

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

*Building for a modern  
New Zealand Police*

## ***Issues Paper 6: Relationships***

***November 2006***

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

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

*One issue it might be important to  
clarify is Police's relationships with  
other agencies*

*This issue has been raised already  
in the context of other Police Act  
Review Papers*

*Policing in 2006 is more networked,  
co-operative and complex ...*

*... leading some to call for greater  
clarity around the relationships,  
roles and boundaries of the many  
different contributors to modern  
policing*

## 1. Introduction

A project to rewrite the legislative framework for policing in New Zealand was launched in March 2006. This is the sixth of eight *issues papers* seeking early input on how key topics are dealt with. It focuses on how new legislation might describe New Zealand Police's relationships with other agencies that have justice, safety and security responsibilities.

This topic has been selected because the Police Act Review offers a golden opportunity to bring greater clarity to how New Zealand Police is positioned, both domestically and internationally. Typical of statutes of a similar vintage, the 1958 Police Act is mostly silent on how Police inter-relates with others. There are few clues provided in legislation about the boundaries between Police and other players in the safety and security environment; so much so, it can be more instructive to look at other agencies' legislation to understand where the dividing lines and points of intersection are.

Of itself, the current lack of description of Police's relationships in the Police Act might not be seen as a major problem. Indeed, some might argue it is actually a strength of the current Act, because it implicitly acknowledges the central role of Police in the safety and security environment. If Police is seen as the dominant player, whose staff have a uniquely broad mandate to enforce the law across a wide range of areas, it is arguably less important to spell out in legislation where Police's reach begins, ends, or even overlaps, with other enforcement agencies. Not everyone would see this as a strength, however, and the Police Act Review offers a chance to examine the issues before new policing legislation is drafted in late 2007. This *Paper* identifies options which might offer greater clarity around Police's relationships with other agencies, and suggests ways they could potentially be described in law. Views on these options and any other ideas on the general topic would be welcomed by the Police Act Review Team.

Previous *Issues Papers* have probed related ground, albeit from different perspectives. In particular, *Issues Paper 1: Principles* asked whether it would be a good idea to spell out New Zealand Police's role and functions in legislation. *Issues Paper 2: Governance and accountability* sought views on clarifying the relationship between the Minister of Police and Commissioner of Police. *Issues Paper 4: Community engagement* asked if Police's relationship with territorial local authorities should be lifted up into statute. Readers interested in the topic of Police's relationships may wish to refer to these earlier *Issues Papers*. They can be obtained from the [www.policeact.govt.nz](http://www.policeact.govt.nz) website, or from the Police Act Review Team using the contact details listed on the back page of this *Paper*.

## 2. Background

Police operate in a very different environment to that which existed when the last Police Act was written nearly 50 years ago. Policing today is carried out by a myriad of central and local government agencies with enforcement powers, private security companies, volunteer and not-for-profit organisations. To highlight just a couple of examples, fisheries, immigration and customs officers possess coercive powers, and Neighbourhood Support groups and community patrols bring extra eyes and ears to the policing function. A key point is not only has the number of agencies contributing to policing increased, but in some instances several agencies act co-operatively together to carry out policing work.

These multiple contributors can lead to a degree of confusion over which agency properly does what in an increasingly congested market for safety, investigation and security services. Internationally, one of the outcomes of this networked policing environment has been a perceived blurring of traditional relationships between public and private agencies, and a blurring between government agencies as well. In New Zealand there are many examples of this blurring. For example, private security guards work alongside Police staff in protective services roles, such as guarding and escorting prisoners; volunteers work behind the front counters of some Police stations; Department of Corrections and Police staff work side-by-side in joint prisoner remand facilities; and city safety officers from local councils line up with frontline police for intelligence briefings.

These developments are all generally regarded as progressive, but highlight the potential need to clarify Police's position within this network of agencies. This need is possibly underlined by calls for strengthened powers by some government agencies, thus shifting them further into areas more akin to policing. Examples include the power of arrest being sought for the Serious Fraud Office, the New Zealand Immigration Service seeking to obtain a power of detention, and the New Zealand Customs Service wanting to extend drug enforcement powers beyond the border to within New Zealand. Potential shifts are occurring in the private sector as well, with a recent suggestion that private investigators be granted specific investigative powers. Taken together, these examples highlight how far the safety and security market has evolved.

If a mood for greater clarity in legislation was detected, a logical move might be to not only describe policing principles and functions, but also spell out Police's relationships with other agencies. "Relationships" in this sense would include all formal processes that occur between Police and organisations which contribute to community safety, both within New Zealand and also overseas. This would be consistent with a trend in contemporary legislation to clarify organisational relationships and boundaries (e.g., as seen in the Corrections Act 2004), but balancing the objective of providing greater certainty against the risk of being overly prescriptive.

On the other hand, it may be thought preferable to leave the Police Act silent on Police's relationships. This might reflect the long-held view that Police is unique as the only agency of state with a generally exercisable set of powers (flowing from the novel authority vested in the office of constable). According to this view, Police sits at the hub of government's enforcement capability, and other agencies granted policing powers join Police as secondary agents in their various roles.

### 3. Clarifying Police's broader relationships

As outlined in the previous section, the Police Act 1958 contains no references to where Police sits in relation to other government agencies. In fact, Police's relationship with other agencies is often found in the other agency's legislation (e.g., section 174 of the Customs and Excise Act 1996, section 69 of the Agricultural Compounds and Veterinary Medicines Act 1997, etc.). This is perhaps a little surprising given the importance placed on Police independence, and the need for clarity around the separation of powers. Some feel including a description in legislation of Police's relationships with other key policy and operational agencies would aid understanding of the special role Police has in society. In other words, spelling out who Police works with in exercising state power, and how Police relates to special oversight and accountability bodies, may help to effectively communicate Police's role to citizens.

The next section of the *Issues Paper* briefly reviews some of the arguments for and against a move to clarify Police's numerous relationships.

#### **Arguments against clarifying Police's relationships in legislation**

Perhaps the most straight-forward argument against lifting Police's many relationships up into legislation is the lack of evidence that non-legislated arrangements are inadequate. For example, there should be no argument whether New Zealand Police is part of the 'justice sector'. This is made clear in the Ministry of Justice's *Statement of Intent*, where agencies of the justice sector are described. These relationships are mutually reinforced in agencies' corporate documents - which some people find easier to access than legislation, and which can be adapted to environmental changes more quickly than statutes.

As a more general argument, as raised in earlier *Issues Papers*, elevating descriptions of activity into legislation may achieve little practical difference. Moreover, given the wide array of agencies Police has relationships with, any reference is likely to be broadly stated, and its inclusion in the Act may provide only general guidance and direction.

*Police's position in this network of different agencies could be clarified in legislation*

*Any steps in this direction would be in line with moves to provide greater clarity about such matters in other contemporary Acts*

*Having said this, if Police is generally accepted to sit at the centre of the policing network, it may be seen as less important to do so*

*A feature of the current Police Act is its almost complete silence on where New Zealand Police sits in relation to other organisations*

*It is possible to identify a number of pros and cons to clarifying Police's relationships in legislation*

*Counter arguments to such a move include that it may be a solution in search of a problem*

*There might also be scepticism that it would have any real effect; and worse, it may even promote 'silo-ization'*

*Some might also fear that legislative clarity would come with a price-tag of reduced flexibility*

*Such pessimism is not universal, with some arguing benefits would flow from being clearer about Police's relationships in legislation*

*Positives could include reduced potential for role overlap/confusion, and raising general awareness about Police's role*

*There are few precedents where Acts have clarified inter-agency relationships in the safety and security environment*

*While this presents challenges, there is also an opportunity to be a trailblazer in this area*

Prescribing relationships in legislation might also run the risk of reinforcing a 'silo' approach to issues (unless they were only described at a very high level). If this occurred, it would not support collaborative and 'joined-up' initiatives promoted by government (in particular, see the State Services Commission's *Development Goals for the State Services* [2005]).

The lack of guidance in the current Act also provides Police with flexibility in its operations and deployments, and recognises the broad mandate to act which Police staff have. Developing a statutory list of relationships may impede Police's operational flexibility at critical times, where flexibility to respond with an unlisted agency may be needed (e.g., deploying to a hitherto unknown threat). Not being governed by a prescriptive format, Police can also have a flexible approach in its wider governance, operations and relationship building.

## **Arguments for clarifying Police's relationships in legislation**

On the other hand, legislative development in this area may usefully enhance citizens' understanding of Police's role. While there is no suggestion of widespread confusion about where Police sits in relation to other agencies, from time-to-time co-operation between Police and other agencies does attract public and media questions. This can be because the relationships and boundaries are not well understood. An example where greater legislative clarity may benefit Police and other agency relationships relates to dual enforcement roles under the Civil Defence Emergency Management Act 2002. Section 90 of the Act sets out requisitioning powers civil emergency controllers and members of Police can exercise. Given the overlap, it is unclear what happens if a civil emergency controller wants to requisition Police property but police disagree. This is just one of a number of examples in legislation where powers exercisable by police and staff of other enforcement agencies may conflict with one another. An opening suggested by the Police Act Review is to reconcile these potential conflicts, by being clearer about Police's relationships with other organisations.

On a principled basis, any move to make the Police Act a more informative and educative statute would be consistent with the growing recognition of the civic as well as legal virtues in improving public access to legislation. Simply put, if there were more reason to consult the Police Act (because it helps make sense of what policing is about), people may be more inclined to do so. As things currently stand, there are few if any such insights to be gained from reading the Police Act. Speaking in a related context, the President of the Law Commission has pointed out some of the difficulties which can flow from this:

The problem causes difficulties for our public discourse on matters .... In a democracy as small as New Zealand, where public debate is continuous and volatile, much of it is conducted on a daily basis in complete ignorance about what the law may be on the topic under discussion. And often, that law is highly relevant to what is being debated.

Rt Hon Sir Geoffrey Palmer, *Law Reform and the Law Commission in New Zealand after 20 Years - We need to try a little harder*. Address to New Zealand Centre for Public Law, Victoria University of Wellington, 30 March 2006 [paragraph 59].

The Police Act Review Team is not aware of many overseas precedents, especially in commonwealth countries, that explicitly clarify the relationships and boundaries between policing organisations and the myriad of public and private safety and security agencies. One significant exception is America's Homeland Security Act 2002. Although primarily focussed on terrorism, the Act goes to great lengths to set out functions of, and relationships between, many agencies of the United States government. When discussing the Act, President Bush has noted one of the benefits of the new Department of Homeland Security was the dismantling of walls that kept law enforcement and intelligence agencies from sharing information. Clarifying agency relationships in legislation was seen as one way to improve overall interagency co-operation.

Even with the United States example of the Department of Homeland Security, moves to more generally capture New Zealand Police's relationships in law may well be a novel approach. This should not deter the discussion, but it does highlight the challenges ahead if embarking in uncharted directions.

In summary, legislating relationships might needlessly straight-jacket Police which, by practice, is an organisation that ranges over a wide variety of activities. To reflect the wide range of relationships might result in a legislative description so general it is meaningless. On the other hand, a lack of clear description of Police's relationships can be seen as an impediment to transparency of Police's role, and where appropriate boundaries might exist. The relative benefit of increasing clarity of Police's role in society is also posed in *Issues Paper 1: Principles*. People interested in this topic might find it useful to consider the options presented in that *Paper* alongside the following questions. Briefly, *Issues Paper 1* explored the relative merit of including high-level principles to guide Police, and/or at a more specific level, functions of Police being spelled out in a new Police Act.

**Question 1:** Would it be a good idea to spell out in legislation the type of relationships Police has with other agencies? If so, how detailed should this description be? If not, at what level should Police's relationships be described (e.g., corporate documents, or perhaps via a set of high-level principles)?

## ***Relationships with justice and enforcement partners***

Even if it were felt Police's relationships in a wider sense did not require legislative clarity, it may still be useful to consider options for a new Police Act to spell out specific relationships Police has with several key agencies in the justice sector (e.g., the Ministry of Justice, Department of Corrections and the Serious Fraud Office).

Motivation to go down this path comes from high-level development goals set by the State Services Commission, which encourage networked state services and co-ordinated state agencies. Sectors which work well together are a feature of successful government initiatives, especially in areas like health, employment, and housing. It is difficult to imagine arguments against clarifying similar relationships in a policing context, especially where the special powers granted by government are shared. A useful example is the interaction between the Serious Fraud Office and Police, where one agency holds special inquisitorial powers while the other has powers of arrest. These finely balanced roles are important for interested citizens to easily grasp, but as things currently stand, the Police Act offers few clues about how the inter-relationships play out.

As well as this positive driver, being clearer about Police's key justice relationships might help mitigate some perceived problems with the status quo. More specifically, the absence of discussion in the current Police Act about Police's relationships with other core justice agencies can lead to a degree of uncertainty about the nature and boundaries of those relationships, and how the justice system works.

An example is the recent initiative where Police staff will monitor arrested people released on electronic bail, with some questioning the roles of Police as arrestor, prosecutor and jailer. Another example is the role of Police staff within Courts, where a level of confusion can arise over the differing roles police are seen to be performing (i.e., sometimes prosecutors, sometimes witnesses, sometimes providing security services).

The area of immigration compliance provides a further, operational, example. Currently, immigration officers have no power to arrest or detain people; instead police discharge these functions, using powers under the Immigration Act 1987. Limiting coercive powers to police in this way is deliberate, but to the casual observer it may seem counter-intuitive. In a practical sense, deploying police to every immigration point has resource impacts on other policing services, and as has been pointed out in the context of the parallel Immigration Act Review:

Police are seldom present at the exact time a decision is made by an immigration officer to detain a person. Under the Immigration Act, an immigration officer or Customs officer has no power to detain the person until police arrive. There may be a period of time during which the immigration officer cannot prevent the person from leaving. At an international airport, this period of time may be short. There may also be longer periods of time, for example at a port, where it takes time for police to come and assist immigration officers. The length of time may mean that the person who may be detained has time to leave.

New Zealand Immigration Service, *Immigration Act Review Discussion Paper* (Wellington: Department of Labour, 2006), p 143

*Ultimately, it might be a question of degree, with some feeling more comfortable with guidance being given by high-level principles, rather than via legislated relationships*

*Opportunities exist to paint Police's relationships on a narrower canvas, focussing on justice and enforcement partnerships*

*There are both push and pull factors which lend support to such a move*

*A leading benefit of added clarification would be the ability to better explain in legislation where the connections are between different policing roles and responsibilities*

*Examples abound where this could be helpful in clearly articulating who does what ...*



*... with Police's role in administration of the Court system, enforcing specific offences, and exercising powers in prisons, all being useful case-studies*

*Looking forward, an option to consider is whether to spell out Police's justice sector/enforcement relationships more clearly in legislation*

*Another productive area for discussion is the relationships Police and other policing agencies have with specific monitoring and oversight bodies*

*While not formally within scope for the Police Act Review, it makes sense to reflect on this topic when exploring the issue of Police's relationships*

*Internationally, it is possible to see signs that support looking at ways of gaining assurances about policing work*

The Immigration Act Review suggests granting limited powers of detention for immigration officers to enable a lawful detention to take place until police arrive.

Similar issues arise in relation to detaining people in prison other than prisoners who are believed to be in possession of controlled drugs. Section 103 of the Corrections Act 2004 authorises a corrections officer to detain suspects for a period of up to four hours, in order to allow for a member of Police to be called in to exercise search powers under misuse of drugs legislation. Again, the decision to limit such search powers to police is a conscious one, but seems somewhat counter-intuitive given the expertise corrections officers have in conducting searches for contraband items. Deploying police officers to prisons to conduct drug-related searches also has inevitable resource implications for other policing services.

As these examples demonstrate, the possibility of role overlap or role confusion is left open in the absence of any definitive legislative guide, or any principles or function statement about the scope of Police's operations. This is discussed more extensively in *Issues Paper 1: Principles*, with some of the flow-on consequences for the allocation of enforcement responsibilities being picked up in *Issues Paper 5: Powers and protections*. For present purposes, a live option is whether it would be appropriate to identify Police's justice sector and wider law enforcement relationships in a new Police Act, principally as a means of bringing more clarity to inter-agency relationships.

**Question 2:** Do you think it would be useful to clarify in legislation Police's relationships with justice sector agencies and law enforcement partners? If so, how detailed do you think this description should be?

## ***Specific relationships with monitoring agencies and oversight bodies***

A wider issue is how the network of policing organisations which support public safety relate to appropriate oversight and monitoring agencies. Indeed, if the broader policing effort is considered, law reform in this area might look at developing new oversight mechanisms which reflect the changed realities of public and private policing in New Zealand. Such an innovation would acknowledge the increasing integration of public and private organisations with investigative functions and powers. This becomes especially topical each time there is a need to make appropriate security arrangements for a major international event (e.g., Rugby World Cup, APEC summit or CHOGM meeting).

This topic is not formally within the scope of the Police Act Review, but it is nonetheless useful to consider while wider policing issues are under active consideration. This is especially so, given international jurisdictions are already starting to move in this direction. For example, the Law Commission of Canada recently made the following observation:

Currently, there is a disjuncture between the reality of policing in Canada and the legal framework for its regulation. Several important questions remain unanswered regarding how growing networks of policing should be coordinated to ensure democratic policing. Similarly, how should policing agents be held accountable? These concerns relate directly to law-making and the established legal framework. To date, however, no Canadian government has systematically addressed the challenges that networks pose for public policing.

Law Commission of Canada, *In Search of Security: The Future of Policing in Canada* (Ottawa: Law Commission of Canada, 2006), p xv.

Legislation being progressed in the United Kingdom is seeking to amalgamate inspectorate activities across related fields, such as police, prosecution, prison and probation services. The Police and Justice Bill currently before the House of Lords seeks to establish a single Inspectorate for Justice, Community Safety and Custody to simplify the process of inspection for related services (including constabularies), as well as providing stronger leadership, greater alignment and a spur for improvement.

In the New Zealand context, a move towards thematically grouped inspection agencies is also well established. Examples include:

- the Education Review Office, which reviews, investigates and reports on the provision of school-based education;
- the Mental Health Commission, which has a wide-ranging brief to act as a ‘watchdog’, with monitoring and reporting roles on performance issues, the effectiveness of systems, and the extent to which the Ministry of Health and District Health Boards have exercised leadership in implementing the *National Mental Health Strategy*;
- the Health and Disability Commissioner, whose mandate includes promoting and protecting the rights of consumers of health and disability services, helping resolve problems between consumers and providers of such services, and also improving the quality of those services.

For New Zealand Police, there are several internal and external processes which support improved policing. Internally, Police monitors, audits and improves performance using fairly standard state sector processes. Externally, a range of agencies perform monitoring and guidance functions – for instance, the Offices of the Auditor-General and Ombudsmen, the State Services Commission and The Treasury. As well as providing an independent process for members of the public to air concerns or complaints about Police actions, the Police Complaints Authority (PCA) also has a mandate to review policing polices and procedures.

In this vein, to complement the Garda Síochána Ombudsman Commission’s mandate to investigate complaints about the conduct of Irish police, the Garda Síochána Act 2005 made provision for a new three-member Inspectorate. As described in section 117 of the Act, the Inspectorate’s role is “to ensure that the resources available to the Garda Síochána are used so as to achieve and maintain the highest levels of efficiency and effectiveness in its operation and administration, as measured by reference to the best standards of comparable police services”. The initial work of the Inspectorate will be to carry out an operational and administrative assessment of the Garda Síochána, focusing on:

- Crime reduction and public safety strategies;
- Resource allocation, including deployment of Garda and civilian personnel;
- Police technology systems.

The purpose of the review is to identify relative strengths and weaknesses, and to recommend areas for closer examination and improvement.

In New Zealand, methods of improving the way police services are delivered have been largely self-identified. Successive Police Executive teams have also shown a willingness to seek out independent expert advice on certain areas of policing, if appropriate (e.g., to help identify options to strengthen Police’s Communications Centres). In fact, for some time Police has operated a formal Assurance Committee, made up of a number of respected professionals from diverse fields, which helps to provide a measure of independent oversight and guidance on a range of strategic Police initiatives. Mindful of precedents such as the Garda Síochána Inspectorate, however, and the relative invisibility of internal mechanisms like Police’s own Assurance Committee, the Police Act Review might be looked to as a way of formalising the sort of role such a body could usefully play in the future development of New Zealand Police.

A modernising approach might be to draw these strands together into a new generation model, which potentially includes some current features of the PCA. In a bold line of thinking, this could evolve into an ‘Independent Policing Authority’, highlighting a broader mandate to look across all agencies performing policing functions. Were such an innovative path to be followed, this might help respond to the fact there currently do not seem to be any readily-identifiable equivalents to the PCA, which have a specific mandate to oversight the exercise of coercive powers by non-Police enforcement agencies (e.g., compliance officers working for organisations such as the Ministry of Fisheries, Department of Internal Affairs, New Zealand Customs Service, Ministry of Agriculture and Forestry, etc.).

*Domestically, there are already a range of agencies that perform inspection and oversight roles, for example in the health and education sectors*

*At things stand, there are already a number of guarantors of good policing practice*

*Other possibilities are suggested by developments in jurisdictions like the United Kingdom and Ireland*

*Any prompts taken from overseas would further boost Police’s existing systems to assess, review and improve its performance*

*The Police Act Review might be a springboard for ‘outside the square’ thinking about the networked policing environment, and what this means for oversight disciplines*

*In a future world, it may be possible to imagine a place for a comprehensive Policing Authority*

*Further work in this area would benefit from input by others*

*Police needs to be impartial, and be seen to be impartial*

*The perceived impartiality of Police prosecution decisions can be bolstered by asking for 'arms-length' advice from the Crown Law Office*

*The value of such advice may be even greater in cases involving decisions whether or not to prosecute Police staff members*

*In such cases, some have suggested the Police Commissioner should transfer the prosecutorial role, for instance to the Solicitor-General*

*There are already a number of situations where the Solicitor-General acts as a gatekeeper over prosecutions (when exercising delegated authority from the Attorney-General to consent to certain offences being tried)*

Another option might be to pair the PCA's role with a new body which could focus on providing heightened assurance for both government and the public about the high-quality delivery of policing services. This would not necessarily require legislative underpinning (an analogy could perhaps be drawn with the non-statutory role of the Police Standards Unit within the British Home Office), but it might nevertheless be seen as helpful.

Any further work in this area could benefit from being led by an agency other than Police, such as the Ministry of Justice or the State Services Commission. But the topic is worth considering during the review of the Police Act, if only because the modern networked policing environment and the apparent virtues of a value-adding oversight body are not features of Police's existing legislation.

**Question 3:** Do you favour exploring a new oversight mechanism which might recognise the range of public and private agencies involved in policing and security activities? If so, do you have any models or views on what sort of oversight body might be useful in the New Zealand context?

## ***Prosecutorial relationships***

As noted in earlier *Issues Papers*, the independence provided by the office of constable can be viewed as one of the great strengths of Police. The impartiality of this role is vital in securing the confidence of the community to allow policing to remain consensual. To help build public confidence, police must be seen to give impartial service to the law, 'without fear or favour'.

*Issues Paper 2* focussed attention on the appropriate boundaries and independence of the key relationship between the Commissioner of Police and Minister of Police. At a more detailed level, it is appropriate during a discussion of relationships that this *Paper* looks at the Commissioner's role in prosecutions.

As a matter of practice, even though initial charges may be laid by members of Police, the reality is lawyers working in the Crown Solicitors network prosecute the most serious matters in Court. To more clearly indicate who ultimately prosecutes certain cases, it might be argued the Police Commissioner should be able to step aside from the nominal prosecutorial role in these situations.

Moreover, especially in very complex cases, or where significant public interest issues arise, Police sometimes seeks 'second opinion' Crown Law advice. The question arises whether it might be better in such cases for the matter to be formally referred to the Solicitor-General to make the actual prosecutorial decision, rather than double-handling things by referring the file back to Police.

This idea might draw further support when the practical tension faced by the Police Commissioner as both 'employer' and 'prosecutor' is considered. The hands-on nature of policework results in a number of complaints about police conduct in any given year. Ultimately, under current arrangements, the decision to prosecute, or not, rests with the Commissioner of Police. Given the often highly charged nature of such events, steps taken by the Commissioner to seek independent advice on a case rarely satisfies complainants. Often a perception of unfairness in the process is felt, especially where a prosecution does not occur. The Commissioner fares little better with the feelings of the Police staff member. At a time when arguably a member of Police is looking for support from the employer who placed them in the operational situation in the first place, they find themselves being investigated, and potentially prosecuted, by that same employer. This can lead to a 'lose-lose' situation, whatever the outcome.

An idea that is sometimes floated to avoid this tension is to transfer prosecutorial responsibility for cases involving Police staff to another potential prosecutor, such as the Solicitor-General. Were this point of view to be persuasive, it would seem appropriate that the Commissioner's ability to transfer prosecutorial responsibility should be spelt out in legislation somewhere. To this end, there are various precedents in New Zealand legislation for parts of the prosecutorial decision-making process to be held in hands other than Police's. For example, to name just a few, offences which require the Commissioner to seek the Attorney-General's approval to prosecute are set out in section 18 of the



Aviation Crimes Act 1972, section 65D of the Civil Aviation Act 1990 and section 5 of the Chemical Weapons (Prohibition) Act 1996.

The opportunity offered by the Police Act Review is to consider the merits, or otherwise, of giving legislative guidance around the relationship the Commissioner of Police has with the Solicitor-General and Crown Law Office. Describing these relationships in legislation might usefully clarify the respective roles performed when determining whether or not to commence a prosecution.

Counter-arguments to taking steps in this direction might include a concern that any legislated ability for the Commissioner to step aside from prosecutions would weaken New Zealand Police's position as the Crown's primary prosecutor of record. Poorly-defined criteria for transferring prosecutorial responsibility may also invite perceptions of a 'pick and mix' approach to which cases remain with Police; or perhaps lead over time to a fractured environment where responsibility for prosecutions is devolved to a large array of individual agencies (although, to some extent, this is already a reality). More fundamentally, concerns might be expressed about the signals it might send about Police's constitutional position, were its prosecutorial role to be lessened in any way. Steps down this path would arguably represent a significant change.

Any movement in this area also needs to be informed by the work of bodies like the Law Commission, which has done extensive research and written reports on criminal prosecutions, and the overall shape of New Zealand's Court system. To the extent prosecutorial issues are the subject of existing recommendations by the Law Commission (e.g., in its report on *Criminal Pre-Trial Processes* [2005]), it may make sense to allow any developments in this area to be taken forward through other channels.

**Question 4:** Do you think the process of the Commissioner of Police seeking independent advice on prosecutions should be set out in legislation? Would you recommend going further, and providing a statutory ability for the Police Commissioner to transfer prosecutorial responsibility (e.g., to the Solicitor-General) in certain cases? If so, in what circumstances would you consider it appropriate to transfer responsibility for prosecutions?

## **Recognising Police's increasing role in international affairs**

Increasingly, Police is involved in international settings, and legislative guidance to enable and clarify the extended 'beat' of policing to include off-shore roles would be welcomed by some commentators. As policing is traditionally an internal security matter, leaving the international dimension of policing silent in a new Act may raise a question about the validity of New Zealand Police staff serving in roles as diverse as emergency response to international disasters, transnational criminal investigations, regional police capacity building and peacekeeping in the Pacific.

An international example of a legislative move to describe these broader policing relationships can be found in a recent amendment to the Australian Federal Police Act 1979. Section 8(1) describes in broad terms the relationships and roles of the Australian Federal Police. Specifically listed functions include:

- (bf) the provision of police services and police support services for the purposes of assisting, or cooperating with, an Australian or foreign:
  - (i) law enforcement agency; or
  - (ii) intelligence or security agency; or
  - (iii) government regulatory agency; and
- (bg) the provision of police services and police support services in relation to establishing, developing and monitoring peace, stability and security in foreign countries.

Another recent international example can be found in the United Kingdom. Sections 2, 3, 4 and 5 of the Serious Organised Crime and Police Act 2005 describe the functions, powers and relationships the new Serious Organised Crime Agency will have with partners in the United Kingdom and internationally.

*Making the relationships more transparent in legislation might aid public understanding of these sorts of roles*

*Conversely, some may fear that steps in this direction will further fracture the overall prosecutorial landscape*

*This is another area where the expertise of others will be important to tap into*

*New Zealand Police staff are increasingly involved in offshore work*

*Overseas Police Acts have sought to clarify these international roles in legislation ...*

*... and there are even existing  
references to bodies like Interpol in  
New Zealand statutes*

*But should we go further in spelling  
out these international dimensions  
in a new Police Act?*

*And should we also look to  
consolidate in the one Police Act  
other discrete pieces of legislation  
dealing with overseas policing?*

*This Issues Paper has questioned  
whether there is a role for legislation  
to clarify Police's relationships with  
other agencies*

*Arguments both for and against this  
move have been identified, along  
with a number of suggestive models  
at home and abroad*

*Before things are taken any further  
we want to hear what you think*

Already on our statute books, there is a nod in the direction of the constructive role the International Criminal Police Organization (Interpol) can play in helping New Zealand Police safeguard the country and its citizens. For instance, Schedule 2 to the Terrorism Suppression Act 2002 refers to information exchange with Interpol as a way of facilitating compliance with the *International Convention for the Suppression of the Financing of Terrorism*. New Zealand Police's linkages with Interpol go far beyond counter-terrorism efforts, and it may assist wider goals relating to transparency and certainty if such connections were mentioned explicitly in a new Police Act.

As signaled in *Issues Paper 1*, there may also be merit in bringing into a new Police Act two other Police-administered pieces of legislation: the United Nations (Police) Act 1964 and Crimes and Misconduct (Overseas Operations) Act 2004. These small Acts, each containing only eight sections, are mainly about making sure offshore Police staff are subject to the jurisdiction of New Zealand Courts for any offences against domestic law committed overseas, and also ensuring such staff are subject to standard New Zealand Police disciplinary processes. It is increasingly common for matters relating to international service to be dealt with in other nations' Police Acts, so the development of a new Police Act in New Zealand may prompt a similar approach to be followed here.

**Question 5:** Do you think it would be useful to clarify in legislation Police's international relationships? If so, how detailed should this description be?

## 4. Conclusion

Modern policing is much more than what New Zealand Police does. It reflects the work of many agencies which jointly contribute to New Zealand's safety and security. As a point of principle, it may seem inadequate that relationships with other agencies are not set out in Police's foundational statute. More than this, given the wide powers Police has, it might be important, at some level, to clarify what relationships Police has, and with whom. Currently, that clarity is provided in corporate documents like Police's *Annual Report* and *Statement of Intent*. The opportunity the Police Act Review presents is to enable those relationships through legislation. This might be seen as a positive step towards transparency, offering added clarity about how relationships work between agencies which have justice, safety and security responsibilities.

On the other hand, setting the scope of relationships in legislation may make little practical difference; after all, existing non-legislated arrangements appear to have worked passably well for many years. It is recognised throughout this *Issues Paper* that the current absence of statutory language to describe Police's relationships does not seem to have been a barrier to such relationships forming. There is also little international precedent to provide legislative guidance on the ambit of policing relationships (although recent moves in the United States of America, United Kingdom and Australia may signal a change here).

The questions posed in this *Paper* are put forward with an open mind. This and other *Issues Papers* are designed to test the waters. The aim is to stimulate discussion and detect any general consensus around how topics like Police's relationships 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 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 18 December 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](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  
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](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  
Police National Headquarters  
New Zealand Police  
PO Box 3017  
Wellington  
New Zealand**

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