

Police Act ***Review***

*Building for a modern
New Zealand Police*

Issues Paper 8: Conduct and Integrity

December 2006

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

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

This Issues Paper focuses on encouraging high standards of ethics, conduct and integrity by police

A key area of inquiry is the role legislation could play in helping to reinforce ethical and behavioural standards

Members of Police hold responsible positions in society

Public trust is one of the lifebloods of a consensual style of policing

1. Introduction

In March 2006, a project began to review and rewrite the legislative framework for New Zealand Police. It offers an opportunity to create a strong and durable platform for Police into the 21st century. This is the last of eight *Issues Papers* designed to stimulate thinking about how key topics are dealt with in the review. Its theme is the role legislation could play in supporting appropriate standards of ethics, integrity and conduct within Police.

Coming as it does at the end of the *Issues Paper* series, several aspects of this theme have already been introduced in earlier discussion documents. In particular, there are points of intersection with ideas or commentary contained in *Issues Paper 1: Principles*, *Issues Paper 2: Governance and accountability* and *Issues Paper 3: Employment arrangements*. What this *Issues Paper* does is to draw these threads together, and concentrate on ways to support high standards of ethics, integrity and conduct by individual staff members.

Exploring these topics in terms of personal values and behaviour is not to deny ethics, integrity and conduct can also be seen in organisational terms. Indeed, some of the accountability dimensions of this area were examined in *Issues Paper 2: Governance and accountability* and *Issues Paper 6: Relationships* (in connection with oversight mechanisms for New Zealand Police). Views are certainly encouraged on how legislation might further strengthen organisational level accountabilities, but this *Issues Paper* focuses on how legislation can best support ethics, integrity and conduct at an individual level.

Issues Paper 8 responds to the understanding that a workforce with strong ethics, integrity and conduct can be nurtured by attention to some basic matters. Acknowledging the value of education, training and management support, *Issues Paper 8* examines additional measures which can play a role in this area:

- Pre- and post-employment vetting;
- The possibility of unifying police employees under a common oath of service;
- A *Code of Conduct* (sometimes called a *Code of Ethics*) for all Police staff;
- Protocols to ensure the political neutrality of Police employees;
- Processes for dealing with any cases of poor performance or misconduct, including remedial options which are available to the Commissioner of Police;
- Specific ways to promote ethical behaviour by Police staff, for example possible integrity testing programmes and initiatives designed to safeguard against on-the-job impairment from alcohol and other drug use.

2. Background

New Zealand Police staff have key roles to play in building and maintaining secure communities. Those who hold the office of constable carry special powers and training to help protect life and property, preserve the peace, uphold the law, and prevent and detect offences. All Police staff contribute to public safety in their various roles, whether it be in a general support capacity or in operational settings (e.g., as call-takers in Police Communication Centres) and New Zealanders expect appropriately high standards of ethics, integrity and conduct from them. Indeed, while Police staff are certainly entitled to private lives, the public's expectation of high standards extends to off-duty, as well as on-duty, behaviour. What Police staff do away from work can attract a glare of publicity, and nationwide comment, in ways not experienced by other employees.

While public expectations of police can seem steep, particularly in comparison with some other occupations, the trust implicit in these expectations is a precious resource in policing. It is not an overstatement to say the effectiveness of any police service derives from its ability to earn and sustain public trust. Where people's expectations of Police staff are not met, trust in Police can diminish, which has negative ripple effects on the ability to police successfully; because, for example, citizens do not report crimes or offer witness information.

As the human faces of the organisation, the members of New Zealand Police carry the responsibility of securing and maintaining public confidence. One of the most powerful ways to win the community's trust is through modelling good standards of personal and professional behaviour. The importance of standards is recognised wherever there is a tradition of consensual policing, and has been well summarised by a former British Chief Inspector of Constabulary:

There can be no more important qualities for members of the Police Service than that they are honest and act with integrity. Without these basic attributes, the public can never be expected to trust the police and have the confidence in them that is necessary for a system of 'policing by consent'.

David O'Dowd, *Police Integrity: Securing and maintaining public confidence* (London: Her Majesty's Inspectorate of Constabulary, 1999), p 1.

The above quote sets a useful tone for thinking about how legislation can best support assurance about the ethics, integrity and conduct of members of Police. To be effective in New Zealand's unarmed, community policing style, policing requires community consent, which is dependent on those acting in Police's name having high ethical and behavioural standards. The discussion in this *Paper* will present choices about how those standards are set and encouraged; how Police might provide even greater reassurance to the public on conduct and integrity issues; and measures which could help to unify all Police staff, and instil in them a shared spirit of service to the community.

At the outset of this *Paper*, it is perhaps worth testing the assumption that police *should* be expected to conduct themselves publicly in ways which are above reproach. It is sometimes said police are hardest on their own when staff misbehaviour or unwise actions come to light. Some believe efforts by Police leaders to reinforce high standards of conduct can be out-of-step with the views of 'middle New Zealand', which in some cases are thought to be more forgiving of lapses by Police staff, in part recognising the difficult tasks police have to do. There is also said to be an understanding that all human beings are fallible, most people err at some point in their careers, and it is unfair to expect near perfection just because of the jobs some people do.

Question 1: Do you believe Police employees should display standards of conduct and integrity higher than generally expected of others in the community? In this regard, do you draw a distinction between on-duty and off-duty behaviour, or is the key question whether the person's behaviour is in public or in private?

Contexts for future developments

Another starting point for thinking about how legislation can support appropriate standards of ethics, integrity and conduct by Police staff is the current framework for managing these issues.

The reason for highlighting the present environment is not to defend the status quo, or argue against attempts to improve on what is already in place. Nor is the intention to build a compelling case for change on the basis of perceived weaknesses in the existing way of doing things. Rather, describing the present model for dealing with police conduct and integrity issues helps give a context for understanding what it may be possible to achieve via new policing legislation.

CURRENT MECHANISMS TO SUPPORT POLICE CONDUCT AND INTEGRITY

The current framework for managing conduct and integrity issues within Police has a basis in the Police Act 1958 and Police Regulations 1992, with different systems for sworn and non-sworn staff. For many years, the latter have been covered by a *Code of Conduct*, which although in need of updating, functions reasonably well in setting the conditions for non-sworn staff to work with their supervisors on any identified conduct or integrity issues.

Police's staff, as the public face of the organisation, carry the burden of nurturing this trust

Every time a Police staff member acts with honesty and integrity, public trust in Police is renewed - but the reverse can also be true

Perhaps it is worth testing the assumption that members of Police should model higher standards than other citizens

One important context for debating police conduct and integrity issues is the current regime for managing sworn and non-sworn staff

Non-sworn staff are guided by a fairly mainstream Code of Conduct

The environment for sworn Police staff has a rather punitive feel, with the current Police Regulations containing 42 'thou shalt nots'

As things stand, there is relatively little flexibility to address conduct and integrity issues in a positive light for sworn staff

The existence of parallel systems for sworn and non-sworn staff creates barriers to unifying Police's workforce, as well as creating the potential for inconsistencies

New Zealand Police has a strong track record of being non-corrupt with high quality staff

Another starting point when asking questions about the best way forward is Police's status as a command service

Non-sworn members are also subject to the jurisdiction of the Police Complaints Authority (PCA). In contrast, there is currently no *Code of Conduct* for sworn staff. Instead, arguably the most important feature for sworn members is the constabulary oath of office, spelt out in section 37 of the Police Act, which commits them to:

[W]ell and truly serve our Sovereign Lady the Queen in the Police, without favour or affection, malice or ill-will, until I am legally discharged; that I will see and cause Her Majesty's peace to be kept and preserved; that I will prevent to the best of my power all offences against the peace; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law.

Supporting the constabulary oath the Police Regulations set rules for what a sworn member may not do. Appropriate standards of conduct and integrity can be inferred from the dual influence of the oath and Regulations. However, if an officer's behaviour falls short of the mark, and disciplinary action is appropriate, a quasi-criminal process must be followed. Assuming lesser action such as an adverse report is not justified, the officer must plead guilty, or be found guilty or not guilty, of "misconduct" or "neglect of duty" by a formally-constituted Police Tribunal (which is roughly equivalent to a court martial within a military setting).

The Act and Regulations combine to create a prescriptive environment which sets a rigid disciplinary process to be invoked to deal with unsatisfactory performance by sworn staff. These disciplinary provisions focus on offences, charges, guilt and punishment; putting staff and managers in adversarial roles, rather than helping them work together on identified conduct or integrity issues.

The jurisdiction of the PCA, which extends to all Police members, adds a further layer to the disciplinary environment. PCA matters are either investigated under the secrecy provisions in section 32 of the Police Complaints Authority Act 1988 (rendering any information gathered un-useful in a Police employment setting), or they become subject to a Police disciplinary investigation (with little ability to take PCA-reported issues down a constructive performance improvement path).

In summary, Police has two different internal systems for managing conduct and integrity. For sworn staff (who comprise two thirds of the workforce), a prescriptive legislative framework frustrates the reinforcement of appropriate standards of ethics, integrity and conduct through the types of constructive channels found in most other public sector agencies. The dual systems mean sworn and non-sworn members are not only subject to different processes, but may also end up with different results. Some progress is being made to work around these barriers by improving Police's performance appraisal system, encouraging greater emphasis on desired behaviours and values, etc. However, if alignment of the way sworn and non-sworn members are treated is a desirable outcome, then the basic legislative framework for managing these sorts of issues must change.

Despite the challenges of operating two different systems, an important point to make is, with few exceptions, the men and women of New Zealand Police have a proud record of professionalism. The organisation has certainly not been blighted by the types of corruption scandals, charges of institutional racism, or other systemic failings which have been seen in a number of police forces around the world. While periodic concerns have been raised about isolated groups of staff or individuals, New Zealand Police is regarded internationally as corruption-free. This is not a cause for complacency, but it does represent a very solid foundation from which to build for the future.

A final point of context for discussing the standards of behaviour expected of Police staff is the concept of 'chain of command'. Whereas other employer-employee relationships rely on standard employment law principles, a feature of policing is the command service environment where operational imperatives can demand obedience to the lawful orders of superiors. Although each individual staff member has to play their part (and they must exercise independent discretion within certain parameters of the office of constable), responsibility for the conduct of Police ultimately rests with the Commissioner. As the head of the organisation, the Commissioner has the right to set standards of behaviour, and to take action where behaviour falls below the required standards. This strong sense of the Commissioner's accountability for employee performance in a disciplined, 'command and control', service is a special characteristic of the policing environment.

3. Options for supporting high standards of conduct and integrity

This section of the *Paper* covers areas where it is felt legislation may support improved conduct and integrity through vetting of Police staff at initial selection, and ways to support ethical behaviour by those who take up employment with Police. Some of the presenting options are canvassed and responses are invited to specific questions, as well as any other suggestions people may have for making progress on this front. The focus is on matters which might lend themselves to being dealt with in legislation. That does not mean Police should not further develop the cultural and leadership initiatives required to promote an appropriate environment to support high standards.

Vetting

Performing background checks on would-be employees is an established practice in many industries to assist in identifying the people best suited to work in particular roles. This is also true for Police employees, as there is a reasonable expectation anyone joining New Zealand Police is trustworthy, with a strong track record of ethical conduct and lawful behaviour. Pre-employment vetting can help provide additional levels of assurance around these expected characteristics. It is also 'the first line of defence' to prevent ill-suited people gaining employment with Police.

The risks of Police staff having prior convictions or links to known offenders are largely self-evident. Briefly, though, Police staff with criminal backgrounds or connections are more susceptible to being pressured by associates, and even family, in ways which can put the individual at personal risk and present a danger to the integrity of Police personnel, premises, systems and data. A Police employee with criminal associates heightens the risk of information being misused, altered or deleted. Unlawful access may be given to Police premises, or the identity/location of staff may be disclosed to criminal elements. Police operations and the safety of other staff or the public could be harmed by any such actions. While after-the-event steps can be taken if concerns arise (e.g., moving a staff member to a less security sensitive area), it is accepted practice to do robust pre-employment screening to protect against people being put into positions in Police where such steps become necessary.

An issue that might be highlighted in this context is the fact that, under section 19 of the Criminal Records (Clean Slate) Act 2004, all historic convictions can be considered by Police during vetting of applicants for sworn roles, but not for non-sworn roles. Attention was drawn to this seeming anomaly in *Issues Paper 7: Administration*, where comment was made on the difficulty of understanding the logic behind applying different standards of rigour to sworn and non-sworn positions within Police. This could be an issue which there is support to revisit.

POSSIBLE ENHANCEMENTS

Current vetting practices are not backed by specific provisions in the Police Act. This highlights opportunities for legislation to play a role in supporting sound recruitment and employment decisions. For example, to deter unsuitable persons from seeking employment with Police, and to identify unsuitable people before any offer of Police employment is made, it might be asked whether it is appropriate to build into statute provisions enabling access to vetting information about prospective Police staff, including biometric data.

Philosophically, there may be no objection to use of legislation in this context. Police already holds biometric data about some sworn staff members for certain specific purposes (e.g., fingerprints to allow for elimination of any identifying details left by staff during forensic examination of crime scenes). These limited schemes operate with voluntary compliance, and there is no suggestion this somehow exposes the staff to any unfair action or a risk of unauthorised release or other misuse of the information. In fact, the increasing role of non-sworn staff in crime scene examination, exhibit management and interacting with victims and offenders, suggests a case for DNA sampling all staff for inclusion in an elimination database. Legislation might encourage such a move and offer

Views are welcome on opportunities to enhance the status quo, plus any other ideas people have on improving Police conduct and integrity

When undertaken with the informed consent and assistance of job applicants, pre-employment vetting can be a 'win win'

Known high-risk relationships or associations should not be allowed to threaten the integrity of policing

Consideration could also be given to applying a common standard for vetting all would-be Police staff for prior convictions

There is the ability for legislation to set a more certain environment for Police vetting

For example, a legislative platform would be valuable in allowing for more extensive DNA typing to be done of Police staff

There are precedents for both police and non-police employers to include their staff in DNA elimination databases

The possibility of DNA sampling for vetting purposes poses issues for family members of prospective staff

A more robust and integrated system would involve more comprehensive vetting of Police staff

Beyond those ideas already floated, there are a range of other possible vetting measures that might assist to provide greater assurance

Equally, it would be interesting to hear views on whether any current vetting issues are thought no longer necessary and/or desirable

greater certainty about the uses of such data and retention issues (notably, to avoid the costs involved in repeat exclusion sampling which currently occurs).

Incidentally, if there were a level of comfort about the idea of mandating routine collection of biometric data from Police staff, New Zealand would not be the first police service to introduce such a programme. Constabularies in England, for instance, take DNA samples from staff for inclusion in an elimination database. Tasmania Police also have a DNA profile database of staff for elimination purposes. In New Zealand, the Institute of Environmental Science and Research Limited (ESR) runs a similar initiative containing all ESR laboratory staff, which is seen as an essential part of operating in a DNA forensic environment.

A more challenging proposal might be to move beyond the routine collection of biometric data for an elimination database post-employment, to the use of such information as part of standard Police pre-employment checks.

Some may have privacy concerns or other reservations about how widely such data might be used. For example, familial DNA technology may increasingly enable a person's family members to be identified. The issue becomes whether the benefits of DNA typing all prospective employees outweighs perceived intrusion into other family members' rights.

One view is that family members should not effectively have their DNA gathered without consent, just because a relative seeks employment with Police. Given any cross-matching would only occur in order to trace offenders from DNA material left at crime scenes, others may take the view that the law should not be structured to assist people to evade detection if a crime has been committed. Moreover, privacy concerns may be mitigated by pointing to people's ability to opt out of any information provision exercise, accepting a consequence may be Police's unwillingness to employ them.

Similar considerations arise regarding the possibility of routine fingerprinting for non-sworn, as well as sworn, staff. Legislation could offer a more certain basis for this to occur, and clarify any safeguards thought necessary. Section 96A of New South Wales' Police Act 1990 provides a useful precedent in this respect.

The Police Act Review offers an opportunity to gauge sentiment on measures like these which may further assist Police to make sound recruitment and employment decisions. The ideas mentioned illustrate what might be possible, but they are by no means exhaustive. Other suggestions would be welcomed.

For instance, picking up on recommendations made by anti-corruption inquiries, there may be support to introduce a specific provision into a new Police Act that enables the Commissioner to require nominated staff to provide a financial or integrity statement. Such a provision is found in section 97 of New South Wales' Police Act 1990, and was recently proposed for adoption in Western Australia (see Hon G A Kennedy, *Royal Commission into whether there has been corrupt or criminal conduct by any Western Australian Police Officer* [Perth: Western Australia Government, 2004], volume 2, p 314). Commonly these requirements are limited to staff working in certain 'high risk' roles, such as drug squads and organised crime units.

Any ideas which run in the opposite direction would also be welcomed by the Police Act Review Team. This picks up the point made earlier about the sense some have it is unfair to expect near perfection of people who work for Police - or those who would seek to join Police. In this regard, it would be interesting to receive any views on particular aspects of current recruitment policies which prevent some people making a contribution as a member of Police. An example is the policy of recent Commissioners that no person who has received a drink-driving conviction may train to become a police officer, regardless of whether the conviction is in the distant past. A question for possible consideration is whether the Police Commissioner's ability to effectively set minimum entry standards in this way should be guided more by legislation.

Question 2: Do you favour legislation to clarify and/or boost Police's ability to vet staff? If so, how (e.g., supporting the use of biometric data for vetting purposes)? If not, why not? Are there any other vetting-related issues which you think should be addressed as part of the Police Act Review?

Oath of service

Taking an oath is an important symbolic step. Usually oaths of any description convey solemn and personal undertakings to carry out a certain function. This is currently the case for sworn members of Police, who take the constabulary oath of office (see section 37 of the Police Act). This oath highlights the bond of service to the activities of Police, as well as defining who can act as a constable.

One opportunity arising from the Police Act Review is to consider including an “oath of service” for all employees in new policing legislation. The purpose of such an oath would be to unify all members of Police with a common commitment to community service in Police, and support a shared bond between all staff. This oath would be complementary to any future *Code of Conduct* for all Police staff and the constable’s oath of office.

The notion of all employees making a public commitment when joining a police service certainly has precedents. For example, as provided for by section 36 of the Australian Federal Police Act 1979, Schedule 1 of the Australian Federal Police Regulations 1979 lists the following undertaking to perform police duties:

I ,..., undertake that I will, in the performance of my duties as a *member/*special member/
 *protective service officer/*special protective service officer of the Australian Federal Police,
 comply with the provisions of the Australian Federal Police Act 1979, the regulations made
 under that Act, the Commissioner’s Orders issued under section 38 of that Act and any
 lawful direction, instruction or order, whether written or oral, under section 40 of that Act.
 [* Delete if not applicable]

Within New Zealand, there are a wide range of groups which take public oaths to faithfully and impartially perform their duties (e.g., motor vehicle assessors, pursuant to clause 10(2) of Schedule 1 of the Motor Vehicle Sales Act 2003). Public servants working for Statistics New Zealand and the Department of Inland Revenue also have statutory obligations to make a declaration of secrecy/fidelity (see section 21 of the Statistics Act 1975 and section 81 of the Tax Administration Act 1994). A unifying oath of service for Police staff would thus not be entirely novel, and it may be valued by staff as a chance to formally express their commitment to serve the public as members of Police.

An oath of service for all Police staff could underline the significance of the responsibilities of being a member of Police, and reinforce the accountability of the oath-taker. If designed with an eye to Police’s mission and values, it could also act as a guide to how all members of Police are expected to conduct themselves and principles they are expected to uphold in performing their duties. Such an oath could provide a powerful expression of the need for high standards of ethics, integrity and conduct. It would be a public promise made by all those who contribute to New Zealand Police’s important work in the wider community.

If such an innovation were favoured, it would not replace the constabulary oath; which is likely to be carried across in a more modern form. Options for changing, updating, or removing the constabulary oath were explored by the Ministry of Justice in its 2004 Oaths Modernisation Review (see Ministry of Justice, *Review of Oaths and Affirmations: A public discussion document* [Wellington: Ministry of Justice, 2004], esp. pp. 43-46). The Ministry recommends retaining the constabulary oath, subject to amendments aimed at making the language contained in the current oath more contemporary. Although there is a current proposal to make such changes as part of the Oaths Modernisation Bill, it may make more sense to allow the constabulary oath to be considered alongside any new oath for all members of Police, as part of a Bill leading to a new Police Act.

WHEN SHOULD THE CONSTABULARY OATH BE TAKEN?

It may also be timely to provide legislative clarity on when the constabulary oath is taken. Given full police powers flow from when the constabulary oath is administered, questions arise whether the powers of a constable should be granted only once recruits have completed their initial training. This issue was hinted at in an earlier discussion document (*Issues Paper 7: Administration*), but may warrant closer examination here.

On the face of the existing legislation, the Commissioner of Police is able to decide whether or not it is appropriate for recruits to be assigned sworn status. There appears to

Only sworn members of Police take an oath under the current Act

Oaths can function to bind the oath-takers together with shared ideals and values ...

... and both overseas and local precedents for such an approach can be identified

There may be support for all members of Police to take a common oath of service

Any proposal to bring forward a new oath of service for all Police staff would not undermine the constabulary oath

It may be helpful to clarify the timing of the constabulary oath in legislation, as done in other jurisdictions

There has been some fluidity over the years in how this issue has been addressed

One of the oft-heard explanations for why the oath is taken so early in New Zealand does not seem to be overly compelling

Alignment with the standard practice overseas may offer a more sensible way forward on this issue

Differences in the current coverage of Police staff by a Code of Conduct suggest the possibility of developing a new all-embracing Code

The indications are a single Code is the way to move forward

be no explicit requirement in the 1958 Act or 1992 Regulations which would prevent a change to when recruits get sworn in as constables. In practice, over the last 20 years the timing of Police recruits taking the constabulary oath has varied between commencement or conclusion of training.

A scenario sometimes advanced in favour of early administration of the oath is recruits are occasionally called upon to help in large-scale police operations (e.g., labour intensive scene examination work), however the need for full police powers in these cases seems doubtful. Section 6 of the 1958 Police Act permits the Commissioner to warrant non-sworn members of Police to exercise police functions, with the exception of arresting or searching any person. This may be sufficient to meet any operational fieldwork situations recruits are involved in. The section 6 authorisation regime seems to work well enough when it is used to temporarily empower non-sworn staff to perform support roles to sworn staff (e.g., assisting with roadside 'booze bus' operations).

New Zealand's current approach to attesting police recruits as full constables at the commencement of training sits at odds with most comparable overseas jurisdictions, where the unattested status of trainees is confirmed in legislation, and language such as "probationer" and "student of policing" is used to reinforce the learning curve such staff are on. In overseas settings, attestation acts as a logical recognition of empowerment at the completion of police training, rather than something gifted on day one.

While there may be different views on whether attestation at the start or end of training is the better approach, and any change may well require legislative adjustments to allow recruits to undertake weapons training, attestation at the conclusion of training is consistent with the potential for a professionalised policing model discussed in *Issues Paper 3: Employment arrangements*.

In summary, an oath of service for Police may be considered a useful way to communicate the high service standards expected of members of Police, including those undergoing training. Although such an oath is not a novel concept, it would be new for New Zealand Police. If moves are to be made in this direction, therefore, it will be important to proceed cautiously to ensure there is appropriate clarity around how any new oath of service interrelates with the traditional oath of office taken by constables.

Question 3: Do you think there is value in a broader "oath of service" for all Police employees? Further, do you have a view on when the constabulary oath should be taken by people training to become constables?

A code(s) governing conduct and integrity matters

As noted earlier, Police's current framework for internally managing conduct and integrity issues involves different systems for sworn and non-sworn staff. There is no *Code of Conduct* for sworn staff, who are guided instead by punitive rules. Since the 1990s, non-sworn staff have been covered by a *Code of Conduct*, similar in many respects to the generic *Public Service Code of Conduct*.

The prospect of developing a single *Code* for all Police staff gained momentum during wage bargaining negotiations with groups representing Police employees in mid-to-late 2006. The agreed position reached during the negotiations was to develop and implement a combined *Code of Conduct* for all Police staff, which enables better management of employment-related issues. The Police Act Review is an opportunity to consider views on whether any such *Code* should be given a basis in legislation, and linking the *Code* to standard Police employment agreements would both strengthen the *Code* and the relationship between conduct and employment.

The idea of taking a comprehensive employment approach under the umbrella of a formal *Code of Conduct* or *Code of Ethics* expresses a desire to accelerate steps already being taken to better manage conduct and integrity issues within Police. For instance, an initiative under trial at present involves identification and support of 'at risk' staff through a specific "early intervention" policy. Responding to an international research finding that high volumes of complaints about police are generated by only a small number of staff,

the policy is designed to address potential problems at an early stage. Assessment of data, including public complaints and 'use of force' reports, helps identify if a particular Police staff member requires assistance through performance management, training or counselling. This is an effort to avoid or modify behaviours that may put the person at risk of conduct which generates concern. The desire to work constructively with staff to resolve any identified issues would be a theme carried into a new *Code of Conduct* or *Code of Ethics*.

A new *Code* would also be a natural place in which to restate important principles of policing. For example, it could confirm the commitment of all Police staff not to abuse their positions of authority. For constables especially, this could reinforce the importance of exercising discretion and ensuring they do not use more force than is reasonably necessary in the circumstances.

A key advantage of including sworn members in a *Code* environment would be to move on from the current disciplinary system, with its adversarial approach to performance and misconduct issues. The present system is out-of-step with modern employment practices, especially in the way it puts staff and supervisors in 'us and them' positions. The *Code* would move away from an adversarial approach to employment relations, allowing all but the most serious allegations of misconduct to be dealt with directly between staff and their managers. The most serious allegations could still be put before independent reviewers for a thorough hearing, and would continue to be dealt with alongside the separate and sometimes overlapping jurisdiction of the PCA.

It is also recognised that a *Code* with clear, widely-publicised standards is important, but on its own is unlikely to be enough to provide all the support staff need to know what is the 'right thing to do'. Managers have a critical role to play in communicating workplace ethics, and in reinforcing expectations of what are acceptable behaviours. This can be through formal means such as team training sessions or including ethical conduct as part of employee performance evaluations, and through informal means such as modelling the desired behaviours (setting a good example of ethical conduct) and finding opportunities for discussing work issues or situations that have an ethical component.

Under a *Code* environment the expectation of members of Police to abide by high standards of behaviour would continue but behavioural standards would be more clearly spelt out. Likewise, nothing in a new *Code* would seek to restrict the discretion of those who hold the office of constable; rather, it would help define the parameters of conduct within which discretion should be exercised.

It is also important to recognise the sometimes confrontational nature of policing and vulnerability of staff to false complaints. This requires any alleged police misconduct be dealt with in a way which preserves members' access to natural justice and procedural fairness. Nothing in a *Code of Conduct* or *Code of Ethics* would upset these key principles. Rather, it would respond to the need to affirm the commitment of all Police staff to high standards of ethics and integrity, and offer additional reassurance Police staff will act professionally.

Given the perceived strength of arguments in favour of having all Police staff working under a *Code* environment, remaining debate could centre on whether a *Code* is put on a statutory footing, or simply issued under the Commissioner's existing authority to set employment-related expectations for staff.

Ultimately, the answer to this question may come down to a preference, rather than a 'right' or 'wrong' approach. For instance, from a legal perspective, while the Commissioner of Police has the authority to issue a *Code of Conduct* or *Code of Ethics* for Police staff, there may nonetheless be benefits from giving a *Code* an underpinning in legislation. An example might be the way section 57 of the State Sector Act 1988 provides for the State Services Commissioner to set minimum standards of integrity and conduct across the public service. Arguably, such a legislative underpinning would increase transparency and signal the importance of a *Code* in Police's wider progression as a 21st century policing organisation. However, a potential trade-off to putting such a *Code* on a legislative footing might be it becomes more difficult to change, should this be called for in the future. In any case, it would be interesting to hear any views there are on the preferred way forward in this area.

A new Code could help to support an emerging culture of early intervention, which aims to 'nip trouble in the bud' before heavier duty options are needed

A mainstream Code of Conduct for sworn staff would offer options for a more streamlined, flexible and 'user friendly' system

It would also be consistent with the trend nationally and internationally to shift from rules-based systems to ones that are more principles-based

Leadership on ethics is important, and supervisors have a pivotal role in supporting ethical behaviour by Police staff

A new Code could also help to amplify or reconfirm some important principles of policing which are not up for change

Whether any such Code is enabled by legislation (as the current non-sworn Code is by regulation 30 of the 1992 Police Regulations) is a more open question

Question 4: Do you support giving a legislative basis to any new Police Code of Conduct or Code of Ethics?

POLITICAL NEUTRALITY

If there is movement to a Code environment for all Police staff, with a greater level of alignment with general employment practice, questions will arise about the ongoing relevance of some current provisions of the 1958 Police Act. One such provision is section 31 of the Act, which reads as follows:

31. Members not to engage in politics—

Subject to the provisions of sections 52 and 53 of the Electoral Act 1993, no member of the Police shall, while he remains a member, take part in any election of a member of Parliament or of a local authority prescribed in that behalf by regulations under this Act, whether as a candidate or in any other manner, otherwise than by voting: provided that nothing in this section shall apply to the discharge by any member of the Police of his duty at or concerning any such election.

Section 31 makes clear Police staff need to ensure their participation in political matters does not bring them into actual or perceived conflict with their duty to act in a politically-neutral way. This distancing is critical if Police is to maintain governmental and public confidence in the impartiality of actions taken, and advice given, by Police staff. Thus, although members of Police are free to offer themselves as candidates for public office, and to serve if elected, they are bound by the same general rules which apply to all other state servants in terms of political involvement at a national level. A framework is also created to allow similar rules to apply to any involvement in local body politics (for example, as a mayor or a councillor).

Section 31 anticipated that a further step would need to be taken if Police staff were to be prevented from standing for election in any particular (or all) local authority elections. This additional step was the relevant local authorities needed to be "...prescribed in that behalf by regulations" under the Act. However, this extra step has never been taken. It follows that Police staff are lawfully able to become elected local authority representatives, provided they first obtain clearance for such secondary employment, and their electioneering activities do not corrode their political neutrality as members of Police. On this basis, a small number of current Police staff do hold office as local councillors, as well as performing their policing duties.

While legally permissible, the possibility of conflicts of interest exist if a serving member of Police becomes involved in the functions of local government. Most obviously, a sworn member who sits on a local council could be asked to vote on by-laws which, in their role as a police officer, they could be called upon to enforce. Conflict of interest situations could also arise if non-sworn Police staff are closely involved in local government. For instance, it is possible to imagine a situation where a Policing Development Manager who served as a councillor might be faced with debates about local policing priorities in a council committee meeting. The possibility of such conflict of interest situations arising may have been heightened by the Local Government Act 2002, which requires local government to take a greater measure of responsibility for community safety. This has prompted many local authorities to establish increasingly formal arrangements with local Police commanders. Such scenarios illustrate the importance of ensuring conflict of interest situations are avoided.

One way to achieve this would be to take the same basic arrangements which apply to Police staff who wish to serve as Members of Parliament and translate them to any staff who wish to serve on local authorities. In short, they would be placed on leave from nomination day until the day following polling; or in some cases earlier, if their candidacy would materially affect their ability to perform Police duties satisfactorily, or be seen as independent. If successfully elected, the member would be required to resign from Police or take extended leave, using criteria established for secondary employment situations. If unsuccessful, the candidate could resume duty as a member of Police after polling day.

It is vital that police preserve objectivity and independence from political issues

This duty is backed by a specific section in the 1958 Police Act - as well as the Police Regulations 1992 and General Instructions issued by the Commissioner

Police staff still have the same basic rights to pursue political interests in their private lives as other citizens; and any conflict of interest issues could be addressed by a Code

Recent extensions to the mandate of local government may give greater cause for concern about potential conflicts of interest

One option would be to adopt the same sort of approach to local government as is used for election to central government

While such an approach may be welcomed as a way to manage the risks around (perceived or actual) blurring of distinctions between law-making and law-enforcement, and/or conflict of interest situations, it might be criticised for imposing unreasonable constraints on Police employees' rights of political expression. Despite this, it is notable such limitations have been seen as justifiable in Canada, where the Charter of Rights and Freedoms protects the rights of police to political expression in a similar way as New Zealand's Bill of Rights Act does (see regulation 58(4) of the Royal Canadian Mounted Police Regulations 1988).

As involvement of Police staff in national-level politics is addressed by sections 52 and 53 of the Electoral Act 1993, there are two main issues for consideration as part of the Police Act Review. First, opinion may vary on whether it is necessary or desirable to have specific provisions of new policing legislation re-cover ground already dealt with by the Electoral Act. Second, views may differ on whether new policing legislation should clarify equivalent protocols to apply if Police staff members wish to become elected local body politicians. The Police Act Review Team would be interested to receive any feedback on these issues.

Question 5: Do you believe there should continue to be separate legislative provisions in the Police Act aimed at ensuring the political neutrality of Police staff? If so, do you consider these provisions should extend to local authority representation?

"INCOMPATIBLE BEHAVIOUR"

Another provision of the Police Act which raises questions of ongoing relevance is section 5(A). It states:

5A. Members may be removed for incompatible behaviour—

- (1) The Commissioner may institute the removal of a member of the Police from that member's employment if, following an inquiry ... into alleged misconduct (in the case of a sworn member of the Police), or following an investigation into alleged serious misconduct (in the case of a non-sworn member of the Police), the Commissioner has reasonable grounds for believing—
 - (a) That the member has behaved in a manner which is incompatible with the maintenance of good order and discipline within the Police or which tends to bring the Police into disrepute; and
 - (b) That the removal of the member is necessary to maintain good order and discipline within the Police or to avoid bringing the Police into disrepute.
- (2) Subsection (1) of this section applies to behaviour of any kind including, but not limited to, sexual behaviour of a heterosexual, homosexual, lesbian, or bisexual kind.

This specific provision allowing for the removal of staff due to conduct deemed "incompatible" to good order and discipline, or bringing Police into disrepute, was introduced by a 1994 amendment to the Police Act. The provision is arguably redundant in both the current environment and also potentially under a more modern *Code of Conduct* or *Code of Ethics*.

In a more contemporary framework for managing employee behaviour, including any off-duty conduct which reflects on individuals' ability to do their Police jobs, the power to dismiss a staff member would normally be based on the person's competence, performance, conduct or integrity. The example given of "... sexual behaviour of a heterosexual, homosexual, lesbian, or bisexual kind" [section 5(A)(2)] also seems odd. On this basis, there may be general support to dispense with any equivalent to section 5(A) in a new Police Act.

Question 6: Do you support there continuing to be a special legislative provision dealing with "incompatible behaviour", or should this concept be incorporated into a *Code of Conduct* or *Code of Ethics*?

Perhaps the larger question is whether new policing legislation should deal with such matters at all

Unusually, the current Police Act contains a provision allowing removal of staff for behaviour that is "incompatible" with policing

The continuing relevance of such an "incompatible behaviour" provision seems doubtful, with the idea sitting behind it perhaps best rolled up in any new Code

Movement to a more contemporary Code environment would raise questions about channels which allow reports of suspected Code breaches

Different mechanisms may be appropriate for reports which are made internally versus externally, but views on this are welcomed

Opportunities for legislation to give additional support to high standards of behaviour by police might also be worth exploring

Integrity testing and drug and alcohol testing programmes are being looked to as useful initiatives in some jurisdictions

REPORTING OF SUSPECTED MISCONDUCT

When thinking about the possibility of a new *Code of Conduct* or *Code of Ethics*, a further issue relates to the reporting of suspected misconduct by Police staff.

Introducing a new *Code* is not only an opportunity to set, communicate and assure the public and Police staff about clear standards of Police behaviour and integrity, but also a chance to strengthen mechanisms for reporting any misconduct by Police staff. Some jurisdictions have specific legislative provisions which open up channels for such reporting, although arguably this is a matter which could sit at a policy level within a new *Code*.

Notably, where the situation involves a member of Police observing conduct by another staff member which appears to breach principles set out in the *Code* (e.g., a member harasses a colleague), it would be possible to include a positive statement in the *Code* which supports challenging that conduct (e.g., by bringing concerns about the behaviour to the attention of the member's supervisor or another senior person). Such an approach would seem to be no more than is expected of any member of the public observing wrong-doing, or in other organisations where oppressive conduct between peers is not tolerated.

Different considerations may apply in other cases. For example, it may be less clear how to appropriately handle a situation where a person who is not a Police staff member provides information to assist with an internal Police inquiry about alleged unethical behaviour by a member of Police. In this hypothetical situation, is there a duty to report back to the non-Police informant about what happens as a result of the internal inquiry, which is likely to be conducted under the *Code*? Using the analogy of a standard Police inquiry into a suspected criminal offence, there is no equivalent duty on Police to keep witnesses updated on the outcome of any Court process (although it is good practice to do so). Conversely, if the aim is to facilitate interested citizens to become partners in the success of a Police *Code of Conduct* or *Code of Ethics* (while de-escalating matters from the complaint-focussed jurisdiction of the PCA, where they can properly be dealt with by Police as an issue under the *Code*), there may be support to formalise a process of providing feedback to any citizens who bring apparent *Code* breaches to the attention of Police.

Question 7: Do you have any views on whether new Police legislation should contain provisions designed to encourage the reporting of any *Code* breaches? In addition, what ongoing involvement (if any) do you think it would be appropriate for Police to have with those who may bring apparent *Code* breaches to Police attention?

Question 8: Are there any other conduct and integrity related provisions in current police legislation which you believe should either be retained or dropped in the future?

Additional ways to support ethical behaviour

Continuing the theme of promoting high standards for Police staff, various other options exist for legislation to support ethical behaviour. To provide a sense of what may be possible, two opportunities worth discussing in this *Issues Paper* are the ideas of introducing formal integrity testing and/or substance use testing.

The possibility of Police adopting such testing programmes is not being floated as a way of promoting any particular measure, but rather as an example of the type of ethics-related initiative which could potentially find a place in new policing legislation. Discussion of integrity testing and substance use testing is a prompt for people to make their views known on practices which are increasingly being used in overseas police jurisdictions, and in the public and private sectors in New Zealand. While feedback on the specific examples of integrity testing and substance use testing would be welcomed, of perhaps more interest are views people have on the idea legislation might be used to mandate ethics-based programmes within Police.

ALCOHOL AND OTHER DRUG TESTING

A basic expectation of all Police staff is they should carry out their duties lawfully, safely and competently. It follows that members of Police should refrain from using alcohol or other drugs in ways which might impair their on-the-job performance. Where poor choices are made by Police staff about alcohol or other drug use, there are potential adverse safety and productivity consequences - for the member concerned, his or her work colleagues, and for the wider public. Particularly in safety-sensitive areas, like road policing or specialist squads (e.g., Search and Rescue, Armed Offenders, etc.), there is an imperative for staff working in such roles to exercise unimpaired judgement and act decisively. Alcohol or other drug use can prevent people meeting these basic expectations.

The issue is not just one of personal/public health and safety. Questions of professional ethics and integrity may also come into play where staff turn up for work despite doubts about their ability to effectively discharge their duties (e.g., because of the use of prescription medication, or the after-effects of drinking alcohol). The situation would be even more clear-cut if use of illegal drugs was involved. Moreover, illicit drug use by police employees is recognised as creating a serious corruption risk. Disclosure of any illegal drug use by police would also inflict reputational damage on the organisation, thus harming public confidence in the integrity of the police service as a whole.

In response to such concerns, workplace drug and alcohol testing programmes have been introduced to police forces in several jurisdictions around the world. In addition to schemes which are commonplace throughout the United Kingdom, extensive drug and alcohol testing programmes have been established by the Australian Federal Police, New South Wales Police, Queensland Police Service and others. Typically, these programmes have been given a legislative basis.

For example, the Queensland scheme was introduced as a new part of that jurisdiction's core police statute, following the passage of the Police Service Administration (Alcohol and Drug Testing) Amendment Act 2003. It enables, under certain circumstances, alcohol and other drug testing of recruits, police officers and civilian police staff members working in critical areas. The testing programme has twin objectives: "(a) to ensure appropriate steps are taken in the interests of the health and welfare of relevant members of the service; and (b) to enhance the public's confidence in the service and the integrity of the service" [section 5A.1 of the Police Service Administration Act 1990 refers].

If a similar type of testing regime were introduced by New Zealand Police, a number of issues would need to be carefully worked through in consultation with employees and their representative groups. Amongst other things, this would include the type of testing (e.g., urine versus oral fluid) and whether the testing was random, targeted, post-incident or based on some other selection criteria. These options present a range of policy choices, and final decisions would need to reflect New Zealand Police's specific environment. In particular, the context for assessing possible impairment from alcohol use would need to be worked through sensitively, with relevant considerations including the practicalities of staff based in rural locations or in specialist squads who may be called back when off-duty or during leave.

As a "good employer", there is an acknowledged need for Police to support any staff who experience personal problems with alcohol or other drug use which spills over into the workplace. There is also a need to provide assurance any inappropriate drug use by members of Police will not be tolerated where this calls into question the members' ability to do their jobs properly. These needs must be balanced with privacy interests of police employees, and the wider benefits to be gained from creating a supportive environment in which anyone with a substance-related problem is encouraged to seek out help.

While challenging, this balancing exercise has been successfully accomplished by a number of police forces around the world, and there is every reason to think similar success could be achieved by New Zealand Police. To this end, one of the outcomes of recent wage bargaining negotiations with groups representing Police employees was an agreement to jointly develop a rehabilitation-focussed drug and alcohol abuse identification and management programme. However, the Police Act Review offers an opportunity to consider wider views on the need (or otherwise) for such a testing programme, and whether any such programme should be put on a statutory footing.

Substance use can impede a staff member's ability to deliver policing services safely and effectively

A zero tolerance approach is taken to personal use of illicit drugs by police employees

Introducing such a programme is a protective step, and does not mean there is widespread substance abuse within a workplace

Testing programmes advance staff health/ welfare objectives, as well as assisting to provide assurance and protect against corruption risks

Challenges lie in understanding where conflicting rights and responsibilities meet in this area

Police managers and employee groups are seeking to grasp the nettle, and design a local programme which has a focus on rehabilitation

Legislation could establish a more certain environment for any such programme

Some jurisdictions have implemented formal integrity testing programmes

Integrity testing schemes vary in their simulation of misconduct opportunities

Typically, where such schemes have been introduced, they are established by legislative means

Opinion about such schemes has often warmed after initial scepticism and/or resistance

Given New Zealand Police's reputation as corruption free, however, some may perceive integrity testing as being 'a solution in search of a problem'

While there are some unique features of policing which would need to be appropriately reflected in any Police workplace testing programme, there are also likely to be lessons Police could learn from how drug and alcohol testing operates in other workplaces. An estimated 800 private and public sector organisations in New Zealand conducted employee drug testing in 2005/06, involving employers as diverse as personnel consulting firms, forestry companies and the New Zealand Defence Force. Views are also welcomed on any relevance of judicial guidance in cases like *NZEPMU v Air New Zealand* [2004] 1 ERNZ 614 to a possible Police workplace substance testing programme. (As this case does not provide a general authority to conduct substance testing, the role of legislation in mandating such testing is an important consideration.)

Question 9: Do you support additional legislative measures to provide reassurance about Police conduct and integrity? Specifically, do you have any views on whether new policing legislation should make provision for alcohol and other drug testing?

INTEGRITY TESTING

Another measure to detect and deter police misconduct is the use of formal integrity testing programmes. Such testing is not part of the mainstream employment environment in New Zealand, although it is used as an anti-corruption strategy by police forces in several Australian states (e.g., Victoria, New South Wales and Queensland), the United Kingdom, and by the New York Police Department. In essence, integrity tests simulate misconduct opportunities in order to gauge the responses of staff being tested. In some American schemes, covert agents are deployed in elaborate test environments (e.g., use of cash 'bait' at mock crime scenes), while the United Kingdom approach is angled more towards quality assurance, using 'mystery shoppers' to check for racism, sexism or neglect of crime victims.

These sorts of models of integrity testing raise obvious and significant policy, legal and employment issues. Concerns are expressed about the way staff are put into positions to 'pass' or 'fail', with the mere fact such tests are being used said to undermine the trust which should exist between an employer and its employees. To help mitigate concerns about integrity testing, detailed procedural guidelines have been developed by Ethical Standards Departments and Professional Standards Units in police forces which have introduced such programmes. Additional transparency and certainty is provided by putting the programmes on a legislative footing (e.g., see Part 10A of New South Wales' Police Service Act 1990).

One of the interesting aspects of how such schemes have been implemented overseas is the extent to which they appear to have gained growing acceptance. This trend has been described in a recent overview of such programmes (internal references excluded):

Many police unions have vehemently opposed integrity tests on grounds of entrapment, adverse effects on morale, inhibiting effects on police work, misdirection of scarce resources, and potential hazards. They have also argued that testing of police should not be introduced unless other occupations are also tested [R]andom testing in the NYPD was initially accompanied by outrage from officers but they came to accept it as a necessary evil to prevent corruption and protect the police reputation. In New South Wales a state-wide education program was conducted prior to implementation of targeted tests emphasis[ing] the slogan, "honest police have nothing to fear from integrity testing". The policy nonetheless was said to meet with considerable resistance, as well as some adverse media coverage. However, targeted testing became accepted as an essential anti-corruption tool by key stakeholders in policing in NSW; including the union, who argued it provided a means to remove officers who betrayed their colleagues and also to address public distrust of police.

Tim Prenzler, Senior police managers' views on integrity testing, and drug and alcohol testing (2006) *Policing: An international journal of police strategies and management*, vol 29:3, pp 394-407, p 397.

In some respects, integrity testing poses more challenges than testing for problematic alcohol or other drug use. Given New Zealand Police's reputation as corruption free, this begs the question whether an integrity testing programme is even needed.

On the other hand, the Police Act Review offers the opportunity to assess arguments there may be for and against such an initiative, at a point where there is no perceived crisis within Police driven by a high-profile incident. Periods of calm can be the best time for reasoned discussion and consideration. In addition, enabling integrity testing in legislation does not mean it has to occur, simply that it may occur if the Commissioner of Police saw a need for it at a future date.

Question 10: Do you have any views on whether new policing legislation should make provision for integrity testing?

Clarity around remedial options

Discussion about conduct and integrity and the possibility of testing for illicit drug use ultimately leads to thinking about what happens in any situations where Police staff 'fail' the test. This is a sub-set of the wider issue of being clear about what options the Police Commissioner has to deal with substandard performance or actual misconduct.

A theme running through *Issues Paper 3: Employment arrangements* was the extent to which the legislative arrangements underpinning Police employment might more closely reflect those of the wider community. This point is also relevant to the consideration of remedial options. Under standard employment law, it would not be necessary to set out in legislation the sorts of sanctions an employer might apply against an employee. The ability to apply such sanctions would typically arise under contract or common law. If Police was to operate under this more mainstream employment framework, it would involve significant departures from the current legal environment, set out in the 1958 Police Act and the 1992 Police Regulations.

Under existing legislation, Police's disciplinary regime is essentially statutory in character. This means if particular outcomes are not set out in legislation, they may be found not to exist. An example of this is the case of *Commissioner of Police v Walls* [1998] 1 ERNZ 224, where the Employment Court held an ability for Police to administratively transfer staff could not be used for disciplinary reasons, because such action was not expressly contemplated by the legislation.

If Police does not move to a more mainstream employment framework as contemplated in *Issues Paper 3: Employment arrangements*, one approach to address this situation would be to specifically list in new legislation any actions a Commissioner may want to take in response to cases of unsatisfactory performance or misconduct by Police staff. Section 5 of the current Act provides for removal from employment and, in a departure from mainstream employment practice, provides other possible sanctions. Relevant subsections of section 5 read:

- (4) Subject to –
 - (a) The provisions of this Act, any general instructions ... and any regulations made under ...this Act; and
 - (b) The conditions of employment set out in any agreement under ... this Act; and
 - (c) The conditions of employment set out in any individual contract of service under this Act,—
 the Commissioner may at any time remove any member of the Police from that member's employment.
- ...
- (7) Without limiting subsection (4) of this section, where the Commissioner is satisfied that any sworn member of the Police is guilty of any misconduct or neglect of duty, the Commissioner may impose all or any of the following penalties:
 - (a) Reduction to any rank, whether commissioned or otherwise:
 - (b) Reduction in seniority by any specified number of years:
 - (c) Reduction in pay for any specified period:
 - (d) A fine not exceeding \$500.

Another issue within the scope of the Police Act Review is clarity about options to tackle misconduct or poor performance

A theme in previous employment related discussion is a more mainstream approach in contrast to Police specific provisions

The current model is for such sanctions and remedial options to be spelt out in legislation

A legislated approach may be favoured again in a new Police Act and accompanying Regulations

The current Act lists a range of possible sanctions, some of which might not seem appropriate in a modern environment

Ideas are welcomed on whether there is value in subtracting from, or adding to, the current list of options

For example, an explicit 'loss of confidence' dismissal power exists in a number of Australian jurisdictions

In a recent 12 month period, 'loss of confidence' provisions were initiated 23, 26 and 32 times respectively in the New South Wales, Western Australia and Australian Federal Police jurisdictions

The dual role of the Commissioner as employer and as prosecutor hampers the ability to promptly act on employment matters

If these arrangements were retained it need not involve all the currently-available sanctions. For example, some may question the value in the Commissioner continuing to be able to impose a monetary fine on staff members, or to reduce a member's seniority by a specified number of years.

One area where it might be worth clarifying the Commissioner's ability to act, particularly if substantive changes to the disciplinary framework are not made, is clarifying the power to dismiss a member of staff who has committed serious misconduct. An option would be to introduce a specific provision in a new Police Act which clarifies the sanctions which can be imposed for serious misconduct. Such a move is consistent with recent discussion on a *Code of Conduct* environment with employee representatives.

One approach could be an explicit power to remove a member if the Commissioner forms the view that, due to the member's competence, integrity, performance or conduct, he or she is no longer suitable to continue service with Police.

Precedents for strengthening a Commissioner's dismissal powers on confidence issues exist in several Australian jurisdictions. Examples include section 33L of Western Australia's Police Act 1892, section 68 of Victoria's Police Regulation Act 1958 and section 181D of New South Wales' Police Services Act 1990. There are some points of difference between how these powers are expressed. For instance, the Victorian model ties assessment of the member's suitability to "(a) the member's integrity; and (b) the potential loss of community confidence in the force were the member to continue as a member of the force". However, all the Australian precedents contain due process protections, and do not allow the Commissioner to instantly fire an officer in whom he or she loses confidence.

It would be useful to obtain people's thinking on whether Police should adopt a more mainstream approach to sanctions for employment issues, or continue to deal with such matters in its own legislation. Although greater alignment with a mainstream employment framework might be beneficial, a counter view is that Police's employment of a large number of independent office holders requires some matters to be dealt with specifically in policing legislation.

Reflecting on this special character of the policing environment brings us to the final consideration in this discussion on managing conduct and integrity. A significant feature for discussion is the impact of the Police Commissioner being required to act as both an employer as well as a prosecutor. Unlike other employers, the Commissioner cannot deal internally with a matter of alleged criminality. Arguably the Commissioner's 'hands are tied' at a time when he or she needs to show the leadership expected as the guardian of trust and confidence in Police. This poses the question of whether the public interest may be better served if a Police Commissioner can act in an employment context where any cases of the most serious misconduct come to light, notwithstanding there might be parallel criminal processes or PCA investigations underway.

Question 11: Do you believe policing legislation should clarify the remedial options which can be used to deal with performance or misconduct issues? Alternatively, do you believe policing legislation should reflect more mainstream arrangements for dealing with performance or misconduct issues?

Question 12: If the existing framework for dealing with such issues is retained in a new Police Act, do you favour supplementing or narrowing the current set of options the Commissioner has to deal with poor performance or misconduct? What (if any) are your suggestions? Finally, do you favour the Commissioner having an ability to take employment action despite the fact criminal charges may be contemplated or are already underway?

4. Conclusion

This eighth and final *Issues Paper* has raised a series of questions about how legislation can best support assurance about the conduct and integrity of New Zealand Police staff. The need for such assurance is fundamental, as the community support required for effective policing rests in large measure on those acting in Police's name having high ethical and behavioural standards. The *Paper* has presented choices about how those standards are set and encouraged; how Police might provide greater public confidence on conduct and integrity issues; and measures which could help unify all members of Police, and instil in them a shared spirit of service to the community.

The Police Act Review's wide-ranging discussion about policing offers a welcome opportunity to think about these matters. The development of a new Police Act and associated set of Regulations offers a vehicle to promote initiatives which might benefit from an underpinning in legislation. And although the *Issues Paper* does not seek to anticipate the outcomes of the Commission of Inquiry into Police Conduct which is due to report back on its findings in 2007, views expressed in response to this *Issues Paper* may help to complement any conduct and integrity recommendations which are made by the Commission of Inquiry next year.

As with the other Police Act Review *Issues Papers*, the intention is to open up discussion. The aim is to test the waters and detect any general consensus around how key topics might be presented in later phases of the 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.

The intention in this Issues Paper has been to create space for a discussion about conduct and integrity issues within policing

This Issues Paper will also help prepare the way for assessing any conduct and integrity recommendations that come forward from other channels

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

How to make your views known

We are inviting written responses to this *Issues Paper* by 31 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
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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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