisions remain today, albeit their relevance has been significantly diminished by subsequent superannuation scheme changes. This does not mean, however, that such standards no longer have a place in modern policing.

Many would see an ongoing need for Police to maintain standards of fitness

Many would see an ongoing need for Police to maintain standards of fitness and health for staff who operate, or who are likely to be deployed to, frontline policing roles. Similar considerations presumably lie behind physical competence requirements that apply in other public sector employment settings (e.g., in the fire service) that currently also have a legislative backing.

Recent policy development has allowed for sworn members of Police who are not "frontline or response staff" to be provided with an exemption to meet both standards of fitness and minimal training requirements, so as to accurately reflect the back-office nature of their roles. Even for essentially desk-bound roles, there may be times when the Police Commissioner needs to operationally deploy sworn staff who work in these roles (e.g., to deal with an emergency, civil unrest, or large-scale public order commitments - such as ensuring the security of an APEC meeting). As an employer for the purposes of the Health and Safety in Employment Act 1992, the Commissioner also needs to ensure members of Police are physically capable of doing their job, and the tasks expected in that job. For staff holding the office of constable, this will always imply a need to be operationally ready to act, in order to keep the peace and prevent offences.

There may be times when the Police Commissioner needs to operationally deploy sworn staff who work in desk bound roles

Overall, it may be agreed that minimum standards of health and fitness for police officers are desirable and should be legislatively supported; perhaps balanced with an increased ability for sworn staff to move into less-than-fully-warranted roles if they become unable to fulfil the minimum range of duties required of any constable (as envisaged by the move to a flexible employment model discussed earlier that could facilitate retention of valuable skills in Police). Beyond New Zealand Police's current legislation, there are a number of overseas models to draw from in this regard.

Overall, it may be agreed that minimum standards of health and fitness for police officers are desirable

Comparing New Zealand's approach with other jurisdictions may be a useful exercise

To take one example, section 43(1)(c) of the Police Services Act 1990 from the Canadian province of Ontario provides that "No person shall be appointed as a police officer unless he or she … is physically and mentally able to perform the duties of the position, having regard to his or her own safety and the safety of members of the public". The statute also contains detailed provisions to deal with situations where a member of the Ontario Provincial Police becomes mentally or physically disabled, and as a result is incapable of performing the essential duties of the position [see section 47].

Question 10: Should new legislation for Police continue to enable the Commissioner to prescribe minimum standards of fitness? If so, are there any particular matters that should be taken into account when refreshing the legislation in this area?

Superannuation

The Commissioner currently makes membership of a state services superannuation scheme compulsory

The effect of section 67(7) of the Police Act is that the Commissioner may make membership of a state services superannuation scheme compulsory. Police has thus far retained compulsory membership for superannuation purposes, and this has generally been supported by service organisations who are joint Trustees of the current Police Superannuation Scheme (PSS).

Historically, the compulsory arrangements were linked to the disengagement provisions for staff no longer able to meet fitness standards. However, this link is now less critical, following superannuation scheme changes allowing staff to access superannuation benefits at resignation, and for staff in the old Government Superannuation Fund (GSF) scheme to transfer to the PSS.

With the exception of the armed services, compulsory superannuation is not a feature of any other state sector organisation

With the exception of the armed services, compulsory superannuation is not a feature of any other state sector organisation. The concept was discarded in the core public service as long ago as the 1970s. Having said this, some argue that compulsory provision for police officers' superannuation is a key safeguard. Not only are funds from superannuation contributions vital for those staff unable to remain within Police for fitness or injury reasons, but the financial security provided by such a 'nest egg' is claimed to reduce the likelihood of corrupt practice.

Some argue that compulsory provision for police officers' superannuation is a key safeguard

One of the choices opened up by the Police Act Review is whether to retain the provision for the Commissioner to make membership of a superannuation scheme compulsory for some Police staff. An alternative might be to divorce the act of appointment from the requirement to join a superannuation scheme, allowing the individual staff member to take advice and to make a decision about retirement saving scheme membership in the context of an employment agreement.

Question 11: Do you support the Commissioner being able to (continue to) compel superannuation scheme membership for sworn staff? If not, would you prefer retirement saving scheme issues to be dealt with in the context of staff employment agreements?

Employment relationship problems

Currently, the management of Police employment relationship problems sits in the same general framework as for the wider community. However, a special provision exists for Police whereby the actions of the Commissioner are deemed to be justifiable where they are carried out to meet an operational requirement, and any failure to perform that requirement would likely result in a breach of the constabulary oath of office.

This provision - section 87(2) of the Police Act - was introduced in 1989 to ensure Police operations are not compromised. It does not appear to have been controversial, nor subject to judicial comment, but equally there is no record of the provision ever being used by a Commissioner of Police to defend an employment claim. Ultimately, it is hard to assess the impact of this clause, as its mere presence may have prevented grievances being raised, or it may have caused their premature withdrawal.

Approached objectively, while section 87(2) is a specific departure from the usual position, its inclusion in the statutory framework for Police's HR environment may be desirable, as it may provide Police Commissioners with additional assurance they can meet operational demands. Alternatively, it may be more consistent to remove the protection, and rely on providing positive powers for the Commissioner to make operational decisions, and to open those decisions to standard personal grievance challenges, if required.

A special provision exists whereby the actions of the Commissioner are deemed to be justifiable where they are carried out to meet an operational requirement

Question 12: Should the Police Commissioner retain a statutory defence to personal grievance actions in relation to operational matters? If so, do you have a view on where such a defence should most appropriately be located in legislation?

A further matter of interest regarding the way personal grievances in Police are dealt with concerns jurisdiction. Section 96 of the 1958 Act currently provides for jurisdiction over Police employment disputes to be split between the specialist employment institutions (the Employment Relations Authority and Employment Court) and the High Court.

Jurisdiction over Police employment disputes is split between the specialist employment institutions and the High Court

As far as can be established, the introduction of section 96 in the late 1980s was intended to result in Police employment matters being dealt with by the employment institutions. In practice, though, because of the way section 96 is worded, the employment institutions have not had the jurisdiction to deal with the sorts of employment-related matters they would normally consider in a policing context, because of the express limitation on jurisdiction to actions arising from Part 4 of the Police Act [see section 96(2) of the Act].

It is difficult to see any advantage to splitting the employment institution's jurisdiction in this way. For example, the approach taken by the High Court in *Attorney-General v Benge* [1997] 1 ERNZ 109, and the outcomes achieved in that case, do not seem dissimilar to what might reasonably have been expected had it been heard by the Employment Court.

Police can perhaps come within the jurisdiction of the mainstream employment institutions

An option to consider, therefore, is whether new legislation might sensibly provide for the employment institutions to have comprehensive jurisdiction over Police employment-related matters. If this option were favoured, then it would align the employment institution's authority to hear Police-related cases with their comprehensive jurisdiction under sections 161 and 187 of the Employment Relations Act.

Question 13: Do you favour the specialist employment institutions having comprehensive jurisdiction over Police employment disputes?

Industrial action

One of the dividing lines between sworn and non-sworn staff in the present Police Act is the ability to take industrial action. Non-sworn members are covered by state

One of the dividing lines between sworn and non-sworn staff in the present Police Act is the ability to take industrial action

sector arrangements that make use of the Employment Relations Act standard, providing more flexibility and access to mainstream employment arrangements covering bargaining and representation. In contrast, sworn members have no right to strike and are exclusively represented by named service organisations (an arrangement which dates back to the 1920s).

From one perspective, barring Police from taking industrial action offers a guarantee to both the government and the public that such action will not impact on public safety and confidence in the rule of law. The 'no right to strike' provision in section 81 of the Police Act is consistent with a further limitation that can be invoked to prevent staff resignations. The provisions work in tandem to assure continuity of policing services in times of upheaval.

Limitations on police industrial action have been contentious

While some see a rationale for 'no right to strike' in Police's constitutional position, and the fact Police is a command service, limitations on police industrial action have been contentious. In the 1980s, when the prospect of police officers taking industrial action was raised (in the context of promoting a claim for increased pay), the Attorney-General of the day wrote to the Police Commissioner and expressed his profound concerns about implications for the rule of law:

> The unique status of the Police is fundamental to this whole issue. Society entrusts to the Police the common law and statutory powers of arrest, search, detention and prosecution. It relies upon the Police for assistance in times of emergency. In the enforcement and upholding of the law the Police hold powers and occupy a place no one else has. The refusal by the Police to carry out any or all of those functions involves not only a breach of the law but raises a question of public credibility. If the Police refuse their duties of protection of the community and enforcement of the law two consequences follow. Firstly, society is left unprotected. Secondly 100 years of nurtured credibility is imperiled.
>
> Hon Geoffrey Palmer, *Memorandum to Commissioner K O Thompson*, 24 January 1986, p 3.

Comparisons with other emergency services agencies might be instructive

On the other hand, it might be felt unfair to single out police officers on public protection grounds, as other emergency services workers (e.g., doctors, ambulance staff and fire fighters) all have rights to take industrial action. Occasional strike action by such employees seem to have been managed without undue risk to public safety.

Legislation applying to these other groups has nonetheless sought to factor in the need to reconcile the right to take industrial action with the public interest in providing for continuity of essential services. For example, health workers have a code of good faith specified in Schedule 1B of the Employment Relations Act, creating public safety obligations on the parties, and providing for binding adjudication on measures where agreement cannot be reached.

Lessons might also be drawn from overseas jurisdictions

A broadly similar approach has also been provided for in Australia. Notably, section 498 of the Commonwealth Workplace Relations Act 1996 states that:

> (1) The Minister may make a written declaration terminating a specified bargaining period, or specified bargaining periods, if the Minister is satisfied that:
>
> (a) industrial action is being taken, or is threatened, impending or probable; and
>
> (b) the industrial action is adversely affecting, or would adversely affect, the employer or employers who are negotiating parties, or employees of the employer or employers; and
>
> (c) the industrial action is threatening, or would threaten:
>
> (i) to endanger the life, the personal safety or health, or the welfare, of the population or of part of it ....

Furthermore, precedents can be found in several Australian jurisdictions where police officers have access to limited forms of industrial action. In these jurisdictions, police industrial action over the last decade has been generally limited to working-to-rule, and using their discretion to refuse to issue infringement notices that would otherwise garner funds for government.

A modernising option for New Zealand might be to provide sworn staff with limited access to industrial action, so long as such action does not adversely impact on public safety. Indeed, it might be prudent to consider extending such a public safety caveat to non-sworn staff in certain roles. With the trend to an integrated team approach to policing duties, the risks of service failure could arguably be just as serious if, say, non-sworn Communications Centre workers took industrial action en masse. This would compromise Police's ability to effectively respond to emergency calls for police assistance. This scenario serves to illustrate the increasingly tenuous distinction to be drawn between sworn and non-sworn staff in the 'no right to strike' area, given the configuration and deployment patterns of a modern police force.

Alternatives to the status quo might include factoring in public safety considerations

Question 14: In your view, should Police staff have the right to take industrial action; with or without meeting a public safety test? If so, should the same rules cover sworn and non-sworn staff?

Wage bargaining and arbitration

One consequence of sworn staff not being able to take industrial action is that they have access to a special conciliation and arbitration procedure if required, to provide independent adjudication on matters such as pay disputes. Arbitration was a common feature of New Zealand's employment landscape until the 1980s, but Police is now alone in the state sector in having an arbitral system listed in statute. (The only other references to compulsory arbitration procedures in New Zealand law were repealed in 1991). If all Police staff were to have access to industrial action options, there is arguably no case to retain this arbitration system.

Police has access to a special conciliation and arbitration procedure

The current procedure works on the basis of a 'final offer', where one party wins and one loses, because the arbitration panel has to select one party's position in its entirety. This is designed to promote negotiated settlements by increasing the risks to the parties of not reaching agreement.

This is designed to promote negotiated settlements by increasing the risks to the parties of not reaching agreement

The 'final offer' approach to arbitration only came in temporarily at the very twilight of arbitration use in New Zealand. The procedure that had been most widely used until then was a type of 'down the middle' arbitration. This had allowed arbitrators to construct a settlement based on elements from both parties' positions, which could result in the arbitrated outcome being a compromise between the extreme ends of the parties' positions. While the 'down the middle' approach avoids some perception of there being winners and losers, it does not necessarily promote negotiated settlements.

Police's current 'final offer' system has been strengthened by the development of a good faith model for negotiations by Police management and the service organisations. This has been a self-initiated development, rather than one resulting from a legislative encouragement or requirement.

Question 15: Do you have an opinion on whether the current 'final offer' arbitration system should be maintained in a new Police Act? If not a 'final offer' system, would you prefer another model?

Further options relating to the current Police wage bargaining environment concern the criteria that the arbitrating body must consider, and whether (as now) the Commissioner of Police enjoys the sole right to nominate additional matters that the arbitrator must take into consideration.

It might also worth examining the arbitration criteria under this model

The current criteria to be observed by the arbitrating body are spelt out in section 24 of Schedule 3 to the 1958 Act. It states regard must be had to:

(a) the supply and demand factors for the skills of the members covered by the proposed agreement; and

(b) the need for fairness and equity in the rate of pay and conditions of employment for work covered by the proposed agreement; and

(c) any changes in the content of any job or in the skills, duties, or responsibilities of positions covered by the proposed agreement; and

(d) any changes in productivity arising from, for example, the introduction of new technology; and

(e) relativities within the proposed agreement, and between it and other awards and agreements; and

(f) the special conditions applicable to employment as a member of the Police; and

(g) such other matters as the Commissioner or the arbitrating body, as the case may be, considers relevant, or as may be agreed upon between the Commissioner and the appropriate service organisation.

The current arbitration criteria have not been updated for some time, despite changes in the wage bargaining environment

These criteria were last amended in the early 1990s. The matters influencing wage bargaining have changed considerably in the ensuing period. A review of the arbitration criteria may thus be timely, to ensure Police's arbitration environment reflects the state sector environment as much as possible.

Overseas models might provide a useful benchmark

Such a review exercise might also look to benchmark New Zealand's criteria with those which are applied to arbitral systems for police forces in other parts of the world. For instance, it may be instructive to compare the seven listed criteria in New Zealand Police's legislation with the equivalent criteria that apply to arbitration awards in Part VIII of Ontario's Police Services Act.

A further provision also places limits on what can be subject to arbitration, notwithstanding that a matter may have been subject to earlier negotiations. This approach harks back to earlier industrial relations eras where limits were placed on what matters could be negotiated. This is inconsistent with a modern employment environment.

An arbitration system must be fair to all

Finally, thought might be given to whether it is necessary or desirable to retain the current power in section 24(g) for the Commissioner to exclusively nominate additional matters for consideration by the arbitrator. This unbalanced right to bring extra considerations to the arbitrating table seems at odds with the good faith negotiating model developed by Police and the service organisations.

If an ability to self-nominate 'other' factors is retained, an option would be to extend this right to the service organisations. In such a formulation, a revised section 24(g) might require the arbitrating body to have regard to: "such other matters as the Commissioner, appropriate service organisation or the arbitrating body, as the case may be, considers relevant".

Question 16: If a statutory arbitration system for Police is kept, should the arbitration criteria be reviewed to ensure their balance and consistency, as far as possible, with state sector standards?

Question 17: Do you support both parties to an arbitration run under such a system being able to nominate matters for consideration by the arbitrator?

Employee representative groups

The 1958 Act prescribes that only a "service organisation" can negotiate a collective employment agreement on behalf of sworn members. The Act defines "service organisation" to include the New Zealand Police Association, Police Officers' Guild (now known as the Police Managers' Guild) or any other organisation prescribed by Regulations (of which there are presently none). This provides the identified service organisation(s) with exclusive bargaining rights for sworn staff.

Only a "service organisation" can negotiate on behalf of sworn members

While not an uncommon situation in policing overseas (see, for instance, section 18 of the Garda Síochána Act 2005), this represents a stark contrast with the contestable environment in other employment settings. While there do not appear to be any calls at present to change the status quo, seeking to regularise the representation environment for Police staff is a live option. This could potentially include consideration of whether the organisations established to represent staff should be open to all employees, or whether the organisations should be able to refuse to represent staff who perform certain roles.

Question 18: Do you think Police staff should have the same general options for representation as do other employees?

Secondary employment

A final issue that can capture attention in the Police HR environment is the way secondary employment is handled. Outside of Police, secondary employment matters are usually dealt with by provisions in individual or collective employment agreements, or through internal guidelines or perhaps an employee *Code of Conduct*. Such matters are not normally reflected in legislation.

A more prescriptive approach is sometimes advocated for the Police HR environment. It is important Police staff avoid any interest or undertaking that could directly or indirectly compromise the impartial performance of their duties, or damage Police's standing in its relationships with different levels of government, other agencies or communities. To help ensure actual or perceived conflicts of interest do not arise, which may otherwise impair the full, effective, and impartial discharge of policing duties, secondary employment activity by Police staff is regulated through formal *General Instructions* issued by the Commissioner. Generally speaking this approach has effectively managed what can be considered as reasonable work activity outside of primary Police employment.

Currently Police regulate secondary employment activity through Police General Instructions

Internationally, the issue of police secondary employment has been topical, and recent interest in New Zealand cases suggests it is perhaps timely to consider if a clearer statutory provision could be useful to underscore the expectations and boundaries for police employees considering other work. In this regard section 49 of Ontario's Police Services Act may provide a useful guide as how another jurisdiction has covered this issue.

It is perhaps timely to consider if a clearer statutory provision could be useful to underscore the expectations and boundaries

(1) A member of a police force shall not engage in any activity,

- (a) that interferes with or influences adversely the performance of his or her duties as a member of a police force, or is likely to do so;
- (b) that places him or her in a position of conflict of interest, or is likely to do so;
- (c) that would otherwise constitute full-time employment for another person; or
- (d) in which he or she has an advantage derived from employment as a member of a police force.

Exception, paid duty

(2) Clause (1) (d) does not prohibit a member of a police force from performing, in a private capacity, services that have been arranged through the police force.

Disclosure to chief of police

(3) A member of a police force who proposes to undertake an activity that may contravene subsection (1) or who becomes aware that an activity that he or she has already undertaken may do so shall disclose full particulars of the situation to the chief of police…

Question 19: In your view, should conditions for secondary employment be lifted to a statutory level?

5. Conclusion

Before we take things any further, we want to hear what you think

This third *Issues Paper* considers a range of ways in which Police can adapt its current employment arrangements to better meet complex demands on policing and Police staff, whilst retaining the core strength of the office of constable. This is done with an open mind. This and later *Issues Papers* are designed to test the waters. We hope to generate discussion and to detect any general consensus around how key topics could be presented in subsequent 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 the Police Act Review team aware of your views are set out on the back page of this document.

How to make your views known

We are inviting written responses to this *Issues Paper* by 16 October 2006.

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

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

Police Act Review Team
Police National Headquarters
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 website, or you can ask to speak to a Police Act Review Team member by calling (04) 474 9499.

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