In Confidence

Office of the Minister of Police

Cabinet Legislation Committee

The Policing (Police Vetting) Amendment Bill: Approval for Introduction

Proposal

1 This paper seeks approval to introduce the Policing (Police Vetting) Amendment Bill 2024.

Policy

Background

- 2 The Police vetting service is a key contributor to the wellbeing of New Zealanders. Its main purpose is to contribute to public safety (particularly the protection of children and vulnerable members of society) and national security. It does this by providing Police vets that enable approved agencies to assess the suitability of a vetting subject for a relevant role.
- 3 A Police vet comprises criminal conviction history and a summary of relevant and substantiated non-conviction information (if any) held by Police at that point in time.
- 4 In this way it differs from a criminal conviction history check that is undertaken by the Ministry of Justice in a wider range of circumstances. A Police vet also requires the consent of the vetting subject to release the information, so differs from some information Police may share with third parties under the Official Information Act 1982 or the Privacy Act 2020. It is also a separate process from the information Police provides for national security clearance purposes.
- 5 The Police vetting service has undergone significant growth and change since it was established in 2000, with demand for its services increasing each year. Currently more than 14,000 agencies are approved to access the service and over 650,000 Police vets are provided each year.
- 6 Most vetting requests do not result in the release of any information. This is because Police either holds no information on a vetting subject or holds no information that is relevant to the purpose of the vet and sufficiently substantiated. Approximately 10 percent of Police vets include only a criminal conviction history, and less than five percent include a summary of nonconviction information.

7 Over time, there have been increasing legislative requirements on agencies to obtain a Police vet on individuals. Most notably, organisations employing children's workers (including teachers, healthcare workers, and social workers) are required under the Children's Act 2014 (the Children's Act) to undertake a safety check on employees. This includes a requirement for a Police vet. These legislative requirements are set by regulating agencies, not Police.

No statutory framework for the Police vetting service

- 8 There is currently no statutory framework for the Police vetting service, rather it is provided operationally. Police currently releases personal information in a Police vet to an approved agency with the consent of the individual concerned, in line with the Privacy Act 2020.
- 9 A review of the Police vetting service in October 2016 by the Independent Police Conduct Authority (IPCA) and the Office of the Privacy Commissioner (OPC) concluded that the lack of a statutory framework creates legal risks and uncertainties for Police and vetting service users – for instance, about what information Police considers for release.

Policy of the Bill

- 10 On 6 July 2020, Cabinet agreed for the Policing Act 2008 (the Policing Act) to be amended to provide a statutory framework for the Police vetting service [SWC-20-MIN-0086, CAB-20-MIN-0323 refers].
- 11 The Policing (Police Vetting) Amendment Bill (the Bill) provides a statutory framework for Police vetting, with strong legal direction and clear and consistent policy for Police and users of the Police vetting service.
- 12 This framework provides for the current Police vetting service to continue in substantially the same manner as at present. At a high level, the Bill:
 - 12.1 sets out the purposes of Police vetting;
 - 12.2 sets out who can request a Police vet;
 - 12.3 requires a request for a Police vet to be made with the consent of the individual who is the subject of the request;
 - 12.4 sets out the information that may be disclosed in a Police vet;
 - 12.5 sets out the circumstances in which certain information may be disclosed in a Police vet; and
 - 12.6 requires updates to Police vets for children's workers, when they are subsequently charged or convicted of a specified offence.
- 13 Additionally, the Bill enables Police to deliver service improvements in the future that could enhance public safety and increase the efficiency of the Police vetting service. The Bill does this by:

- 13.1 enabling Police to make arrangements with an agency to provide updates on a Police vet in agreed circumstances, with the vetting subject's consent; and
- 13.2 enabling Police to identify a class of individuals who can request a Police vet on themselves to be provided to approved agencies.
- 14 The following sections describe what the Bill does in further detail, in line with previous policy approvals.

The purpose of Police vetting

- 15 The purpose of Police vetting is to assist an approved agency to assess the suitability of a person for a role in relation to:
 - 15.1 the care and safety of children, young persons, or other vulnerable persons (such as elderly in care);
 - 15.2 the education of children and young persons; or
 - 15.3 national security or law enforcement (such as border protection or biosecurity officers).
- 16 These roles could be undertaken in a voluntary or employment setting.
- 17 Police vetting is also undertaken for the purpose of assessing suitability to obtain or sponsor, a New Zealand visa, or for citizenship purposes.

Approved agencies may make a vetting request

- 18 The Bill provides that an agency can only make a vetting request if they are approved to do so by Police, or they are required by legislation to obtain a Police vet (such as under the Children's Act). Police may approve an agency to make vetting requests if Police considers it is appropriate for the agency to do so, having regard to the activities of the agency (and whether those involve roles where a vetting request is appropriate). An approved agency and a vetting subject cannot be the same individual.
- 19 All agencies that are approved prior to the commencement of the Bill will continue to be approved.

Police vets can only be provided with consent

20 The Bill provides that a request for a Police vet can only be made with the consent of the vetting subject or, if the vetting subject is under 16, the consent of a parent or guardian. A Police vet cannot be undertaken on a vetting subject who is under 14 years of age.

Information that can be provided in a Police vet

21 The Bill provides that a Police vet must include any criminal conviction history. This is subject to the limitations of the Criminal Records (Clean Slate) Act 2004 that places restrictions on the release of criminal conviction history in certain circumstances.

22 The Bill also provides that a Police vet may include a summary of nonconviction information. Non-conviction information can include any information Police holds about the vetting subject, such as active or past charges, warrants, infringement offences, demerits, overseas convictions (if held), any family violence incidents the person may have been involved in, investigations that did not result in charges, and interactions the vetting subject has had with Police.

Disclosure tests for release of non-conviction information

- 23 Non-conviction information can only be released if Police considers it is relevant to the role. An assessment of relevancy involves having regard to the risk the vetting subject could pose in the role for which they are being vetted, and whether the information could inform this.
- 24 Police is also required to take reasonable steps to ensure the information is accurate and not misleading. The level of substantiation required will depend on the nature of the role the subject is being vetted for and the associated level of risk posed.
- 25 There are additional specific disclosure tests related to the following four types of information:
 - 25.1 **suppression orders** information subject to a suppression order (including criminal conviction history) can only be released if Police is satisfied that the agency has a genuine interest in receiving the information because the information is substantially relevant to the purpose of the vet;
 - 25.2 **youth information** information about a vetting subject when they were under 18 can only be released if Police is satisfied that the agency has a genuine interest in receiving the information because the information is substantially relevant to the purpose of the vet;
 - 25.3 **mental health or substance abuse** information that may relate to this can only be released if Police is satisfied there is a link between those issues and any criminal conduct of the vetting subject, or the issues present a direct risk to another individual;
 - 25.4 **involvement in family violence as a witness or victim** information of this kind can only be released if the purpose of the vetting request is to assess the suitability of the vetting subject:
 - 25.4.1 for a role working in the vetting subject's home environment;
 - 25.4.2 to be granted or to sponsor a New Zealand visa; or
 - 25.4.3 to be granted New Zealand citizenship.

26 For visa or citizenship applications, information about a vetting subject's involvement in family violence, as witness or victim, would only be released where the Police vet would include other family violence information – such as where the vetting subject was involved in family violence as an aggressor or mutual participant. This allows the Citizenship Office and Immigration New Zealand to better consider the full context of the situation.

Updates on Police vets for children's workers

- 27 A Police vet is a point-in-time assessment of Police-held information. However, the Bill requires Police to provide agencies with updates on an existing Police vet where the vetting subject is a children's worker (as defined by the Children's Act), and they are subsequently charged or convicted of a serious offence (as specified in the Children's Act).
- 28 This approach aligns with current Police practice, and the consent of the vetting subject will continue to be required as part of the initial Police vet. It assists agencies in meeting their statutory responsibility not to employ or engage an individual as a core children's worker who has been convicted of a specified offence (unless they have received an exemption).

Updates on Police vets upon request for approved agencies

- 29 If requested by the agency, the Bill enables Police to make arrangements to provide updates on other Police vets, where considered necessary by Police, and with the vetting subject's consent. This service could improve public safety, by alerting agencies to a new risk that arises in respect of a vetting subject.
- 30 While the Bill enables these additional update services to be requested, in practice they will not be bespoke arrangements. Instead, Police is likely to offer a standardised update services for particular sectors that agencies could request. For instance, this service could be offered to agencies vetting those who have a particular care and safety role with children.
- 31 As these services are not currently provided, and would present additional costs for Police, providing this service would likely require changes to the Policing (Cost Recovery) Regulations 2017 (the Cost Recovery Regulations).

Indemnity for Police from liability for good faith actions

- 32 The Bill provides Police with indemnity from proceedings where a Police vet is undertaken in good faith. This indemnity balances the need to disclose information for public safety and national security purposes with individual privacy rights.
- 33 These are equivalent protections to those available to government agencies releasing information under the Official Information Act 1983 or the Privacy Act 2020. They do not protect Police from liability where information is not released in good faith.

34 A vetting subject will also continue to have access to the right to make a complaint to the Privacy Commissioner and the Independent Police Conduct Authority if they consider Police's actions in releasing a Police vet were not appropriate.

In the future, authorised individuals may also make vetting requests

- 35 Currently, only approved agencies can make vetting requests. The Bill sets out a new framework enabling Police to identify classes of individuals who can be approved to make requests on themselves. The resulting Police vet would then be provided to approved agencies that the individual nominates.
- 36 When setting out a class of individuals, Police will be required to consider the potential efficiency gains of enabling that class of individuals to make vetting requests on themselves. This could include classes of individuals that are likely to require their Police vet to be provided to more than one approved agency at the same time, where the vet is for the same purpose. This could reduce the regulatory burden on the agencies.
- 37 Police could also consider any efficiencies that may be gained if an authorised individual requests updates on their Police vet (which is also enabled by the Bill). Such a service would keep their Police vet up to date, enabling it to be readily available to additional approved agencies in the future.
- 38 However, Police does not currently have the systems in place for individuals to be able to make requests. Implementing this service would require investment in systems development and would likely require changes to the Cost Recovery Regulations.

Cost recovery regulations

- 39 The Bill makes a minor change to the regulation-making power in the Policing Act that relates to methods of cost recovery. The current regulation-making powers did not clearly enable cost recovery for some of the service improvements enabled by the Bill.
- 40 The Bill clarifies that cost recovery regulations can set charges which differ based on the class of person (such as whether the requestor is an agency or an individual), and the time taken to deliver the service (such as a future expedited service for a higher fee).

Consequential amendments

41 The Bill also updates references to Police vetting in primary and secondary legislation (for example, the Education and Training Act 2020).

Minor policy changes for Cabinet approval

42 Previously, Cabinet agreed for some matters to be included in the Bill. Further work suggested that these matters are better provided in a different manner. I therefore propose the following changes to previous Cabinet policy approvals:

- 42.1 **not providing an administrative review process in the Bill:** the Bill does not set out the administrative review processes that already exist (including Police internal processes prior to releasing a vet, raising issues with Police, the Ombudsman, or the Privacy Commissioner) as there is no intent to amend these;
- 42.2 **not providing for professional organisations to voluntarily disclose information in the Bill**: the Bill does not provide for professional organisations to be able to voluntarily disclose to Police where their members who have been a vetting subject are deregistered due to misconduct, as this can already occur;
- 42.3 **not providing for viewing and consenting to release in the Bill:** the Bill does not provide for a vetting subject to have the option to view their Police vet before consenting to it being released or provide for a review process of any vet prior to release:
 - 42.3.1 when initially considered by Cabinet, these provisions were agreed subject to funding. However, funding has not been identified to support the required system development; and
 - 42.3.2 as systems develop Police could provide these options operationally. This is already the case in limited circumstances, such as when information that was previously not released in a vet is now going to be released due to its relevancy to a different role.

Withholding some information from a vetting subject

- 43 One further change relates to the protection of certain information.
- 44 The Bill generally requires Police to respond to a vetting request as soon as reasonably practicable. In practice, Police has a 20-working day service level agreement. 99.7% of vets are currently delivered within 20 days, and approximately 15% are completed within 24 hours.
- 45 In rare circumstances, a vetting subject may not be aware of some of the information that Police holds about them, for example, at an early stage of an investigation. Releasing this information in a Police vet could place criminal investigations, vulnerable people, privacy, or national security at significant risk. This information may be highly relevant to the vet, and a vetting subject is likely to become aware of it, given their right to view their Police vet.
- 46 In most instances, Police will prioritise progressing the matter so that the vetting subject becomes aware of it as part of the investigation. In very rare circumstances, this is not possible. Cabinet previously agreed that in these exceptional circumstances, Police could provide the information to the approved agency but require that the agency keeps this information confidential and unavailable to the vetting subject.

- 47 Police has advised me that this approach it would be contrary to the purpose of vetting for there to be a version of a Police vet that the vetting subject cannot access. It would also be difficult to ensure the vetting requester does not share the information with the vetting subject.
- 48 I therefore seek to replace this previous approval, to instead provide for an exception in the Bill where Police can refuse to provide a Police vet where providing a Police vet is likely to prejudice the maintenance of the law. This would reflect both existing exemptions provided in the Privacy Act (such as section 53(c)) and current Police practice.

Impact analysis

Regulatory Impact Statement

49 A Regulatory Impact Statement (RIS) for the paper *Policing (Vetting Service) Amendment Bill: Policy decisions* was submitted to Cabinet in July 2020. A cross-agency panel from the Treasury Regulatory Quality Team and the Ministry of Business, Innovation and Employment reviewed the RIS and considered it met the Quality Assurance criteria.

Compliance

- 50 The Bill complies with:
 - 50.1 the principles of the Treaty of Waitangi;
 - 50.1.1 Police considered the principles of the Treaty of Waitangi in developing the policy and the Bill, and no inconsistencies were identified;
 - 50.2 advice was not sought from the Treaty Provisions Officials Group on Treaty of Waitangi provisions as there are no Treaty Provisions in this Bill requiring advice;
 - 50.3 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 50.3.1 the draft Bill is currently being vetted by the Ministry for Justice for compliance with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. My officials do not anticipate any issues will be identified;
 - 50.4 the disclosure statement requirements (a disclosure statement has been prepared and is attached to the paper);
 - 50.5 the principles and guidelines set out in the Privacy Act 2020;
 - 50.5.1 in line with the approach under the Privacy Act 2020, the Bill only allows the release of information about a vetting subject with their prior consent, and Police is required to take

reasonable steps to confirm the accuracy of information prior to its disclosure;

- 50.6 relevant international standards and obligations;
- 50.7 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

Agency consultation

- 51 The following agencies were consulted on this paper and the Bill: Oranga Tamariki – the Ministry for Children, the Ministry of Education, the Ministry of Health, Te Whatu Ora – Health New Zealand, the Ministry of Justice, the Ministry for Social Development, the Ministry for Women, the Department of Corrections, the Department of Internal Affairs, the Ministry of Transport, Te Puni Kōkiri – the Ministry of Māori Development, Whaikaha – the Ministry of Disabled People, the Ministry of Business, Innovation, and Employment, the Ministry of Defence, the Ministry of Primary Industries, the New Zealand Customs Service, the Treasury, the Public Service Commission, the Ministry of Regulation, the Department of Prime Minister and Cabinet, the Office for Seniors, Te Arawhiti – the Ministry of Māori-Crown Relations, the Government Communications Security Bureau, the New Zealand Security Intelligence Service, Te Kāhui Kāhu (Social Services Accreditation), Waka Kotahi - New Zealand Transport Agency, the New Zealand Defence Force, the Civil Aviation Authority, Sports New Zealand, Maritime New Zealand, the Office of the Privacy Commissioner, and the Independent Police Conduct Authority.
- 52 A number of agencies specifically indicated support for the Bill. Based on feedback, some technical changes have been made to the Bill to improve clarity and ensure it achieved the policy intent. This paper has also been updated accordingly.
- 53 There were two more significant concerns raised during consultation about the impact on Māori and the good faith indemnity provision. These have not resulted in any amendment to the Bill.

Impact on Māori

- 54 A concern was raised was that there could be disproportionate impact on Māori due to over-representation in the criminal justice system and unconscious bias.
- 55 Some groups, including Māori and Pasifika, are over-represented in the criminal justice system, and the information Police holds reflects this and other wider societal factors.
- 56 However, the purpose of Police vetting is to assist agencies with their decisionmaking about roles that involve the care and safety of children, young people, and vulnerable adults, roles that involve the education of children or young people, and roles that involve law enforcement or national security. The agencies may be legislatively required to request Police vets (for example as

part of safety checks for children's workers under the Children's Act 2014) or may have employment or volunteer policies that meet the purpose of Police vetting.

57 I consider it is justified to release information that it is relevant to the role and that Police has taken reasonable steps to ensure information is accurate and not misleading. The decision to employ or engage an individual is ultimately up to the agency.

The good faith indemnity

- 58 The Privacy Commissioner provided the following comment for inclusion in this paper.
 - 58.1 As my Office set out in the Cabinet policy paper, I support the establishment of a statutory framework. However, I have significant concerns over the provision indemnifying NZ Police from civil or criminal proceedings for any good faith disclosures of vetting information. Significant harms can result from the disclosure of potentially prejudicial information that may not be tested in a Court. If Police have failed to take adequate steps to be satisfied of the reliability of that information and ensure that the information is sent to the appropriate agency, it should be liable for the harm caused to the individual as a result. I suggest that indemnification should be associated with the individual officer rather than NZ Police as an organisation and recommend that the provision is amended to reflect this.
- 59 Given the concerns raised by the Privacy Commissioner, I have considered whether the previously agreed policy to provide Police with this good faith indemnity is required. I believe that it is warranted.
- 60 A Police vet is a consented service in which information could be released which may, if prejudicial, have implications for an individual's ability to be employed or engaged in a particular role. Given the strong policy rationale behind providing Police vets to approved agencies, including the safety of children and vulnerable people, it is appropriate that there is an indemnity to encourage Police to err on releasing rather than withholding information.
- 61 The indemnity means that there is no liability for Police from good faith actions or omissions in relation to providing Police vets. It is important to note that not all information held by Police is released in a Police vet. Information must meet threshold tests of relevancy and substantiation before it can be released, as provided in the Bill.
- 62 This approach is consistent with the good faith protections provided in the Privacy Act 2020 and the Official Information Act 1982 (for both the agency and employees). The same policy imperative underpinning the indemnities in these Acts applies when Police release information in a Police vet.

63 Furthermore, the indemnity does not affect the right to complain Privacy Commissioner and the Independent Police Conduct Authority.

Public consultation indicated high levels of support for a statutory framework

64 In 2018, Police publicly consulted on establishing a statutory framework for PVS. 76 submissions were received from a cross-section of agencies and individuals. 92% of submitters supported a statutory framework for the Police vetting service for greater clarity, certainty, transparency, and consistency.

Consultation with the government caucus and other parties

65 Consultation has been undertaken with the government caucus and other parties represented in Parliament.

Binding on the Crown

66 The Bill will amend the Policing Act, which binds the Crown.

Creating new agencies or amending law relating to existing agencies

67 The Bill does not create new agencies or amend laws relating to existing agencies.

Allocation of decision-making powers

68 The Bill does not involve the allocation of decision-making powers between the executive, the courts, and tribunals.

Associated regulations

- 69 The Bill does not require regulations to be made to bring the Bill into operation.
- 70 The Police vetting service operates on a cost recovery basis. Amendments to the Cost Recovery Regulations may be made in the future to enable cost recovery of any new services that Police provides subsequent to the Bill being enacted.

Other instruments

71 The Bill does not include any provision empowering the making of other instruments that are deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

72 The Bill does not contain a definition of Minister, department, or chief executive of a department.

Commencement of legislation

The Bill will come into force on the day after the date of Royal Assent.

Parliamentary stages

74 The Bill holds a category 5 priority on the 2024 Legislation Programme (to be referred to select committee in 2024). I recommend the Bill is introduced in October 2024, referred to the Justice Committee, and passed in May 2025.

Proactive Release

75 I propose to proactively release this paper after the Bill is introduced.

Recommendations

I recommend that the Cabinet Legislative Committee:

- 1 **note** that the Policing (Police Vetting) Amendment Bill (the Bill) holds a category 5 priority on the 2024 Legislation Programme (to be referred to select committee in 2024);
- 2 **note** that the Police vetting service contributes to public safety (particularly the protection of children and vulnerable members of society) and national security;
- 3 **note** that the Bill amends the Policing Act 2008 to provide a statutory framework for the Police vetting service;
- 4 **note** that the Bill enables Police to deliver service improvements in the future that could enhance public safety and increase efficiency;

Policy of the Bill

- 5 **note** that as agreed by Cabinet [SWC-20-MIN-0086 refers, CAB-20-MIN-0323], the Bill:
 - 5.1 sets out that the purpose of Police vetting is to assist an approved agency to assess the suitability of a vetting subject:
 - 5.1.1 for roles that involve the care and protection of children, young persons, or vulnerable persons; the education of children or young people; or national security or law enforcement;
 - 5.1.2 to obtain or sponsor a New Zealand visa, or citizenship;
 - 5.2 requires that an agency can only make a vetting request if they are approved to do so by Police, or required by legislation to obtain a Police vet;
 - 5.3 requires that Police vets can only be made with the consent of the vetting subject or, if they are under 16, the consent of a parent or guardian;
 - 5.4 provides that no Police vet can be made in respect of a vetting subject who is under 14;

- 5.5 requires that Police respond to a vetting request as soon as practicable;
- 5.6 provides that a Police vet must include the criminal record (unless the Criminal Records (Clean Slate) Act 2004 provides otherwise);
- 5.7 makes transparent the types of Police-held information that may be considered for release by Police in responding to a request for a Police vet;
- 5.8 provides that a Police vet may include any information Police holds, if Police is satisfied the information is relevant to the purpose for which the Police vet is made, and Police has taken reasonable steps to ensure the information is accurate and not misleading, subject to additional disclosure tests for information that:
 - 5.8.1 is subject to a suppression order by a court or tribunal, or other statutory prohibition on publication;
 - 5.8.2 relates to the vetting subject when under the age of 18;
 - 5.8.3 may relate to the mental health or substance abuse of the vetting subject;
 - 5.8.4 relates to family violence (within the meaning of s 9 of the Family Violence Act 2018) where the vetting subject has been a victim or witness;
- 5.9 requires that Police provide agencies with updates on Police vets where the vetting subject is a children's worker, who is charged or convicted of an offence specified in Schedule 2 of the Children's Act 2014;
- 5.10 enables Police to make arrangements to provide updates on other Police vets, where requested, considered necessary by Police, and where the vetting subject's consent is obtained;
- 5.11 enables Police to identify classes of individuals who can make a vetting request on themselves, for a Police vet that will be provided to approved agencies, subject to funding for systems development;
- 5.12 provides an indemnity for Police from any liability arising from actions taken in good faith in providing Police vets;
- 5.13 makes amendments to regulation-making powers for cost recovery, to enable cost recovery of services provided by the Bill;
- 5.14 makes consequential amendments to references to Police vetting in other legislation and regulations;

Policy decisions

- 6 **note** that Cabinet previously agreed for the Bill to include some further matters;
- 7 **note** that further work through the drafting process has identified that these matters are better provided in a different manner;
- 8 **agree** to the following changes to previous Cabinet policy approvals:
 - 8.1 that the Bill does not set out the administrative review processes that already exist for Police vetting;
 - 8.2 that the Bill does not provide for professional organisations to voluntarily disclose to Police where their members are deregistered due to misconduct;
 - 8.3 that the Bill does not enable, subject to funding, a vetting subject to have the option to view their Police vet before consenting to it being released;
 - 8.4 that the Bill does not provide for Police to release a Police vet to an approved agency that would be kept confidential and unavailable to the vetting subject;
 - 8.5 that the Bill include an exception to the requirement to provide a Police vet where providing it is likely to prejudice the maintenance of the law;

Parliamentary stages

- 9 **note** that the Policing (Police Vetting) Amendment Bill holds a category 5 priority on the 2024 Legislation Programme, (a priority to be referred to Select Committee in 2024);
- 10 **approve** the Policing (Police Vetting) Amendment Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 11 **agree** that the Bill be introduced in October 2024;
- 12 **agree** that the government propose that the Bill be:
 - 12.1 referred to the Justice Committee for consideration;
 - 12.2 enacted by May 2025.

Authorised for lodgement

Hon Mark Mitchell Minister for Police