Police Act Review

Building for a modern New Zealand Police

Issues Paper 7: **Administration**

November 2006

BUILDING FOR A MODERN NEW ZEALAND POLICE

1. Introduction

Views are being sought on how some key topics are dealt with in the Police Act review

This is the second-to-last in a series of *Issues Papers* designed to generate ideas on how to modernise the legislative framework for New Zealand Police. It deals with issues which can broadly be described as administrative - although the word "administrative" should not be read to mean the issues are less important than others being discussed during the Police Act Review.

A sometimes overlooked foundation for effective policing is a robust set of administrative arrangements

The 'nuts and bolts' of how a large organisation like New Zealand Police operates are critical components in the delivery of its services. They may be less visible and attract less attention than some other aspects of policing, but the arrangements put in place to allow Police to function are important platforms for success. Precisely because these administrative details sit in the background, and are normally viewed as internal matters for Police, the Police Act Review provides a valuable opportunity to invite thinking and discussion about what might otherwise be taken-for-granted.

In line with the approach of earlier *Issues Papers*, the aim is not to try to cover every administrative matter that could conceivably sit within new policing legislation. To introduce the breadth of issues which could be explored in this area, however, the net is cast fairly widely. The range of topics covered by this Paper includes:

This Issues Paper *does not try to deal exhaustively with every aspect of administration ...*

- The extent to which legislation spells out particular ranks within Police;
- Explaining how the chain of command operates generally within Police, as well as how authority is delegated in specific cases (e.g., arrangements for people to act up into the most senior Police positions);
- Mechanisms for providing direction or guidance to Police staff (e.g., the Commissioner's ability to issue *General Instructions* and to communicate policy decisions through internal publications, such as a *Police Gazette*);
- Details relating to Police assets, both actual property (e.g., police stations) and intellectual property tied up in Police's branding (e.g., restrictions around the use of the New Zealand Police crest and badge);
- Confirming how Police is funded, including whether there should be an ability to recover policing costs in special circumstances.

... but it sets the scene for input on administrative matters in policing by introducing some key topics

As this list conveys, the heading "administration" can conceal just how central some unseen arrangements are to everyday policing. This has been hinted at several times in previous Police Act Review *Papers* (notably in *Issues Paper 2: Governance and accountability, Issues Paper 3: Employment arrangements* and *Issues Paper 5: Powers and protections*), where concepts of command and control, delegated authority, and so on, are discussed. These connections should not be lost when focussing on the more transactional side of such concepts. Those interested in drawing these linkages through are encouraged to refer to earlier *Issues Papers* (accessible from the www.policeact.govt.nz website or the Police Act Review Team, using the contact details listed on the back page of this document).

Several of these topics have high-level linkages with issues discussed in earlier Police Act Review Papers

A final point to bear in mind when considering this *Issues Paper* is the fact New Zealand Police has come a long way in blending modern public administration theory and practice with the unique demands of operational policing. There is already a strong culture of delegating responsibility to the lowest possible level in the organisation. Deployment planning and rostering arrangements help Police run smoothly, with administrative details largely sitting outside of legislation.

A starting point for considering options in this area might be an acceptance of the solid foundation provided by Police's already-evolved administrative arrangements

Police also continues to be supported in its administration by central agencies (The Treasury, State Services Commission and Department of Prime Minister and Cabinet) and sector lead agencies (e.g., the Ministry of Justice). Like other Crown organisations, a number of Police's administrative practices are also guided by general legislation, such as the Public Finance Act 1989.

Looking ahead, while there will always remain room to improve further, especially in streamlining paperwork and other initiatives to improve operational policing, it might be agreed the role for legislation in this area is to offer certainty and transparency, rather than needing to solve any major problems as such. What the Police Act Review provides is a chance to reflect on what special features of Police administration might require or benefit from legislative backing.

The key question is to what extent is it necessary and/or desirable for Police administration issues to be dealt with in legislation?

To help encourage discussion, the following sections of the *Paper* introduce a number of administration-related issues, then ask some specific questions. Responses are welcomed not only to these numbered questions, but also on any other matters relating to Police's administration which could usefully be dealt with in a new Police Act, or an accompanying set of Police Regulations.

We also welcome wider views on the issue of Police's administration

2. People

It is often said New Zealand Police's most important asset is its people. This centrality is reflected in just how much of Police's current legislation is personnel-related. It is not an exaggeration to say the bulk of the current Act and Regulations is concerned with managing Police's human resources. Much of this content deals with basic administrative matters. This is a consistent theme from the earliest Police Acts and Ordinances, dating back to the 1840s.

Personnel-related administrative arrangements are likely to be included in new legislation for Police

Even if new policing legislation takes a scaled-back approach to such issues, and seeks to transfer more of the detail out of the Act and into Regulations (or from Regulations into tertiary legislation, like a Police Commissioner's *General Instructions*; or even moved into internal Police policy documents), administrative arrangements for Police's people is still likely to be a topic reflected in the new legislative framework. There are a number of options available for how this issue might be dealt with most appropriately. To help understand what might be possible, some sub-issues will be explored below.

COMPOSITION

Most overseas Police Acts include a clear explanation of the make-up of the police service

It is commonplace in overseas legislation to find a clear statement about how policing organisations are composed. Ready examples of this pattern include section 3 of the Royal Canadian Mounted Police Act 1985 and section 5 of the South African Police Service Act 1995. New Zealand's 1958 Police Act also follows this pattern, albeit in a rather more roundabout way.

The 1958 Police Act contains provisions which offer some insights about the composition of New Zealand Police

Section 2 of the 1958 Act explains "the Police" means "the Police of New Zealand; and includes all members of either sex appointed to the Police under this Act". Separate sections of the Act give further definition to the specific terms "sworn members" and "non-sworn members", and additional clarity is provided around the ranks of "commissioned officer" and "non-commissioned officer". (Now-repealed section 11A of the Act formerly gave clarity about the status of recruits at the Royal New Zealand Police College.) Section 5(3) of the Act empowers the Police Commissioner to assign "such rank as the Commissioner considers appropriate" to any sworn staff member.

For the most senior roles within Police, the current Police Act provides for the appointment of a Commissioner and "one or more fit and proper persons to be Deputy Commissioners of Police" [section 4(1) of the Act]. Until 1989, the Police Act also specified appointments which could be made at the level of Assistant Commissioner, Deputy Assistant Commissioner and Chief Superintendent [refer to now-repealed sections 4, 4A and 5 of the Act]. The Act is now silent on all appointments below Deputy Commissioner level, underlining the Commissioner's wider responsibility for employment matters.

It is a bit vague in places, however

New Zealand's approach to legislating for the composition of its police force arguably has the virtue of simplicity; although it is oblique in places, leaving some things to be implied (e.g., the place of Inspector-level staff and above as "commissioned officers", despite the fact they do not hold a commission as such). It certainly sits in contrast to the more prescriptive format seen in some other jurisdictions, such as South Australia's Police Act 1998.

A new Act could be clearer about issues like the status of "commissioned officers", and when recruits are to take an oath to become a constable

A perceived advantage of the current New Zealand approach is the unification of all staff as "members of Police". This is not always a feature of policing statutes overseas (e.g., see Victoria's Police Regulation Act 1958). However, it would be possible to provide an even clearer statement about New Zealand Police's composition. If this were the preferred path, there may also be support for (re-)clarifying the status of recruits as members of Police; including when recruits are to take the oath of office as constables. Any updated statement about the composition of Police in legislation could further underline New Zealand Police's legal personality as a cohesive body of people forming a single organisation.

Question 1: Do you favour including a statement about New Zealand Police's staff composition in a new Act? If so, how could this be expressed? If not, do you think non-legislative means should be used to achieve extra clarity and transparency in this area?

Definitional issues around Police's composition also arise in other areas

New Zealand's approach to legislating for the composition of its Police can be usefully contrasted with overseas models in other areas. Two dimensions that offer pause for thought are establishment numbers and rank structures.

Establishment numbers

Sometimes, there seems to be a fixation on Police staffing numbers

Staffing levels are a vital ingredient in delivering successful policing services, and they attract interest from government and the wider community. At times, though, staff numbers can be characterised as the only, or the most convenient, indicator of Police resourcing. This is especially so in the case of sworn police staffing. In some jurisdictions, the focus on staffing levels seems to relate to anxiety about the potential for upward 'creep'. In some contexts, this reflects dangers seen if police forces grow too strong numerically, or budgetary concerns given the salaries and associated costs which come with increases in police numbers. Elsewhere, the tension appears to come from an anxiety about inadequate staffing levels, with pressure to fix a minimum number of police per capita (sometimes benchmarked to a standard recommended by the United Nations or police-to-population ratios in what are seen as comparable jurisdictions).

The focus on staff numbers has been carried across into legislation in several countries

Concerns about police staff numbers have been translated into legislation in several places. Most commonly, authorised staffing levels have been used to establish effective ceilings on police numbers at various ranks, or to control overall police expenditure. By way of example, section 6(2) of the Royal Canadian Mounted Police Act 1985 states "the maximum number of officers in each rank shall be as prescribed by the Treasury Board". Older-style police statutes in Australia contain similar capping mechanisms (e.g., refer to sections 6 and 7 of Western Australia's Police Act 1892 and section 8 of Victoria's Police Regulation Act 1958). More contemporary policing legislation in Australia leaves the overall number of sworn staff to the discretion of the Commissioner, although some retain limits on the number of officers who can be appointed as Deputy and Assistant Commissioners.

Some jurisdictions have upper limits on the number of officers who can be appointed to senior ranks, like Assistant Commissioner

In New Zealand, there are high levels of transparency about how budgeted funds are directed towards staffing, for instance via breakdowns provided in Police's *Annual Reports*. Arguably, little would be achieved by setting statutory levels for Police staff in general, or at specific ranks within the organisation (even more so given the modernising trend to draw on the skills of non-sworn staff to undertake an increasing range of roles previously only performed by sworn members). More significantly, it could weaken the Commissioner's broader responsibility to make the most appropriate deployment decisions to achieve the best operational outcomes.

Others may see it as worthwhile to give statutory backing to the practical reality that governments help determine police staffing levels. Indeed, some constitutional commentators argue one of the historic duties of liberal democratic governments is to provide for a public police service. A nod in the direction of such a duty can be seen in some overseas police statutes. For instance, section 3 of the Police Act 2000 from one Canadian province states: "The Government of Alberta is responsible for ensuring that adequate and effective policing is maintained throughout Alberta".

Perceived benefits of such approaches need to be weighed against drawbacks, and arguably the lack of a convincing case for change

Question 2: Do you support or oppose including provision for maximum and/or minimum staffing strengths in new policing legislation? What are the reasons for your view? If you do support such legislative provisions, do you think they should only relate to sworn staff numbers?

Rank structure

Should Police ranks be specified in legislation? This question can provoke disagreement, as it introduces a wider debate about Police's hierarchical nature. Some see it as a way to argue for reinstating no-longer-used ranks, like Chief Superintendent and Chief Inspector; while others take the chance to advocate for more modern language to describe different levels in Police; perhaps moving to a unifying term like "police officer" (broadly equivalent to the way in which "federal agent" is used by the Australian Federal Police).

Questions involving flexibility also arise when thinking about whether to lift details about Police ranks into an Act or Regulations

New Zealand Police shares the same basic ranks and symbols of rank as most other Commonwealth police forces, although New Zealand's rank structure is flatter than some jurisdictions. At present, ranks for sworn staff are defined in a *General Instruction* issued by the Commissioner of Police [*General Instruction* R101]. This represents a change from the past, when Police's rank structure was defined in secondary legislation. For example, regulation 27A of the Police Regulations 1959 confirmed the Commissioner's ability to designate constables as "Senior Constables" after completion of 14 years' service; with entitlement to wear special insignia (a single chevron on each shoulder epaulette). This designation power has been retained, but is today exercised by human resources staff under delegated authority, with the simple backing of a *General Instruction* [A080] from the Commissioner.

Details relating to ranks currently sit outside the Police Act or Regulations

Practice in this area varies internationally. For instance, at least four models are seen in the Australian jurisdictions:

- no rank structure is prescribed (e.g., at the federal level);
- ranks are set out in regulations (e.g., Queensland and Western Australia);
- ranks are spelt out in statute, but may be amended by regulation (e.g., South Australia and New South Wales); or
- ranks are specified in statute (e.g., Victoria).

A range of different models exist for how this is handled overseas

The decisive factors in which approach is taken seem to be each jurisdiction's policing history and legislative culture. Overall, if there is a trend evident, it is towards removing rank structures from statute and at least transferring them to regulation. Benefits seen to arise from this include enabling police command arrangements to evolve over time as a function of management, offering greater flexibility to respond to emerging needs, and ensuring Parliament retains an awareness and oversight of the chosen rank structure. Parliamentary oversight is not routinely available if issues are dealt with in tertiary legislation (e.g., a Police Commissioner's *General Instruction*).

Whether New Zealand's current approach should change is an open question ...

The question is not just one of visibility; there are also issues of consistency, and allowing readers of legislation to readily understand what is meant by rank-specific references peppered through the statute books. For example, the rank of Sergeant is mentioned in section 317B of the Crimes Act 1961, Senior Sergeant is mentioned in sections 236 and 242 of the Children, Young Persons and Their Families Act 1989, and non-commissioned officers are mentioned in section 18A of the Misuse of Drugs Act 1975. There are also numerous references in legislation to commissioned officers (e.g., section 37 of the Private Investigators and Security Guards Act 1974 and section 59 of the Mutual Assistance in Criminal Matters Act 1992).

... but there are some solid reasons why it might be better to be clearer in legislation about ranks within Police

The fact Police ranks can carry with them certain responsibilities or powers gives a very practical reason for providing a clear explanation of those ranks.

In a 'first principles' review, it would be a missed opportunity to shy away from such a task. Even though there may ultimately be agreement to stick with the status quo, it is nonetheless worthwhile having a discussion about the extent to which legislation should spell out particular ranks within Police.

Question 3: Do you support or oppose specifying in legislation the ranks Police staff can hold? What are the reasons for your view?

The Commissioner's flexibility to assign ranks

There may be cases where the flexibility to adjust ranks up or down is needed

A related issue is the degree of flexibility the Commissioner should enjoy to assign ranks to particular staff members.

There will be times when it is necessary to temporarily allocate a member a higher rank, for example when an officer joins an overseas deployment (where it is important to maintain rank equivalencies between personnel of different contributing countries). Conversely, particularly in order to take up a desired overseas posting, perhaps as part of a longer-term development opportunity, a senior officer might request a temporary reduction in rank. These cases are unlikely to be controversial, and there are few reasons to think policy to guide such situations needs to be given the added weight of legislative backing.

For the most part, these cases will be non-controversial

Concerns may arise, however, if an officer transferring into a position which could be filled by either a sworn or non-sworn member were assigned a higher rank, simply because the job sizing of the role ties the remuneration for the position to a band normally populated by more senior staff. Such concerns could be increased if the member transferring is not qualified by examination to the rank of the new post, and failed to attain the necessary qualifications before seeking to move into another role where there may be an expectation of carrying over the 'legacy' promotion. To deal with such scenarios, it might be helpful to clarify in legislation the Commissioner's ability to designate particular ranks held by sworn staff in certain situations.

Such situations are probably best dealt with as a matter of internal policy, with the back-up power to legally challenge any decisions staff are unhappy with

Indeed, in a more adventurous move, there may be value in being able to assign a rank to senior non-sworn staff, such as General Managers holding finance or human resources portfolios. Staff in such positions are treated as non-sworn equivalents of Assistant Commissioners, and there may be mutual recognition benefits when dealing with peers if such staff were able to use the Assistant Commissioner designation. There seems no difficulty in principle with such a proposal (as reinforced in *Issues Paper 2: Governance and accountability*, citing many examples where civilians have held senior police ranks, both in New Zealand and overseas - including a current Deputy Commissioner). Equally, though, there may be opposition to breaking the assumed link between having a rank and holding the office of constable.

However, legislated provisions dealing with the flexibility to assign ranks may be useful to clarify 'legacy' issues, and the ability to assign ranks to non-sworn members

Question 4: Do you believe it would be helpful to clarify in legislation the Commissioner's ability to designate particular ranks held by sworn (and potentially non-sworn) staff in certain situations? What are the reasons for your view?

Recognising Police staff

A further matter regarding Police personnel which could potentially be dealt with in legislation (most probably in Regulations) is how to ensure Police staff are recognised by members of the public in the course of their duties. This is important in both positive and negative contexts; with police needing to be able to rely on their recognition as officers when exercising police powers, and potentially calling for assistance from members of the public in carrying out their duties (e.g., making an arrest); but equally, it is important citizens can readily identify the Police staff members who they interact with.

Legislation could also play a useful role in helping to allow Police staff to be readily identified

Unlike the situation in most other countries, New Zealand police officers do not have a warrant card which certifies their identity and acts as proof of entitlement to use police powers. Instead, Police staff carry a photo ID card with an employee number, confirming their identity as a member of Police. Constables, Senior Constables, Sergeants and Senior Sergeants also wear an identifying number on their shoulders. At the rank of Inspector upwards, epaulettes do not have 'shoulder numbers', although these senior officers normally wear name badges. As for detectives, by and large such officers do not wear uniforms or badges of rank, but they do have equivalent ranks to uniformed members of Police. When plainclothes detectives wish (or are legally required) to be identified, they simply display their Police photo IDs.

New Zealand's way of confirming police identities is at odds with many overseas jurisdictions ...

These protocols allow members of the public to identify Police staff they interact with. It may be no further legislative encouragement is required to enable police to be readily identified. However, some may prefer to see a legislative provision introduced requiring staff who exercise police powers to carry a warrant card, as proof of their entitlement to do so, or strengthening the status of the existing Police photo ID.

... and it might be worthwhile aligning more closely to the international norm

Further, in a spirit of connection with the community, some may wish to see a requirement for Police staff to wear name badges. Identification of officers by name has certainly been a long-standing and apparently non-problematic practice in a number of jurisdictions (e.g., names have been used to identify Vancouver Police officers since 1987). A counter-argument might be such a requirement would potentially put Police staff at greater risk of reprisal by criminal elements.

To this extent, it seems questionable whether criminally-motivated people would find it hard to identify Police staff, even without 'shoulder numbers' or name badges ...

Again, this is an issue which is perhaps less important in itself than it is an illustration of the potential for personnel-related administrative matters to be reflected in new policing legislation. The Police Act Review Team would be interested to gauge whether there is general support for, or opposition to, bringing such matters into a new Police Act or matching Police Regulations.

... but the issue is whether legislation needs to be invoked to require enhanced staff identification

To offer a direct example of what might be possible, and continuing the theme of recognising Police staff, there may be enthusiasm to formalise the status of "commissioned officers". Becoming a commissioned officer marks an important milestone in the career of a police officer, and while currently not a legislative requirement, it could be accompanied by a ceremony which involves the newly-commissioned officer taking an oath or affirmation; either before the Police Commissioner or perhaps even the Governor-General.

Similarly, while it may not be necessary, there may be some enthusiasm to use legislation to give greater recognition to "commissioned officers"

Providing a legislative basis for promotion to commissioned officer rank, even if this involved the Governor-General, would not diminish the Commissioner's responsibility for managing his or her senior staff. It would be a meaningful symbol of having attained the status of a senior officer, and provide an opportunity for the officers to reaffirm their commitment to the responsibilities of the office. The ceremonial nature of the award would also further enhance the respect afforded to commissioned officers. Hence, while not a matter that needs to be dealt with in legislation, it nonetheless may be something which it is felt should be addressed in a new Police Act.

Question 5: Are you in favour of giving legislative backing to any further administrative issues relating to Police personnel (e.g., helping people to recognise police)? If so, what do you have in mind?

COMMAND AND CONTROL

Another aspect of the way Police's personnel are enabled to do their jobs relates to how command and control arrangements are organised. At the higher-level, principles for assigning responsibilities and powers have been dealt with in earlier *Issues Papers* (in particular, see *Issues Paper 2* and *Issues Paper 5*). At the ground level, though, it is arguably even more important to be clear about how policing proceeds in a disciplined manner.

Chain of command

Clarity on how the 'chain of command' works in policing can be provided by legislation

An important starting point is how authoritative directions are given to police, so there can be certainty about who is making policing decisions. Legislation can play a part in providing such certainty, with extra guidance offered by case-law decisions from the Courts (e.g., confirming senior police cannot command subordinate officers to perform acts which can only lawfully be done if the individual officer forms an independent judgment about the need for such an action - see, for instance, *R v Chief Constable of Devon and Cornwall* [1982] QB 458; *O'Hara v Chief Constable of the Royal Ulster Constabulary* [1997] AC 286; etc.). In light of this, some jurisdictions' policing statutes offer explicit statements about chain of command issues. A useful example is section 35 of Tasmania's Police Service Act 2003, which provides a police officer is subject to the Commissioner's direction and control; the officer must undertake duties assigned to him or her; and must comply with any lawful directions or lawful orders by a senior officer.

The need for such clarity is especially felt in operational settings, where everyone needs to be clear about who is in charge

Some academics have argued the case for greater clarity in New Zealand law about how the chain of command works in Police. Notably, Professor Joseph has pointed to what he sees as deficiencies in current legislation, where the Police Act is silent about officers acting in a chain of command, and the limited provisions that do exist sit in subordinate regulations. Regulation 5 of the Police Regulations 1992 relevantly provides:

New Zealand's current legislation is not as definitive as it could be about such matters ...

... with no guide on whether a District Order, say, takes precedence over a General Instruction *issued by the Commissioner ...*

... and no mention of the primary line running from the Commissioner, to District and Area Commanders, to officers in charge of stations, to staff in supervisory roles, then to police in the field

> **5. Control and supervision**
>
> (1) Every member of the Police shall obey—
>
> (a) The applicable region orders and district orders; and
>
> (b) The lawful commands of a supervisor.
>
> (2) Every member shall obey and be guided by—
>
> (a) General instructions; and
>
> (b) The Commissioner's circulars.
>
> (4) In the absence of a supervisor, the supervisor's authority and responsibility shall devolve upon the next in rank or level of rank, or, in the case of equality, upon the longest serving member in a rank or level of rank.
>
> (5) Every Police party, regardless of its size, shall have a responsible supervisor when the party is proceeding on duty ... who shall be ... obeyed for the time being as if he or she were a supervisor. In default of special appointment, the longest serving member shall take upon himself or herself the command.

"Supervisor" is separately defined in regulation 2 of the 1992 Regulations. It makes clear, for example, there are situations when non-sworn members of staff can properly give directions to sworn members in subordinate roles (e.g., where a non-sworn Team Leader in a Police Communications Centre issues instructions to a constable who performs the role of a call dispatcher).

Additional clarity might also be seen as useful regarding the ability for non-sworn staff to give lawful commands to sworn staff

According to Professor Joseph, more is required to guarantee the operational independence of police acting in the chain of command. He recommends adding a new section to the Police Act, which would form a pair with the oath of office. The new section would state:

> In causing Her Majesty's peace to be kept and preventing offences and bringing offenders to justice, all police officers under the general control of the Commissioner shall follow the instructions of their superiors, and shall carry out their duties impartially, without fear or favour, and shall not act under the control, direction, or instructions of the government or any Minister of the Crown.
>
> Philip Joseph, The Illusion of Civil Rights [2000] *New Zealand Law Journal* 151-154, p 154.

Making clearer provision in law for police to obey the orders of superiors might also be a chance to clarify that this does not include bowing to Ministerial direction

Alternative means of how to phrase such a provision could be suggested. For instance, it might be simpler to state: "Members of Police must obey the lawful commands of their superiors, must carry out their duties impartially, and must not act under the control, direction or instructions of any Minister of the Crown". The larger point is whether policing legislation should seek to confirm the Commissioner at the apex of command and control decisions within Police, and also reinforce the doctrine of obedience to superior orders.

Question 6: Do you support clarifying in legislation the duties of Police staff to act under the Commissioner's direction and control, and to follow the lawful orders of superiors? Why or why not?

Appointment of acting office holders and the delegation of certain functions

A related topic is how legislation deals with the need to appoint acting office holders, and to more generally allow for delegation of certain functions

Discussion of the Commissioner's role at the head of the chain of command introduces the related topic of how to handle situations where he or she is unavailable to perform this role, and how to facilitate the Commissioner delegating certain functions so as to lighten the overall administrative load.

The 1958 Police Act deals with such matters in sections 4, 13 and 55A. The current Act's approach is to generally empower the Commissioner to delegate any of his or her "powers, authorities, duties, and functions" as the Commissioner considers appropriate. Any such delegation may, with the Commissioner's prior approval in writing, be on-delegated to other staff within certain parameters.

To cover absences from duty, unfilled vacancies, or any "special purpose", the Act makes separate provision for the Commissioner to temporarily appoint any member of Police to a higher rank, or for the Commissioner to authorise members to act up into higher ranks. For times when an Acting Commissioner is required, the Act simply creates a default position: the Deputy Commissioner "longest in office as such" is expected to step up.

There are current provisions in the 1958 Police Act which cover off these matters, but it is worth asking whether there is room to improve on existing protocols

There may be agreement about keeping these administrative arrangements in place, or there may be support to adjust the protocols in certain respects.

For example, one advantage of the blanket rule that the longest-serving Deputy Commissioner automatically assumes the Acting Commissioner role is that it covers situations where a Commissioner may be unable to express a choice about who should take over (e.g., because of medical incapacity). However, a disadvantage of this approach is that during any given period of absence by a Commissioner, there may be a senior officer who he or she believes would be better suited to act up (e.g., because of operational imperatives, such as the need to manage an emerging counter-terrorism situation or issues relating to a particular overseas deployment). It might therefore be preferable to allow a Commissioner the flexibility to choose who to hand responsibility over to.

If the status quo is modified in any way, it will focus attention on who has the authority to decide who fills in when there is a need for an Acting Commissioner

Were a new framework favoured for appointing an Acting Commissioner, it would be necessary to consider how to deal with exceptional cases where the Commissioner cannot or should not appoint a temporary replacement (e.g., due to illness, or because the Commissioner has been suspended or removed from office). One option is to provide that where a Commissioner, for whatever reason, is not able to appoint an Acting Commissioner, such an appointment is to be made by the Governor-General.

Alternative models for delegating powers or functions of the Commissioner might also be explored. Some inspiration could be taken from overseas' police legislation which contain detailed delegation regimes. For instance, section 31 of Ireland's Garda Síochána Act 2005 reads as follows:

If there is a mood to make changes, a range of precedents exist for how such matters are dealt with in comparative overseas settings

Delegation of Garda Commissioner's functions

(1) Subject to the regulations, the Garda Commissioner may, in writing, delegate any of his or her functions under this Act to—
  (a) members of the Garda Síochána specified by rank or name, or
  (b) members of the Garda Síochána civilian staff specified by grade, position, name or otherwise.

(2) A delegation under this section may—
  (a) relate to the performance of a function either generally or in a particular case or class of case or in respect of a particular matter,
  (b) be made subject to conditions or restrictions,
  (c) be revoked or varied by the Garda Commissioner at any time.

(3) The delegation of a function does not preclude the Garda Commissioner from performing the function.

(4) Where the Garda Commissioner's functions under a provision of this Act are delegated to a person, any references in that provision to the Commissioner are to be read as references to that person.

(5) An act or thing done by a person pursuant to a delegation under this section has the same force and effect as if done by the Garda Commissioner.

A strength of some of the international models is the clear ability to set certain parameters around delegated functions

An interesting aspect of the Irish delegation approach is the Commissioner's ability to provide guidelines ("...conditions or restrictions...") to the person receiving the delegation. This usefully confirms the Garda Commissioner's power to communicate factors to be taken in account when exercising the delegated authority. While such guidance may be contained in instruments of delegation, or be verbally communicated to the person being delegated to, the lawfulness of such advice/parameters is put beyond doubt in legislation.

Any adjustments made to the current legislative regime would also allow some uncertainties or 'red tape' issues to be resolved

Any revamp of the Police Act's approach to acting office holders might also usefully clarify the ability of those acting up to exercise any statutory responsibilities which come with the higher rank. This could potentially include extending the power to issue warrants to non-commissioned officers, in order to address coverage difficulties which can sometimes be experienced (especially in regional locations) where Senior Sergeants need to act up into roles normally held by Inspectors. Anomalies can also be encountered when Inspector-level staff relieve as Superintendent-level District Commanders. While it has usually been possible to manage through complications under the existing section 4, 13 and 55A framework, new policing legislation might helpfully reduce the bureaucratic costs involved by offering a simpler system.

Question 7: **Are you in favour of appointment of acting office holders and delegation of functions being addressed in Police legislation? If so, do you have recommendations as to how these matters are covered off? If not, what are the reasons for your view?**

Ability to issue directions or guidance to Police staff

Another area of administrative detail that could usefully be dealt with in legislation concerns the ability to direct or guide Police staff

Assuming there is clarity around *who* may exercise command and control functions over Police staff, it remains to be clarified *how* such directions or guidance is communicated.

As noted earlier, the current approach is to deal with the mechanics of this area in regulations. Regulation 5 of the Police Regulations 1992 specifies every member of Police shall obey any applicable District Orders, and obey and be guided by *General Instructions* and circulars issued by the Commissioner. What constitutes a "general instruction" or "circular" is not defined. However, the Commissioner's ability to issue *General Instructions* is given a statutory basis by section 30 of the Police Act 1958, with the only rider being such instructions must not conflict with provisions of either the Act or Regulations. As for making staff aware of such instructions, subsection 30(3) of the Act has a deeming provision in the following terms:

> A general instruction is deemed to have been communicated to a member of the Police when the instruction has been—
>
> (a) Published in the *Police Gazette*; or
>
> (b) Published in a Police magazine that is published under the authority of the Commissioner and distributed to all members; or
>
> (c) Published in a manual of general instructions issued by the Commissioner to all members; or
>
> (d) In the case of a member of a particular group of Police, published in a manual of instructions issued by the Commissioner to members of that particular group; or
>
> (e) Brought to the personal notice of the member.

This is something which is currently addressed in the 1992 Regulations

Under regulation 9(41) of the Police Regulations 1992, it is an offence of misconduct or neglect of duty for any sworn staff member to wilfully violate a *General Instruction*.

Some matters are also covered in the 1958 Act, such as the Commissioner's ability to publish a Police Gazette

The Act also contains a specific provision mandating the Commissioner's publication of a *Police Gazette*, "in which shall be published such notices and other matters as are required by this Act, or by regulations made under this Act, to be published therein, and such other matters (if any) as the Commissioner from time to time thinks expedient" [see section 61]. The confidentiality of the *Police Gazette* is also protected in statute [section 61A].

Similar types of empowering provisions are contained in most jurisdictions' Police Acts, with differing degrees of flexibility provided to Commissioners. For example, section 93 of Tasmania's Police Service Act 2003 requires the Tasmanian Commissioner to produce a Police Manual containing any orders, directions, procedures or instructions which he or she has issued, or "any other matters the Commissioner considers appropriate". Section 94 of the legislation contains a parallel requirement to publish a *Police Gazette* at intervals he or she deems appropriate, which is to contain "appointments, notices and any other matters the Commissioner considers appropriate".

Overseas Police Acts offer some interesting case studies on how to legislate for the ability to issue force-wide orders or policy guidance

Some jurisdictions go further still, emphasising the responsibility police staff have to read and understand applicable force-wide instructions, as well as the legislative framework relevant to policing. Section 1.6 of Queensland's Police Service Administration Regulations 1990 represents a highwater mark of this type of approach:

> **Officers to be familiar with Act etc.**
>
> (1) All officers are to take reasonable steps to familiarise themselves with the provisions of the [Police Service Administration] Act, regulations made under the Act, and those codes of conduct, general instructions and determinations that apply to them.
>
> (2) The Commissioner is to—
>
> (a) direct the attention of all new officers to the requirements of subsection (1); and
>
> (b) ensure that a copy of the Act, this regulation, and those codes of conduct, general instructions and determinations that apply to them are reasonably accessible to each officer.

The need for such orders or guidance is not doubted; the only real question is how best to enable such instructions

In New Zealand, no one doubts the value of retaining the ability for a Police Commissioner to issue circulars, Codes of Practice or other guidance to staff. In particular, *General Instructions* are a key tool in ensuring consistency of police action, and are an important means of disseminating information nationally. This can be especially valuable when advances in certain aspects of policing (e.g., monitoring 'at risk' people in custody) can be brought to the attention of all relevant Police staff and instituted as standard procedure.

While a key rationale for *General Instructions* is operational, having such a system in place also opens up other opportunities for ensuring that activities and behaviours within Police are standardised in key areas. Hence, *General Instructions* also cover a wide array of administrative and employment matters (e.g., wearing Police uniforms and procedures for staff transfers).

The environment for communicating such instructions to Police staff in New Zealand is fairly complex

There are currently over 1000 *General Instructions*, at least some of which are modified each month. A full set of operative *General Instructions* is kept constantly updated on Police's Intranet, and is electronically accessible by all Police staff. The fact remains, however, this represents a large body of instructions which sit in an at times unclear relationship with other corporate policy resources, such as Police's *Manual of Best Practice* series.

Fresh legislation may help ongoing work to rationalise this environment

Efforts to rationalise Police's overall array of corporate instruments is being led by a small project team based in Police National Headquarters. Recommendations on how to design future legislative arrangements for such corporate instruments are likely to flow from this initiative. In the meantime, it would be useful to receive any views other people have on how best to provide in legislation for the Commissioner's ability to issue directions or guidance to all Police staff. Even if ideas are not angled at legislation, there may still be valuable suggestions which can be taken on board by Police (e.g., making *General Instructions* more accessible to interested members of the public, perhaps by uploading them to view on Police's Internet site).

For example, it may be helpful to clarify in legislation that General Instructions *are binding when issued electronically*

Question 8: Do you have any thoughts on the role legislation might play in the process by which the Commissioner issues circulars, Codes of Practice or other forms of guidance to Police staff?

3. Property

The way property-related matters are dealt with in the 1958 Act and 1992 Regulations may be seen as adequate ...

Another cluster of administrative issues that could be dealt with in legislation concerns Police stewardship of assets. Two dimensions of interest here are physical property (e.g., how Police deals with its buildings, vehicle fleet, unclaimed lost property, recovered stolen goods etc.) and intellectual property (e.g., rules about use of the Police crest and badge).

Physical property

... or there could be an opportunity to bring property-related arrangements more up-to-date

Currently, the Commissioner has the legal and financial authority to make purchasing and resource management decisions about Police's property portfolio up to a certain level, albeit consultation with the Minister of Police over significant areas of investments will often be appropriate. Subject to available funding, the Commissioner has sufficient flexibility to enter into contracts to acquire new assets and to develop existing Police infrastructure. By way of example, over the last seven years, 77 police stations have been (re)built or upgraded. This may be taken to indicate the Commissioner's powers to manage Police's property interests are reasonably adequate, and there is no need to modify these administrative powers in a new Police Act.

At the margins, though, potential may exist to modernise the Commissioner's powers to administer property. For instance, technical issues have been raised in the past about Police's ability to effectively manage land it holds on behalf of the Crown under the Public Works Act 1981. These holdings are extensive, as they are the primary bases for Police's radio network assets up and down the country. At present, the power to lease or licence Crown lands acquired for public works is reserved to the Minister of Lands. These property management functions are able to be delegated to relevant government agencies which 'control' such lands. However, because Police is not listed in the First Schedule of the State Sector Act 1988 as a public service department (retaining instead the independent status of an instrument of the Crown), a barrier has been identified to making such a delegation to the Commissioner of Police. To get around this, it would be necessary to devise an appropriate deeming provision which enables the Lands Minister to make the necessary delegation to the Police Commissioner.

Modernisation options include clarifying the Commissioner's ability to receive delegations to manage property under the Public Works Act 1981

This is an example of how a carefully-worded legislative amendment could improve Police's ability to administer its land holdings. Such an amendment was agreed to in 2001, but not progressed. It would be interesting to hear if there is support for it to advance as part of a Bill leading to a new Police Act.

A law change may better enable Police to manage its radio network properties

Equally, views are welcomed on whether property administration flexibility the Commissioner currently enjoys should be made any less extensive. The Police Act Review Team is open to receive any such suggestions. While it is difficult to foresee what the arguments in favour of reduced flexibility might be, in some jurisdictions (albeit with different policing environments) there are instances where police chiefs do not have as much autonomy to make property management decisions as is the case here in New Zealand.

For example, the Commissioner of the Royal Canadian Mounted Police has a statutory obligation to headquarter his force and the Commissioner's Office in Ottawa, even though it may make more sense to locate the administrative hub in Vancouver or another large metropolitan city [see section 13 of the Royal Canadian Mounted Police Act 1985]. Likewise, under its 1951 establishing legislation, the German Federal Criminal Police Office (the BKA or Bundeskriminalamt) is required to headquarter in Wiesbaden, not Berlin. In a similar vein, Ireland's Garda Commissioner is required by statute to gain Ministerial approval to set up or relocate a divisional or district Garda headquarters, or to open a Garda station in a new location or cease basing staff at an existing station [see section 22 of the Garda Síochána Act 2005].

We are also open to receive any ideas there might be for reducing the ability Police currently has to make property-related decisions

It seems unlikely such a prescriptive approach would be embraced in New Zealand, but the existence of such differing models makes it worthwhile at least identifying the option during a 'first principles' review.

Any such move would seem to be 'swimming against the stream' in New Zealand

Finally in relation to Police's administration of real property, it is appropriate to test whether there is agreement about how Police deals with unclaimed lost or stolen goods.

It is believed the current Police Act provisions dealing with such matters (notably, sections 58 and 59) offer sufficient certainty, although there seem to be issues of statutory language and general drafting which could be refreshed. For instance, the ongoing need for publication of a public notice of the intended sale of the goods or chattels "...3 times in some newspaper circulating in the district in which the sale is to be held..." seems overly prescriptive, as does the absolute requirement that any sale be by way of a public auction. Contemporary policing legislation shows a preference for public auctions in these cases, but also allows for other disposal methods to be used at the discretion of the Commissioner [e.g., see section 166 of the Northern Territory's Police Administration Act 2005]. Equivalent provisions in such Acts may provide a useful benchmark for any carried-over power for Police to administer property which cannot be returned to its rightful owner.

Greater potential for movement may exist in relation to the management of unclaimed property which Police holds

Some of the current legal hurdles Police must clear before disposing of such goods seem odd in a modern age

There may also be scope to take advantage of modern developments, such as the emergence of Internet-based auctions. Arguably, Internet-based notifications about recovery of personal property, and the use of e-auctions to realise value from unclaimed property, would be more transparent and cost-effective than relying on print-based media, and auctions where would-be buyers have to travel to a physical location to inspect and bid for goods. If this future is supported, it will be important Police's legislation does not create barriers to using Internet-based auctions to handle unclaimed goods.

Question 9: Do you have any views on how Police's administration of physical property should be dealt with (if at all) in legislation?

Intellectual property

Attention might also usefully be focussed on certain intellectual property issues

Specific provisions in the current Police Act and Regulations seek to protect against the unauthorised use of Police insignia or trading-off Police's name. These provisions work in tandem with generic protections contained in the Flags, Emblems, and Names Protection Act 1981.

Again, this is an area covered by existing legislation

Section 51 of the Police Act contains an offence of impersonating a member of Police, either by words, conduct, demeanour or style of dress/designation, which is punishable upon summary conviction of a fine not exceeding $200, a term of up to three months' imprisonment, or both. Section 51A provides a complementary offence of unauthorised use of a police uniform (or any item of uniform or related articles, including the Police crest and badge specified in the First Schedule of the 1992 Regulations), which is punishable upon summary conviction of a fine not exceeding $500, and a further $50 per day where the misuse is of a continuing nature.

Instances where people attempt to impersonate police are not as rare as might be imagined

Over the last decade, there have been 485 recorded offences of "personating police" (an average of around 50 a year). Such offences, especially in the current climate of increased awareness about security risks, have the potential to be very serious. Many people faced with a person who is wearing a police uniform, or claiming to be a police officer, would feel obliged to comply with any reasonable-sounding requests or instructions given by that person. This could have serious consequences. For example, a person pretending to be a police officer may seek unlawful access to a building; may instruct a person(s) to take some action or refrain from taking an action; or may seek access to information which could assist in the commission of a crime, including possibly a terrorism-related offence.

The seriousness of such cases should not be understated

It is a moot point whether the current penalties for such offences are appropriate

The current maximum penalties for section 51 and 51A offences appear low in comparison with those available for various other administrative offences (e.g., the equivalent offence of pretending to be a corrections officer carries a maximum fine of $2,000: see section 144 of the Corrections Act 2004). A higher level of fine and/or longer custodial sentence may be appropriate to communicate the potential seriousness of this type of offending, and deter would-be police impersonators.

An overseas trend is to act strongly to defend the integrity of police branding

Internationally, the need to assure the public about the status of people presenting as police has been backed up with unambiguous legislation. Approaches range from the general (e.g., section 69(1) of the Nova Scotia Police Act 2004 states: "No person or organization shall use the uniform, insignia, vehicle markings or other signs or symbols of a police department") to the highly specific (e.g., refer to sections 204A, 204B and 204C of the New South Wales' Police Act 1990). There are a wealth of precedents to draw from should it be considered necessary or desirable to modernise this aspect of New Zealand's policing legislation.

Some jurisdictions are even exploring new, aggravated, offences involving misuse of police uniforms/ insignia

Indeed, it is interesting to note proposals to tighten the protection regimes in New South Wales. A recent review of the 1990 Police Act tabled in the state Parliament signals the introduction of a new, aggravated, form of the personating police offence, carrying a maximum penalty of up to seven years' imprisonment. The offence will be used where a person has impersonated a police officer and purported to exercise a police power(s), irrespective of whether the offender has worn a police uniform or insignia.

The Police Act Review Team would welcome any suggestions on how public confidence in the Police 'brand' and the identity of Police personnel could be supported by legislation. In addition to the sort of offence provisions discussed above, views are invited on whether New Zealand should follow moves in other Commonwealth countries to more directly protect against the use of the word "police" or its derivates. Contexts where the misuse of "police" may be especially detrimental include advertisements or the operating names of businesses that infer some type of official endorsement.

Use of the word "police", and its derivates, are also being protected

Tightening up the rules around use of the word "police" on items of clothing, especially where it could lead to confusion about the status of the wearer as a member of New Zealand Police, might be another area for attention. There certainly seems to be potential for confusion to arise, particularly for new migrants or visitors to New Zealand, even where clothing bearing the word "POLICE" is not the traditional blue. Cases involving black jackets and shirts bearing the words/logo "police", and purported "police" warrant cards, have emerged in some parts of the country.

Clearer rules about the use of the word "police" might also be welcomed here in New Zealand, to prevent mischief occurring if it is used on clothing , vehicles or official-looking documents

Concerns in this area could be ameliorated by adopting a consent system like that used in New South Wales, where the Police Commissioner is able to (conditionally) approve use of the term "police". This protects against abuses, but allows legitimate uses to continue (e.g., the Police Credit Union is one of the listed bodies which is approved to use police in its operating name, under regulation 107 of New South Wales' Police Regulations 2000).

Question 10: Do you support or oppose strengthening the current offences of impersonating a member of Police and unauthorised use of Police uniforms and related articles? Further, do you have a view on whether new policing legislation should directly protect against use of the word "police" or derivations of it? If so, what are the reasons for your view?

4. Payment

The third major area of inquiry under the heading of Police administration relates to how New Zealand Police is paid to deliver policing services. Given Police's integration within the government budgetary system, the questions raised here are less to do with how Police receives funds appropriated by Parliament to pay for specified outputs and outcomes, because there is no suggestion the current central financing model for Police needs to change. Rather, questions that arise relate to opportunities to provide for additional public/private revenue streams as a supplement to core Vote Police funding.

A foundation of the way New Zealand Police operates is its central funding

Two presenting opportunities are the ability Police may have in the future to:

- receive direct contributions (e.g., funds realised by the Official Assignee after police action under the Proceeds of Crimes Act 1991); and/or
- recover policing costs in special circumstances (e.g., if requests are received to provide a police presence at certain money-making events).

Opportunities to add supplementary funding streams might still be worth thinking about

Before sketching out these opportunities a little more fully, it is important to offer a caveat. Clarifying Police's funding base is about ensuring Police has the necessary capacity, capability and resilience to deliver effective policing. It need not imply any questioning of established channels for Police funding, nor are such questions within the agreed scope of the Police Act Review. Moreover, Treasury officials are recognised to hold the primary expertise on funding mechanisms for state sector organisations, and any discussions about future funding options for Police should tap into this knowledge. What the Police Act Review offers is the chance to float some funding ideas which have gained currency in other jurisdictions, and to see if there is any enthusiasm to do more detailed policy work on these ideas in New Zealand.

Any move down this track would certainly require in-depth work to be done on the pros and cons of any proposals

DIRECT CONTRIBUTIONS

A suggestion sometimes heard is for Police to receive a direct payback for work to break down organised crime networks and seize ill-gotten criminal gains. This model of a direct link between the success of anti-crime policing efforts and resources made available to enforcement agencies is most familiar from the United States of America, where inventive schemes exist which allow assets confiscated from convicted offenders to be made available to the agency responsible for bringing the offenders to justice. High profile cases involving anti-drug work, where motor vehicles, boats, etc., have been re-directed to law enforcement agencies, are occasionally cited as evidence of the value of such schemes.

It is occasionally suggested that New Zealand should look at adopting models used in some overseas countries, where police can benefit from seized criminal assets

While the symbolic value of such American initiatives can be acknowledged, legitimate concerns may be expressed about the ability for such schemes to create perverse incentives which could potentially skew some police actions. Returning the confiscated assets themselves to enforcement agencies, rather than funds realised from the sale of such assets, may also prove problematic.

Fewer concerns might arise in a New Zealand context if, for example, there were provision for Police to receive a proportion of monies realised by the Official Assignee, after the sale of 'tainted' criminal assets seized as a result of police action under the Proceeds of Crimes Act. The possibility of such tied-funding for policing organisations is certainly a feature of some overseas countries. For instance, in the United Kingdom, sums from recovered criminal assets can be allocated back to police forces which were instrumental in seizing the assets in the first place. This scheme was first introduced in 2004/05 as an incentive programme. A total of £13 million was distributed to police forces in England, Wales and Northern Ireland on the basis of each force's asset recovery performance in 2004/05, and a further £26 million was allocated to forces on the basis of performance in 2005/06.

It is possible to foresee how such a model might work in New Zealand, but objections to such a move could also be anticipated

If adapted for the New Zealand environment, it is open to debate whether the benefits of such a model would outweigh its perceived drawbacks. A key issue here is likely to be whether any funding contributions sourced in this way would be *additional* to Police's baseline level of funding, or whether it would act to discount Police's government-agreed maximum level of funding. There are also questions raised about whether any such scheme would need to be given a legislative basis. In principle, at least, it is possible to imagine sums from recovered criminal assets being allocated to Police in a way similar to other transfers to Vote Police which periodically occur during any given year. While Ministerial approval of such fiscal transfers would be necessary, it is arguable whether separate statutory authorisation would be required.

Direct contributions could also be given legislative blessing in other ways, such as potentially enabling voluntary funding of targeted policing services

There are other examples of where direct financial contributions are made to police forces on a negotiated basis. In the United Kingdom, for instance, there are several voluntary schemes where licensed premises pay for extra policing. One such scheme is "Operation Tranquility" in Stockton, where 20 pubs, clubs and off-license premises contribute an average of £80 a week (depending on their size and opening times) for an extra Sergeant and four Constables to help manage issues associated with an inner-city night-time entertainment precinct. A similar scheme operates in Manchester, where licensed premises contribute matching funds for one of two additional officers who help patrol Peter Street, which has a dense concentration of late-night drinking venues.

If Police were able to supplement its funding by charging for certain services, this would require non-chargeable services to be more clearly defined

Ultimately, whether there is seen to be merit in these ideas being adapted for New Zealand may boil down to practical and philosophical considerations.

First, it would need to be demonstrated there are sufficient direct funding contributions at stake to justify the transactions costs involved in setting up and administering any scheme. Secondly, it would be necessary to overcome principled objections which are held to such tied-funding schemes. The use of hypothecation as a funding source is very rare in New Zealand (examples include legislated 'sin tax' levies from the gaming and liquor industries, used to fund programmes for people with gambling disorders and to finance work by the

Alcohol Advisory Council of New Zealand). It would certainly be an exceptional move to allow for direct funding contributions to Police; one which may have unwanted precedent-setting effects (including if it led to calls, say, for revenue generated from Police-issued infringement notices to be channeled to Police, rather than to general Crown accounts).

Some might also see risks associated with perceptions of 'revenue gathering' if there was a direct link between Police enforcement work and Police's budget

PROVISIONS ENABLING THE CHARGING OF A FEE FOR SERVICE

A second future scenario might involve Police having a limited ability to recover policing costs in certain circumstances, or even to generate income from particular types of policing services.

The issues of third-party funding, cost recovery and fee for service policing are complex, and it would be premature to commence a full-blown debate about their potential application to New Zealand within the bounds of this *Issues Paper*. What it would be useful to understand, however, is whether there is interest in further work being done on these possibilities, with a view to them potentially finding a place in a new Police Act.

It is fairly common overseas to be able to charge for what are over-and-above policing services, or to off-set costs in certain situations

In order to inform initial opinion on these matters, it may be enough to paint a picture of how commonplace it is in comparative overseas jurisdictions for policing organisations to have an ability to charge fees for particular services.

One of the most long-standing examples of where such a system operates is the United Kingdom. Since the 1920s, it has been accepted by the Courts in England and Wales that while a police force's fundamental obligation to provide law and order services is funded through general taxation, there is nothing illegal or against public policy for constables to be made available for over-and-above duties on request, and to accept payment for this (*Glasbrook Brothers Limited v Glamorgan County Council* [1925] AC 270).

The cradle of New Zealand's policing model, the United Kingdom, has a well established system which allows the recovery of costs for special services

The common law position was codified in section 15(1) of the Police Act 1964, and carried over in section 25 of the Police Act 1996. In short, the provision enables chief police officers to provide special police services on request in return for payment at a rate set by the relevant Police Authority. Administrative guidance issued by the British Home Office suggests full recovery of costs should be sought where police charge for special services (see *Home Office Circular* 34/2000).

Various decided cases over the years in the United Kingdom have helped to clarify the way the 'special services' scheme functions. The litmus test for what a special police service is will usually involve one of two things: either the services will have been asked for but will have been beyond what police consider necessary to meet their public duty obligations; or they are services which, if police do not provide them, the requester will have to provide for out of his or her own pocket. Hence, it is settled law that regular attendance of police inside football stadia will be considered special police services (*Harris v Sheffield United Football Club Ltd*. [1988] 1 QB 77). A Judge in one of the most recently reported decisions has further observed:

'Special services' has been defined to include attendance at sports fixtures, music festivals, and other profit-making events ...

> There is a strong argument that where promoters put on a function such as a music festival or sporting event which is attended by large numbers of the public the police should be able to recover the additional cost they are put to for policing the event and the local community affected by it. This seems only just where the event is run for profit.
>
> *Reading Festival Ltd v West Yorkshire Police Authority* [2006] EWCA Civ 524, para 72, per Scott Baker J.

... with detailed guidance developed on how the system works, allowing event promoters and police to know where they stand

In addition to this long-established ability to recover costs associated with special services, the United Kingdom policing environment is marked out by several examples of what are essentially privately-funded policing agencies. Examples include the British Transport Police (which is largely funded by train companies to provide bespoke policing of the rail network) and the United Kingdom Atomic Energy Agency Constabulary (which is

'Special services' contracts have been extended into a range of areas, such as funding for dedicated police at large retail outlets like the Bluewater Shopping Complex

funded by the nuclear fuels industry to provide tailored policing of nuclear facilities). Developments in this area continue to occur. For instance, following a recent review of airport policing, the British government has made a decision that policing costs at airports should generally be met by the airline industry.

Developments in this area have also occurred extensively throughout Australia

Closer to home, there are also many examples of legislative empowerments for police to charge fees for certain policing services. For example, in New South Wales, section 208 of the Police Service Act 1990 and regulation 106 of the Police Regulations 2000 combine to allow NSW Police to recover costs of attending sporting and entertainment events, as well as to provide supplementary policing services to local councils and also shopping centres. The Victorian model is similar. Section 130 of the Police Regulation Act 1958 enables regulations to be made prescribing services that may be charged for - with the resulting Police (Charges) Regulations 1992 allowing for charges to be imposed for policing services at sporting and entertainment events, providing escort or guard services, and for provision of certain information.

Delivering training to overseas police is one of the newer areas where income is being generated

Western Australia's Police Service also charges fees for specific operational services provided to the Argyle Diamond Mine and by its specialist Gold Stealing Detection Squad. Operating since the early part of the century, the Gold Stealing Detection Squad provides dedicated police officers to investigate complaints of gold stealing, with industry picking up the costs. Similarly, the operators of the Argyle Diamond Mine pay for a police station at the mine and the personnel/operating costs of police officers who staff it. In addition, the Western Australia Police Service generates an amount of income from the provision of training services to Singaporean police officers.

The fact that New Zealand Police has not gone down this track may be seen (ironically) as a real selling point, as it emphasises policing is not for sale here

While such developments can introduce concerns about 'policing for sale', the fact remains New Zealand Police is one of few modern police forces which does not allow for some degree of cost recovery for the delivery of over-and-above policing services. This may be an especially valued aspect of New Zealand's policing tradition which there is general support to retain. This should not be assumed, however. It may be there is a level of comfort with enabling New Zealand Police to take some cautious steps towards a cost recovery model in certain defined situations. Precedents for how such a trial power might be drafted are available in policing statutes from a number of jurisdictions (e.g., section 30 of Ireland's Garda Síochána Act 2005). There are also available domestic precedents for carefully-worded charging powers (e.g., the ability for the Fire Service Commission to charge fees of vessel owners which have received fire-fighting services from a brigade; or to charge territorial authorities for the use of any fire-fighting equipment which is lent to them - see sections 40 and 41 of the Fire Service Act 1975).

While this is true, Police has long been able to off-set costs associated with certain work

Any moves towards an enhanced ability to recover policing costs could also be interpreted as an extension of a long-standing ability Police has had to recover costs associated with some functions. As such, it may not attract concerns about reversing an important principle, or breaking new ground.

For example, some of the fees payable by casino operators under the Gambling (Fees and Revocations) Regulations 2004 are forwarded to Police, to cover costs incurred in casino-related work

For instance, like other departments of state, New Zealand Police has the ability under the Official Information Act 1982 to charge for the costs of processing certain requests for information. Reimbursement is also received by Police for costs associated with firearms-related licensing functions under the Arms Act 1983, costs linked to commercial vehicle driver endorsements (e.g., for taxi drivers and tow-truck operators) under the Land Transport Act 1998, and to off-set costs of vetting checks and other responsibilities under the Private Investigators and Security Guards Act 1974, Gambling Act 2003 and the Secondhand Dealers and Pawnbrokers Act 2004.

Cost recovery in these cases often involves balancing transfers between government departments (e.g., the Ministry of Justice) or Crown entities (e.g., Land Transport New Zealand). In a similar way, Police gets off-set funding from the Department of Corrections for the costs of accommodating remand prisoners. There are also long-standing arrangements with the government's international aid and development agency (NZ-AID) which allow Police to receive cost recovery funding for overseas deployments, such as participation in the Regional Assistance Mission to the Solomon Islands or disaster victim identification work in Phuket after the Asian tsunami in 2004.

A less common scenario is where Police receives funding from third parties. Examples include a levy imposed on companies to collect voluntary superannuation contributions from Police employees who wish to pay into private superannuation schemes from their Police salaries, and the potential for the Royal New Zealand Police College to charge non-Police groups for the use of certain of its facilities.

There are also numerous examples of where Police is reimbursed for costs it incurs for doing certain things on behalf of others

As this quick overview demonstrates, Police has already evolved ways to recover costs of performing policing functions in particular circumstances, some of which are supported by legislation. An issue for wider discussion is whether this feature of current practice should be extended, perhaps through legislative provisions which more clearly enable such developments to occur.

A more challenging proposition would be to seriously look at following leads from overseas that reduce the reliance of police on funding via general taxation

For instance, seeking to apply the 'polluter pays' principle, provisions in the recently-enacted Violent Crime Reduction Act 2006 (UK) allow for designation of Alcohol Disorder Zones, within which licensed premises will be required to make weighted contributions to the costs of policing alcohol-related crime and disorder. Charging formula have been developed which are designed to encourage drinks industry members to take collective action to tackle alcohol-related problems in their local area, rather than simply paying extra as a 'cost of trade' for police and local authorities to manage the problems. This innovative scheme will be keenly watched to assess its effectiveness, but even now it prompts thinking about whether such a levy-based model could be applied in other jurisdictions, including potentially New Zealand.

For example, does the UK approach to funding police work associated with 'binge' drinking offer a viable model for New Zealand?

Question 11: Do you favour including any new ways of contributing to Police's funding base in new policing legislation? If so, do you have any specific suggestions, or do you wish to highlight any particular factors it will be important to take into account?

5. Miscellaneous issues

To introduce the breadth of issues in the area of policing administration, the *Paper* has grouped a selection of topics under some major sub-headings (people, property and payment). Before closing, it is appropriate to stretch the scope of possible discussion even further still, by inviting any feedback on administrative matters which do not fall neatly into a category. As a prompt for further suggestions, three quick examples are highlighted below.

While it is possible to group some key administrative issues under broad headings, there are also administrative matters which are less easily clustered

REGULATION-MAKING ABILITY

First, in line with the approach taken for most significant Acts of Parliament, a new Police Act is likely to require a power to issue regulations, where matters of detail or a technical nature can more appropriately be addressed. The only question may be whether to express the regulation-making power in general or specific terms. The approach in the 1958 Act is to provide a broad empowerment but to offer a series of examples of the type of thing which may be the subject of regulations [see section 64 of the legislation].

For instance, one of the 'machinery of government' issues which will need to be dealt with in a new Police Act is the ability to issue regulations

A similar approach is seen in a number of overseas jurisdictions, although there are differences in the level of detail provided as to the type of matters suitable to be covered in regulations. For example, Ireland's Garda Síochána Act 2005 has seven separate sections spelling out the power to make general regulations, as well as regulations on specific topics like staff discipline and arrangements for co-operation between An Garda Síochána and the Police Service of Northern Ireland [see sections 121 to 127 of the legislation].

In the New Zealand context, a question to consider is whether a similar level of detail would be helpful or unhelpful in indicating the range of matters which might be the subject of regulations under a new Police Act. Authoritative guidance produced by the Legislation Advisory Committee will provide a useful reference point for the approach which is ultimately taken [see Legislation Advisory Committee, *Guidelines on the Process and Content of Legislation* (Wellington: Ministry of Justice, 2001), especially Chapter 10]. However, it would also be valuable to receive any initial feedback on how broadly a regulation-making power in a new Police Act should be expressed.

A question to pose is how detailed any regulation-making power should be

REFERENCES TO POLICE AND MEMBERS OF POLICE IN OTHER LEGISLATION

A Bill leading to a new Police Act may also be a vehicle to scrutinise cross-references to Police which appear in other legislation

Another general administrative matter which could be addressed by a Bill leading to a new Police Act is to tidy up references to New Zealand Police and its staff members that are widely scattered throughout the statute book.

In particular, the Police Act Review creates the space to think through implications of other Acts cross-referencing to powers of a "constable", as a way of empowering non-police to perform certain law enforcement functions (rather than defining the particular policing powers which may be needed). This is a not uncommon drafting technique, but as raised in earlier *Issues Papers*, it can raise discomforting questions about the training received by those being delegated constabulary powers or privileges (e.g, fire police empowered by section 33 of the Fire Service Act 1975, or court security officers given protections under section 31 of the Court Security Act 1999).

For instance, is it still appropriate to cross-reference in other Acts to non-police having the powers/ protections of constables?

Sometimes the coverage provided is expansive. An example is section 21 of the Corrections Act 2004, under which corrections officers are extended "all the powers, authority, protections, and privileges of a member of the police (including a constable)". Examples such as these beg the question whether it is appropriate to continue cross-referencing to powers vested in members of Police when extending certain policing powers to non-police workers. The Police Act Review Team would welcome any feedback on this question.

During any stocktake of references to "member of Police" and "constable" in non-Police-administered legislation, some may wish this exercise to involve breaking down barriers between sworn and non-sworn staff where possible. Various opportunities present themselves in this general area, some of which hold more significance than others.

Another legitimate area of scrutiny is whether there is scope to remove any anomalies in the way Police staff are dealt with in other legislation ...

At one end of the spectrum, unnecessary divisions are created between sworn and non-sworn staff in lower-level legislation like the Land Transport (Driver Licensing) Rule 1999. For identity confirmation purposes when seeking a driver's licence, rule 10(e) allows "A New Zealand Police .... photo-identity card issued to non-civilian staff that is current or has expired within the 2 years immediately preceding the date of application" to be accepted as evidence of identity. It is difficult to understand the rationale for accepting the photo ID card of a sworn member of Police but not a non-sworn member, given the same sorts of checks must be performed before the photo ID cards are issued, and the cards themselves are the same (except for the words "sworn officer" and "non-sworn member" which appear under the member's photo and name).

Opportunities in this area range from the trivial to the more significant

At the other end of the spectrum, one path forward which would send a unifying signal about members of Police being treated as trusted equals would be reversing the current default position that a reference to "member of Police" in legislation applies only to sworn members [see section 6(1)(a) of the Police Act 1958, and the discussion of this point in *Issues Paper 5: Powers and protections*].

For example, in 2004, different thresholds were set for coverage of Police staff by the 'clean slate' regime

To take just one example of where such an evolution might be of assistance, the present default setting means vetting of would-be Police staff members allows 'spent' convictions to be considered for applicants for sworn roles, but not for applicants for non-sworn roles [section 19 of the Criminal Records (Clean Slate) Act 2004 refers]. The assumed need for different standards of rigour to be applied to sworn versus non-sworn positions is hard to fathom, especially given the growing number of roles non-sworn staff perform in areas which require access to confidential or sensitive information (e.g., staff working within Police's Licensing and Vetting Service Centre, who ironically perform vetting checks on people who require Police clearances).

There are convincing policy reasons for making sure people working in such roles have the highest standards of ethics and integrity. Previous convictions which may be eligible for concealment under the clean slate regime (e.g., theft/dishonesty offences, or offences which involve perverting the course of justice) are likely to be a meaningful and enduring indicator of a person's suitability to work in such positions, irrespective of whether the organisational status attached to the role is "non-sworn" instead of "sworn".

This distinction may be challenged, and illustrates an area where a common standard might be looked to for all members of Police

These are just two examples of where additional progress could be made towards the 'one New Zealand Police' concept by scrutinising the way Police staff members are referred to in legislation. The Police Act Review Team would be interested to hear other suggestions or views on this possibility.

A related task could be to tidy up references to Police that are scattered throughout the statute book. For example, the organisation is referred to as "The Police" in Part 2 of Schedule 1 of the Ombudsmen Act 1975, but as "The New Zealand Police" in Schedule 2 of the Public Audit Act 2001. It may be worth undertaking a quick consistency check to identify and remove any variants, and to reinforce a clear organisational identity across all legislation.

Putting legislative references to "Police" under the microscope might uncover other ideas of where useful tidying-up changes could be made

LEGISLATING FOR AN AUTOMATIC REVIEW OF THE NEW POLICE ACT

A final example of an administrative matter which could be thought about in the context of the Police Act Review is the possibility of legislating for an automatic review of the new Police Act at a defined future point in time - say, 10 years after its enactment. Such provisions are typically not seen in New Zealand statutes (although examples include section 24 of the Protected Disclosures Act 2000 and section 42 of the Prostitution Reform Act 2003), but it is an approach that is sometimes used to support a culture of ongoing legislative improvement in jurisdictions like New South Wales and Queensland. For example, the Police Act 1990 (NSW) contains the following provision:

Consideration could also be given to setting a date for when the Police Act is next reviewed, as a way of ensuring it is kept up-to-date

> **222. Review of Act**
>
> (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
>
> (2) The review is to be undertaken as soon as possible after 1 January 2002.
>
> (3) A report on the outcome of the review is to be tabled in each House of Parliament on or before 31 December 2002.

This automatic review clause reflects an appreciation of the Police Act as an important piece of legislation, and that review of the Act is an ongoing process which needs to address changing needs and circumstances. The review required by section 222 was recently completed and found to be extremely useful. Based on this positive experience, the New South Wales Ministry of Police has recommended section 222 be amended to require a further review, five years after the date of the amendment being enacted.

Such an automatic review function has been built into some overseas Police Acts, where it has been found to be a useful prompt

There might be support for an equivalent review trigger to be included in a new Police Act for this country, although it would represent a fairly novel move for New Zealand legislation. Even with the best efforts, it would be naïve to suggest a revamped Police Act will get everything right. To help ensure the new legislative framework remains effective and enables New Zealand Police to provide world-class policing services, it may be worth writing into the new statute an automatic review date. This would certainly take the guesswork out of when the next opportunity might come along to assess whether the Police Act remains fit for purpose, and whether it might be possible to further improve the way Police is supported by its legislation.

Pluses and minuses can be identified for such a proposal ...

A counter-argument could be that fixing an automatic trigger date for such a review is unnecessary or otherwise undesirable. It is hard to see the force behind such points of view, though, given the accepted importance of the Police Act as a platform for how policing is done, and the fact Police officials keep Police's foundational statute under constant review anyway, and advise Ministers when any opportunities for legislative amendment are identified.

... although none of the potential 'fish-hooks' would seem insurmountable, or indeed necessarily require a legislative fix to overcome

Consideration would certainly need to be given to who completed any review - although as in the New South Wales' precedent, it may be unnecessary to specify this in legislation. Likewise, careful thought would need to go into who has responsibility for responding to such a review (i.e., Parliament, via the Law and Order Committee perhaps; or the Executive, presumably through the Police Minister). But again, this may not require legislative specification.

The specific idea is less important than the example it sets of an administrative matter which could be dealt with in a new Police Act

This option, too, is being put forward simply as a one possibility in the general area of administration. The Police Act Review Team would welcome feedback on the possibility, but is interested more broadly in receiving ideas people may have on administrative matters that might usefully be dealt with in new policing legislation.

Question 12: Beyond things already covered, are there any administrative issues which you think should be included in legislation (e.g., a regulation-making power; more consistency in references to Police and its staff across the statute book; or providing for a review of the Police Act at a future date)? Alternatively, do you know of any matters currently in the Police Act or Police Regulations which no longer require legislative backing?

6. Conclusion

This Issues Paper *gives a springboard for discussion about the administrative arrangements for New Zealand Police*

The administrative matters highlighted in this *Paper* might seem largely internal to Police, on which there is less need to seek public input than on 'shopfront' issues, such as what sort of powers Police staff can exercise and ways in which interested community members can engage with local police. But as emphasised at the outset, the more mechanical aspects of how Police functions are important building blocks for how policing is delivered. It would also be a mistake during an inclusive process like the Police Act Review to suggest 'Police knows best', and to rule this area out-of-scope for possible discussion.

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

To help stimulate reflection and debate on administrative arrangements for policing, a selection of sub-issues have been introduced, and a number of general questions have been asked. It bears repeating that these questions are being put forward with an open mind. Like its predecessors, this *Issues Paper* is designed to test the water. We hope to generate discussion on key topics, and to identify any general consensus around how they 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 15 January 2007.

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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