

Police Act ***Review***

*Building for a modern
New Zealand Police*

Perspectives on policing

*An analysis of responses received on
the Police Act Review Issues Papers*



February 2007

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Introduction

In March 2006, Cabinet agreed to a comprehensive review of the legislative arrangements for policing, resulting in a rewrite of the 1958 Police Act and its accompanying set of regulations.

Responsibility for leading the review was given to New Zealand Police, as the organisation most directly affected by the existing legislation, with unique insights into its strengths and weaknesses. The mandate for the review was broad-ranging, signalling a desire for a national conversation about New Zealanders' expectations of policing. A green light was given to go back to first principles, to challenge things taken-for-granted, and to encourage public debate.

'Testing the waters'

To allow New Zealanders to articulate what kind of police service they want, and to enable them to have a say in shaping the kind of legislation which might help deliver that style of policing, three phases of public consultation were devised. The first of these public consultation phases began in June 2006, with the release of the first of eight *Issues Papers*. These were designed to 'test the waters' and stimulate discussion on significant policing topics. The themes selected for the *Issues Papers* were:

- Principles
- Governance and accountability
- Employment arrangements
- Community engagement
- Powers and protections
- Relationships
- Administration
- Conduct and integrity

The *Issues Papers* were progressively released over a six month period, with copies available in printed form as well as online via a dedicated website (<http://www.policeact.govt.nz>). The *Papers* were widely publicised and distributed to a range of individuals, agencies and groups.

In parallel, a platform for debating some of the *Issues Papers* was created by convening four discussion forums

and a symposium, in conjunction with Victoria University of Wellington's School of Law, School of Government and Institute of Criminology, and Auckland University of Technology's School of Social Sciences. These events brought together key thinkers from New Zealand and overseas to discuss principles of policing, governance and accountability, community engagement, and the increasingly networked state of security and safety services.

Who responded?

Having opened up discussion, people were invited to provide feedback on the 100+ questions posed in the *Issues Papers*. Written submissions could be provided by post, fax, email or using an online response option on the Police Act Review website. Indicative deadlines for responding to each *Issues Paper* were set six to seven weeks after the release of each *Paper*, although any responses received up to the final deadline of 31 January 2007 were included in the analysis of submissions.

Overall, 226 separate responses to *Issues Papers* were received from 132 different submitters. Not all submissions sought to answer every question posed in a particular *Paper*, although comprehensive responses were provided by a number of Police-related organisations (notably, the two union groups which represent the bulk of Police staff - the New Zealand Police Association and the Police Managers' Guild Inc). In addition to submissions made by individual Police employees, respondents came from government sector agencies (e.g., the Department of Corrections), Crown entities (e.g., the Office of the Privacy Commissioner), the local government sector (e.g., elected community boards), various interest groups (e.g., Safer Communities Foundation New Zealand), community groups (e.g., law centres) as well as individual members of the public.

On a numerical basis, *Issues Paper 3: Employment arrangements* received the most responses, with 42 submissions. This included a high proportion of responses from individual Police employees, perhaps not surprisingly given the subject matter of

the *Paper*. *Issues Paper 4: Community engagement* also generated a large response, with 40 submissions received. A number of these were from individual city or district councils, community boards and a submission from Local Government New Zealand (incorporating feedback provided by representatives from 14 local authorities). At the other end of the spectrum, *Issues Paper 6: Relationships* generated the least number of submissions, with just 10 submissions received.

What did the submissions say?

This report presents a summary analysis of the feedback received during this initial public consultation phase of the Police Act Review. It draws on the written responses to the eight *Issues Papers*, as well notes which were taken at the four university-based discussion forums. It does not include perspectives which were aired at the symposium on networked policing, as the proceedings of this day-long event have already been separately published (accessible online from: <http://www.policeact.govt.nz>).

This report provides an indication of the level of support for ideas which were put forward in the *Issues Papers*, and highlights common themes which emerged in the responses. Care has been taken to reflect the breadth of views received, whether from private individuals, sector groups, government departments, Police staff or their union bodies. As this was a 'testing the waters' phase, priority was placed on the range of views presented, rather than adopting a strict quantitative approach. While some numbers are included in the following commentary, they should be treated with caution, as submissions ranged from those sent in by a single individual to those (e.g., from the Police Association) which can be taken to represent the views of thousands of people. With this caveat in mind, indications are given of whether there were "mixed views," "general support," "some support," and so on, to give a sense of the general reaction from submitters to various possibilities which are floated in the *Issues Papers*.

Direct quotations have been used liberally to represent the individual voices of respondents. While some editing was done in the interests of brevity or clarity, efforts have been taken not to alter the original intent of respondents, or to take statements out of context. Where appropriate, quotes are attributed to submitters; although in the interests of privacy, quotes from people who made submissions in a personal capacity have not been attributed by name.

Next steps

Looking forward, this report will help to inform the preparation of a discussion document, called *Policing Directions in New Zealand for the 21st Century*, to be released in mid 2007. The discussion document will outline the government's proposals for new policing legislation, and will form the basis for the second phase of public consultation during the Police Act Review. Submissions on the discussion document will be called for over a two month period, and there will be a series of public meetings to seek direct feedback. *Policing Directions in New Zealand for the 21st Century* will provide another opportunity for New Zealanders to have a say on the future legislative arrangements for policing.

Executive summary

Principles

Structure of the Act

- There was support for a new Police Act to be enabling and set out broad principles, with matters of detail not put into primary legislation. Some emphasised the need for appropriate checks and balances if much of the detail was to be left to secondary legislation.

Consolidation of Police-related law

- Although there was a level of support for the idea of consolidating police-relevant aspects of other legislation - predominantly police powers - some worried it might prove difficult and overly bureaucratic.

Reflecting the special character of New Zealand policing

- There was support for drafting the new Act in a way that emphasises the New Zealand way of policing, with respondents identifying a number of themes they felt contributed to the special character of New Zealand policing.

Principles for the process of developing a new Act

- The most common suggestion for other process-type principles to take into account when drawing up new legislation was compliance with the New Zealand Bill of Rights Act. Overall, most respondents focussed their attention on guiding principles for policing.

Principles of policing

- There was support for including a set of guiding principles for policing in a new Act, although there was little consensus on the scope of the principles. The most favoured options for inclusion were ethics-type principles and Peel's principles (possibly with more contemporary wording).

Clarifying the purpose of New Zealand Police

- There was wide support for legislatively defining Police's role and functions, although participants at a discussion forum on the topic generally disagreed this was the best way to go.

Governance and accountability

Options for strengthening and formalising Police's governance and accountability arrangements

- There was broad support to clarify the relationship between Police and government in legislation, in particular to confirm the independence of Police and to define the relationship between the Commissioner of Police and the Minister of Police.

Legal status of Police

- There was general support for clarifying the status of New Zealand Police as a legal entity, although there were mixed views about referring to Police as an "instrument of the Crown".

Police's name

- There was strong support to keep New Zealand Police as the official title of New Zealand's police, rather than shifting to other possible names (for instance, "New Zealand Police Force").

Appointments

- Formalising the appointment processes for the Commissioner and Deputy Commissioners in its current form was favoured by most respondents. There was also support for statutory criteria to guide the appointment processes for these roles. Submitters tended to support either introducing an 'operational experience' requirement, or adopting more flexible criteria.

Terms of engagement

- There was a strong preference to retain the Remuneration Authority as the body which determines the pay of the Commissioner and Deputy Commissioners. Fewer suggestions were received on who should set the Commissioner's and Deputies' other conditions of employment.
- There was a spread of views on the performance review arrangements for the Commissioner. Of those who addressed the Deputy Commissioners' performance review arrangements, most favoured the Commissioner undertaking such reviews.

Tenure of senior officers

- Fixed terms for appointment as Commissioner and Deputy Commissioner were favoured, although some respondents felt a five year term was too long. A provision for re-appointment was supported by some, although others felt this might lead to overly-long tenures.
- There was support for non-exhaustively stating the grounds for suspending or removing a Commissioner or Deputy in legislation. Safeguards to protect appointees from political interference were also suggested.
- There was a level of support for specifying a process if a Commissioner or Deputy is suspended or removed, but some felt the breadth of the Commissioner's role would make such a process unworkable.

Role and functions of the Commissioner

- There was some support for broadly listing the Commissioner's responsibilities in the new Act, however some felt this might create reporting responsibilities which could impede the independence of the Commissioner.

Clarifying the relationship between the Commissioner and Minister

- There was some support for clarification of when ministerial directions are appropriate, although there was no consensus on how precise the clarification should be.
- Situations where matters of policy and administration arose were considered appropriate for ministerial direction. The specificity of the direction was suggested as another way of classifying appropriate areas for direction. Areas of operational/constabulary independence were generally seen as inappropriate for ministerial direction. Others felt directions would be inappropriate without prior consultation with the Commissioner and/or Cabinet.

Providing for ministerial directions in a new Act

- There was some support for providing a ministerial directions power in the new Act. If a ministerial directions power were to be legislated for, respondents generally preferred presenting a copy of the direction to Parliament, and/or publishing a copy in the *Gazette*, as ways of making it publicly known the Minister has given a direction to the Commissioner.

Ministerial ability to request reports from the Commissioner

- There was some support for compelling a Commissioner to provide reports on the request of the Minister, with little discussion of whether other types of communication between Ministers and the Commissioner should be set out in statute.

Help with assessing Police's performance

- Most submitters felt Police's existing statutory reporting obligations needed to be rationalised.

Provision for inquiries

- There was support for retaining the power to set up an independent inquiry, although views were mixed on who should hold such an inquiry. Respondents generally favoured leaving the make-up of the inquiry to the person convening it.

Employment arrangements

More closely aligning to the state sector standard

- There was support for new policing legislation to reflect the principle that whatever employment arrangements apply to the rest of the state sector should also apply to Police, although some felt this should be limited due to the 'uniqueness' of the role and functions of Police.

Commitment to act as a 'good employer'

- There was support to remove the qualification on the 'good employer' principle which exists in the current Police Act. Alignment with the state sector was a common reason for supporting such a move. Some felt any limits due to the nature of police work should be explicitly stated, while others felt operational limits meant the "as far as possible" rider should be retained.

Staffing options

- There was enthusiasm to introduce more flexibility into Police's employment arrangements. The three options with most support were a model linking roles to powers and training; some specialist jobs being removed from the sworn-only domain; and more flexibility between sworn and non-sworn roles. Many respondents favoured some form of checks and balances.

Entry points to Police

- There was a mixed reaction to new legislation making clear provision for direct entry of suitably-qualified Police staff. Overall, a desire emerged for a "best person for the job" approach, with a fair process, appropriate training, thorough vetting, and ongoing supervision.
- There was support for legislation expressly allowing overseas police working under the Commissioner's control for short term stints. Longer term work received a mixed reaction, with a strong focus on the necessary amount of training and vetting. Several respondents raised the idea of using overseas exchanges.
- There was support for new policing legislation to make explicit allowance for transfers of staff to and from non-Police agencies, although some support was conditional on training expectations. Opposition to such a move was often based on a reluctance to allow staff from non-Police agencies into sworn roles.

Supporting senior staff

- Mixed support was given to legislation continuing to limit senior managers to five year terms of appointment. Arguments for retention varied, while the most common reason for change was aligning with current employment law and dealing with performance issues in other ways.
- There were mixed views on who should be responsible for building management and leadership capability within Police. Reaction was also evenly divided between accepting and rejecting a statutory requirement for the Commissioner to build such capability within Police. The main reason for legislating seemed to be increasing the focus and priority of leadership building, while the dominant reason for opposition was a view it was inappropriate to legislate for what is a standard expectation of any state sector employer.

Professionalism and skill portability

- There was little in-depth discussion on this issue. Overall, there was support for a professional policing model, although there was little support for enshrining such a model in legislation.

Medical standards and fitness requirements

- There was support for the Commissioner retaining the right to set fitness standards in legislation. However, numerous submissions sought a review of the current testing regime.

Superannuation

- Reaction was mixed to keeping the Commissioner's power to compel sworn staff to contribute to a superannuation scheme. Perceived benefits of this model were highlighted by supporters, while opponents argued for better alignment with non-sworn staff and the wider state sector.

Employment relationship problems

- There was support for the Commissioner to retain the current statutory defence to personal grievance actions on operational grounds, although few respondents expressed a preference for where it should be located in legislation. Those who supported doing away the defence felt it would conflict with the Commissioner's 'good employer' obligation.
- There was wide support for transferring comprehensive jurisdiction of Police employment disputes to specialist employment institutions. The dominant reason for this was increased alignment with the state sector, and with mainstream employment practice.

Industrial action

- There were mixed and strongly held views on whether Police staff should have the right to take industrial action. Support for the ability to take strike action was generally limited to action meeting a public safety test and/or 'working to rule'. Opposition came from those who felt industrial action by police would imperil public safety, and possibly violate the constabulary oath of office. Many felt that whatever the final position, there should be one rule for sworn and non-sworn staff.

Wage bargaining and arbitration

- There was some support for retaining the current 'final offer' arbitration model, including some which saw this as the *quid pro quo* for sworn staff having no right to strike. Others rejected the 'final offer' arbitration model, often in favour of a 'down the middle' approach.

- There was unanimous support for a review of the present arbitration criteria, with some stating they should go wider than the current criteria. There was strong support for a system of arbitration where both parties are able to nominate matters for consideration by the arbitrator.

Employee representative groups

- There was some support for allowing Police staff to have the same general options for representation as other employees, rather than limiting rights of representation to pre-defined police service organisations.

Secondary employment

- Overall there was a positive reaction to lifting conditions for secondary employment to a statutory level, although some felt legislation on this topic was not necessary (recommending instead that this could be dealt with in a Code of Conduct). Of those who mentioned a possible legislative model, the Ontario Police Services Act gained some support.

Community engagement

Options for communities to engage with Police on setting priorities and determining services

- There was no consensus on a legislative process to underpin connections and priority setting between communities and Police. Those who supported legislation often stated formalising current practice was their preferred option. Opposition to this idea came from those who believed current arrangements work efficiently and allow for greater flexibility.
- There was divided opinion on the idea of spelling out in legislation a process for consultation between Police and territorial local authorities. Opponents felt it was unnecessary and would duplicate the Local Government Act 2002. Supporters felt it would ensure greater consultation through a consistent and transparent process.

Local Police performance and accountability

- There was a mixed response to the idea of making it a legislative requirement for police to report results of their activities to local areas. Respondents often supported this concept on the basis it would increase Police-community engagement, while those who

rejected it either felt it was unnecessary or favoured less formal incentives for greater reporting, such as a policy guideline. There were few submissions on whether it would be appropriate for Police to report to territorial local authorities, with mixed support for the idea in those submissions which did.

Provisions empowering active involvement in policing by interested citizens

- There was a variable response to the idea of formalising Police volunteer roles in legislation. Generally speaking, there was opposition to giving volunteers a limited range of police-like powers, with concern expressed that such volunteers could be used as a 'stop-gap' for a shortage of fully-trained Police staff, and could even lead to vigilante activity.

Special constables and other civilian reserve models

- There was some support for formalising police support roles, although this was qualified by a number of respondents. Supporters suggested checks and balances, such as appropriate training, identification, selection processes and protections. Opposition came from those who thought current legislation was adequate, with one submitter proposing an alternative to the current practice of giving temporary sworn officers all the powers of a constable.

Powers and protections

The most appropriate statutory home for police powers

- Most respondents believed the Police Act would be an inappropriate place to locate most police powers, mainly due to the need for continual revision as other statutes are amended. One respondent felt it depended on the purpose of the new Act. Some respondents suggested a cross referencing system in the new Act.

Improving public understanding of police powers

- The most commonly proposed suggestions to increase understanding of police powers were cross referencing the powers in a schedule to the new Act, and/or making the powers more accessible by publishing them on Police's website.

Testing whether particular powers are necessary and/or desirable

- Varied suggestions were received on which (if any) current police powers should be transferred to other agencies. Some of the more common suggestions included the enforcement powers of agencies such as Customs, Immigration and the Ministry of Fisheries. However, some respondents were against transferral of powers where it was done because of insufficient Police resources. Concerns were also raised that the enforcement staff of other agencies might not be as accountable or as well trained as police.

Opportunities for greater clarity about policing practices

- General support was given to codifying practices that currently have no statutory backing, such as the youth fingerprinting scheme and use of undercover agents. Cautions were expressed that such a move could allow non-codified practices to be challenged in the Courts.

Section 57: Identifying particulars

- There was support for revising section 57 of the current Police Act to clarify when identifying particulars can be retained or must be destroyed. Some respondents favoured extending powers to take particulars, while others rejected this. There was a similar mix of views on when identifying particulars should be destroyed.

What particulars may be taken

- There was support for updating section 57 to allow a wider range of biometric data to be used for identity confirmation purposes. A number of suggestions were offered on safeguards which could usefully accompany such a revision.

Where particulars may be taken

- There was some support for broadening section 57 of the current Police Act to enable police to require production of identifying particulars outside of police stations. Some respondents believed existing safeguards would suffice, although others made additional suggestions. Ideas included setting clear parameters on where and how biometric data could be collected, and rules to ensure data collected would not be retained or stored on any Police database.

New technology

- There were several suggestions on how to ensure police powers under other legislation might most effectively support modern technology, including sharing identification information with Environmental Science and Research Limited (ESR) to reduce identity fraud, empowering the Commissioner to authorise suitable technologies as they arise, and adding a verification scheme to licences to target their fraudulent use.

Section 57A: searching detainees

- Some widening of search powers (particularly in light of the Corrections Act 2004) were suggested, as was allowing scans to search for drugs or to promote staff safety.

Police equipment

- There was some support for providing more certainty in legislation around the use of equipment by Police. While some were in favour, others believed it could limit future flexibility and restrict the independence of the Commissioner.

Information sharing provisions

- There was general support given to strengthening the ability to share information between Police and its partner agencies. Some saw this as a role for policing legislation, while others preferred non-legislative mechanisms, such as memoranda of understanding.

Changing the ability for Police to enforce particular offences

- There was qualified support for legislation to extend police enforcement responsibilities for some offences, with some respondents supporting an extension mandated through other Acts, while others sought safeguards around the use of any extended powers.

Introducing whole new powers

- Although some respondents thought it would be unnecessary, most submitters gave support for legislation to extend general police powers in particular areas.
- There were mixed views on the adequacy of current police powers in specialised areas. Several respondents felt powers were generally adequate,

while others highlighted areas of concern. Some submissions suggested that, where special powers were needed, they might be better located in separate legislation.

Allowing for greater targeted empowerment of non-sworn Police staff

- There was some opposition to new legislation allowing for a greater range of powers to be exercised by staff who are not fully-warranted constables. Balancing this, there was some support for extending limited powers to non-sworn staff for specific roles, such as jailers and prisoner escorts, so long as adequate training was provided.

Enabling special powers to be used by a select group of staff

- There was mixed support for legislation to allow for new ring-fenced powers to be used by supra-warranted officers. However, no respondents argued against existing examples of where additional powers are allocated to senior and/or specially-trained Police staff.

Allowing for police (and police-like) powers to be exercised by others

- The prospect that police(-like) powers could be exercised by other than Police staff was opposed by most submitters. Examples cited of where extending police(-like) powers to other agencies might make sense included 'secondary' law enforcement roles, such as investigating Electoral Act offences.

Facilitating access to police powers

- There was unanimous support for maintaining the office of constable as an access point to general police powers; the main factors being the historical nature and respect for the oath, and the lack of compelling reasons to change the *status quo*.

Police-specific offences

- Further protections were suggested for Police staff, such as limits on civil and criminal liability and name suppression. As a counterpoint, an independent review body for policing was suggested by several respondents, to strengthen the scrutiny of actions by Police staff.

Protections for people who interact with Police staff

- There were mixed views on whether new policing legislation should clarify the duties of care police owe to particular members of the public. In general, concerns centred on how a duty of care could workably be defined without overriding other principles. There was also some support for addressing the roles and protections of members of the public who assist Police staff.

Relationships

Clarifying Police's broader relationships

- There was a mixed response to spelling out in legislation the type of relationships Police has with other agencies, with varying suggestions on the level and detail of any such statements. Some saw an opportunity to include in legislation a principle outlining Police's relationships, while others thought Police's relationships were better described in corporate documents.

Relationships with justice and enforcement partners

- There was a mixed reaction to clarifying in legislation Police's relationships with justice sector agencies and law enforcement partners, with those in support generally suggesting a broad or principles-based approach.

Specific relationships with monitoring agencies and oversight bodies

- There was some support for a new oversight mechanism which might recognise the range of public and private agencies involved in policing and security activities, although no consensus emerged on the best model for such a body.

Prosecutorial relationships

- There was a mixed reaction to whether legislation should set out a process for the Commissioner to seek independent advice on prosecution decisions. There was some support for providing a statutory ability for the Commissioner to transfer prosecutorial responsibility to someone such as the Solicitor-General, where police officers were charged with offences.

Recognising Police's increasing role in international affairs

- Respondents supported clarifying Police's international relationships in a non-restrictive way, with a number approving of the Australian Federal Police Act model. Opinions were divided on whether this should include incorporating the United Nations (Police) Act 1964 and Crimes and Misconduct (Overseas Operations Act) 2004 into new policing legislation.

Administration

Composition of Police

- Including a statement about Police's staff composition in a new Act was generally opposed.

Establishment numbers

- Providing for maximum and/or minimum staffing strengths in new policing legislation was also opposed, mainly because respondents believed it would unnecessarily restrict flexibility.

Rank structure

- There was opposition to specifying the ranks Police staff can hold in legislation. Some respondents thought this would be more appropriate in regulations made under the new Act, while others believed it should be left to the Commissioner's discretion.

Commissioner's flexibility to assign ranks

- No consensus emerged on whether it would be helpful to clarify in legislation the Commissioner's ability to designate specific ranks held by sworn (and potentially non-sworn) staff in certain situations.

Recognising Police staff

- Although a number of respondents supported addressing the need to help identify Police staff, there was little support for giving specific legislative backing to such administrative issues.

Chain of command

- There was some support for clarifying in legislation the duties of Police staff to act under the Commissioner's direction and control, and to follow the lawful orders of superiors, although suggested methods of doing so varied.

Appointment of acting office holders and the delegation of certain functions

- There was some support for policing legislation to address the appointment of acting office holders and delegation of functions, particularly to give the Commissioner more choice in appointing an Acting Commissioner.

Ability to issue directions or guidance to Police staff

- There was a mixed reaction to legislation playing more of a role in the process by which the Commissioner issues circulars, Codes of Practice or other forms of guidance to Police staff. Some felt the current largely unlegislated situation works effectively. Others felt it might be useful for legislation to clarify the hierarchy of corporate documents.

Physical property

- A common theme was that any legislation relating to Police's administration of physical property should not be overly prescriptive, with the general feeling being that these matters were more appropriate for informal directions by the Commissioner.

Intellectual property

- There was some support for strengthening the current offences of impersonating a member of Police and unauthorised use of Police uniforms and related articles. In addition, there were suggestions offered on offences relating to unauthorised use of Police's intellectual property.

Payment

- There were divergent views on the possibility that policing legislation include new ways of contributing to Police's funding base. Some advocated for cost-recovery in relation to alcohol outlets, large commercial events and certain search and rescue call outs, while others raised concerns about chipping away at the model of policing being funded through general taxation.

Legislating for an automatic review of the new Act

- There was mixed support for a clause in the new Act to initiate an automatic review. No submissions were received on the likely need for a specific regulation-making power, or on other matters currently in the Act or Regulations which no longer require legislative backing.

Conduct and integrity

Behaviour standards

- There was support for Police employees having to display standards of conduct and integrity higher than is generally expected of others in the community, with mixed support for a distinction between on-duty and off-duty/public and private behaviour.

Vetting

- There was wide support for legislation to clarify and boost Police's ability to vet staff. Common suggestions were the use of DNA checks and audits of financial records.

Oath of service

- There was a mixed reaction to the idea of a broader 'oath of service' for all Police employees. A majority of submitters supported the constabulary oath being taken at the end (rather than at the beginning) of recruit training.

Code(s) governing conduct and integrity matters

- There was some support for giving a legislative basis to any new Police Code of Conduct or Code of Ethics, with the most common suggestion being for a provision enabling the Commissioner to issue such a Code(s).

Political neutrality

- There was a mixed reaction to retaining separate legislative provisions aimed at ensuring the political neutrality of Police staff. Just over half the respondents favoured retaining such a provision for national politics, and approximately a third of respondents supported extending these requirements to local body politics.

Section 5A: Incompatible behaviour

- There was wide support for removing the existing legislative provision dealing with "incompatible behaviour" and placing it in a Code of Conduct or Code of Ethics.

Reporting of suspected misconduct

- The option of legislative provisions to encourage reporting of any Code breaches was generally opposed. Several submitters favoured encouraging such action through a Code of Conduct or Code of Ethics. Few respondents expressed a view on whether Police should have ongoing involvement with individuals who bring apparent Code breaches to Police attention.

Other conduct and integrity issues

- Other Police conduct and integrity related provisions in current legislation suggested as being appropriate for carry-over or deletion were: providing protection for individuals who report misconduct; using a more mainstream approach to employment law issues within Police; and placing all Police conduct and integrity issues into a Code of Conduct, rather than in an Act.

Alcohol and other drug testing

- Few submissions were received on additional legislative measures which might provide reassurance about Police conduct and integrity. Several submitters were in favour of alcohol and other drug testing for Police staff, but did not want such a scheme codified in legislation. Nevertheless, a majority of respondents supported making provision for alcohol and other drug testing in new policing legislation. Several submitters rejecting random testing, however, only giving support to targeted testing.

Integrity testing

- There was a mixed reaction to the possibility of providing for integrity testing in new policing legislation. Of those who supported such a move, the majority supported targeted testing only. Random testing was felt by most respondents to be unnecessary given New Zealand Police's international reputation as a non-corrupt police service, with additional concerns about the likely costs of any random testing programme.

Clarity around remedial options

- There was a mixed reaction to legislatively clarifying the remedial options which can be used to deal with performance or misconduct issues, although few submissions were received on this issue. There was support for policing legislation to reflect more mainstream arrangements for dealing with performance or misconduct issues. Respondents did not approach the two questions as being mutually exclusive, however.
- There was majority support for the Commissioner to have an ability to take employment action against staff despite the fact criminal charges may be contemplated or are underway. Views were split on whether the Commissioner's options to deal with poor performance or misconduct should be supplemented or remain in their current state, with several suggestions on how to improve on the *status quo*.



Issues Paper 1: Principles

Q1 Do you agree with the suggestion that the new Police Act be an enabling piece of law that sets out broad principles, whilst matters of detail are saved for secondary/tertiary legislation?



Of the 23 responses directly answering the question, 19 supported it, with the remaining four giving qualified or limited support. Overall, it was suggested including broad principles could make the primary legislation briefer and easier to navigate. Respondents suggested the following examples of what principles could usefully be included in a new Act:

- The roles, functions and important elements of Police
- Political neutrality and the relationship with government/other agencies
- The importance of fairness and upholding human rights
- Broad employment principles, including the right for Police staff to take industrial action.

Three respondents cautioned about including only broad principles. Several worried it was possible the resulting legislation could appear comparatively simple, but have a plethora of complex rules behind it. In addition, they were cautious about saving details for secondary/tertiary legislation, given a perceived practice of migrating some things down from legislation to policy, with a corresponding loss in consultation requirements. However, most respondents generally agreed details should be left for secondary/tertiary legislation to help "future proof" the new Act.

Crown Law supported the inclusion of principles as a "useful tool," but pointed out tension may arise between the principles of openness and clarity and the principle of flexibility; stating a flexible approach may lead to a preference for important matters to be left to supplementary legislation for ease of modification, while the principle of openness would suggest all important matters be included in the new Act to allow greater public accessibility.

There was support for a new Police Act to be enabling and set out broad principles, with matters of detail not put into primary legislation. Some emphasised the need for appropriate checks and balances if much of the detail was to be left to secondary legislation.

Q2 Are you in favour of the new Police Act being a logical place to consolidate police-relevant aspects of other legislation?



There was a level of support for consolidating police-relevant aspects of other legislation in a new Act, with 17 of the 20 responses favouring this suggestion. Mostly, respondents did not elaborate on their reasons for advocating such a move, although one submitter supported including police powers on the basis it would facilitate public knowledge, while another submitter cited the importance of all police-relevant legislation being kept together.

Those who were against consolidating police powers in the Act wrote of the complexity it would entail, which could reduce ease of use for the public, and the need for amendments to the Act when police powers were modified under other statutes. Several submitters felt this complexity would thwart the goal of the Act being an overarching or "quasi-constitutional" piece of legislation.

Conditional support came from respondents who wanted to define the amount of detail that would be included - several stating that while some discussion on the scope of police powers was desirable, an "absolute one stop shop" was not. As an example, one response supported the inclusion of powers related "broadly to police functions, roles, and police conduct," but did not support including powers related to enforcement.

A commonly proposed alternative was listing Police's broad powers in the new Act and then cross-referencing to the particulars in relevant legislation.

Although there was a level of support for the idea of consolidating police-relevant aspects of other legislation - predominantly police powers - some worried it might prove difficult and overly bureaucratic.

Q3 Do you support drafting the new Act in a way that emphasises the special character of New Zealand policing? If so, are there specific ways you would like to see this expressed?



The idea of drafting the new Act in a way that emphasises the special character of New Zealand policing was broadly supported, being favoured by 16 of

the 17 respondents. Five submitters did not elaborate on their reasons for supporting the idea. Of those who did elaborate, several common themes emerged:

- The principle of unarmed policing
- The role of community policing
- The value in police independence
- Various relationships/partnerships Police has with communities, Maori and Pacific groups
- Acknowledging the role of the Treaty of Waitangi (including the possibility of codifying the principles of the Treaty in the new Act)
- Recognising New Zealand as a multicultural society.

Further issues were raised by a single respondent each, including Police's commitment to restorative justice, the contribution of staff conduct to New Zealand Police's "special character," the role of transparency in policing, and the role played by New Zealand Police in overseas deployments.

While some respondents believed relationships with particular ethnic groups should be emphasised, others preferred an inclusive or "all-encompassing approach" to avoid singling out specific groups.

One respondent who was against emphasising the special character of policing in a new Act regarded it as unnecessary, given that "the special character of policing in New Zealand is implicit in the legislation."

There was support for drafting the new Act in a way that emphasises the New Zealand way of policing, with respondents identifying a number of themes they felt contributed to the special character of New Zealand policing.

Q4 **Apart from those already suggested, are there any other process-type principles you think should be taken into account when new Police legislation is drawn up?**



The majority of responses to this question addressed various principles respondents wanted to see in new legislation, and are incorporated with the responses to Q5 of the *Issues Paper*. Of the remainder, six responses suggested additional process-type principles.

The most common suggestion (three responses) was compliance with the New Zealand Bill of Rights Act 1990.

One respondent urged compliance with the Treaty of Waitangi, the Privacy Act 1993, Legislation Advisory Committee guidelines and relevant Cabinet Office processes.

The Human Rights Commission was "generally pleased" with the principles articulated in the *Issues Paper*, and supported any process which would result in legislation that is "clear, unambiguous and capable of being understood by the public at large."

The Police Association suggested that detailed matters should be located in a companion Act to the new framework legislation for Police, giving the example of a statute dealing with employment arrangements. It added that this companion Act should be "not easily changed."

The most common suggestion for other process-type principles to take into account when drawing up new legislation was compliance with the New Zealand Bill of Rights Act. Overall, most respondents focussed their attention on guiding principles for policing.

Q5 **Would it be worth including in a new Police Act a set of guiding principles for policing? If so, what principles should be included? Are any principles more important than others?**



While several respondents reinforced the basic principles identified in the *Issues Paper* itself (impartiality; openness; accountability; respect for human rights; partnership; representativeness; and a commitment to effective, efficient and ethical service delivery), others proposed their own. The following 'sets' of principles, roughly in descending order of popularity and perceived importance, were identified by respondents as worthy of inclusion:

- Ethics-type principles
 - Independence
 - Impartiality
 - Accountability
 - Respect
 - Professionalism
 - Honesty
 - Integrity
- Peel's principles (in some cases updating the wording was suggested)

- Principles derived from the New Zealand Bill of Rights Act
- Principles guiding Police's relationships
 - Cooperation
 - Coordination
 - Community engagement
- Maintenance of law and order/safety and security
- Maintenance of adequate frontline resources
- Safe communities
- Representation of all ethnic groups
- Investigation and resolution of crime
- Leadership
- Responsiveness/innovation.

The most favoured option was ethics-type principles, with six responses. Peel's principles also received support from multiple respondents, including participants at the discussion forum which debated *Issues Paper 1*.

Generally, the Department of Corrections supported the inclusion of guiding principles for policing, but advised that Police could be left open to judicial review if the principles were not followed. This view was also expressed by the discussion forum participants. The Department of Corrections also suggested that Police consider "defined and focussed principles rather than broad, generally stated principles." Conversely, another submission suggested the broad principles of the Corrections Act 2004 could be used as a precedent, with particular obligations softened by qualifiers like "as far as possible" if this was appropriate.

There was support for including a set of guiding principles for policing in a new Act, although there was little consensus on the scope of the principles. The most favoured options for inclusion were ethics-type principles and Peel's principles (possibly with more contemporary wording).



MIXED VIEWS

Q6 Would it be a good idea to spell out New Zealand Police's role and functions in legislation? If so, how detailed should this description be?

Of the 16 submissions fielded on this question, seven favoured a broad description of Police's role and functions, in most cases to preserve future flexibility. However, several respondents preferred a narrower definition for differing reasons.

For example, the Police Association wished to see a description of Police's functions pitched "at a level appropriate to a quasi-constitutional entity." Some individuals preferred a detailed role description to avoid Police being insufficiently anchored, and used to "fill any gaps." Others advocated for a description that was sufficiently broad to encompass the full range of Police functions, but one which was exhaustive, therefore providing focus and protecting against any 'scope creep'. According to Community Law Canterbury, "The benefit of having a legislative framework is that it provides clear landmarks that both guide an organisation and serve as check-points in evaluation. Giving an organisation too much discretion in interpreting its own role and function would defeat this purpose."

At the discussion forum on *Issues Paper 1*, participants commented on the difficulty of accurately defining Police's roles and functions. Forum participants expressed concern that if Police's roles and functions were described too precisely, some of the less common or lesser-known ones could be excluded. Another concern was the possibility of judicial review should a Police staff member do something not in line with the stated purpose. This concern was echoed in one of the written responses, which noted it was important to avoid placing unintended obligations on Police.

Several submitters did not comment on the scope of the definition, but wanted protection of human rights to be included as a specific Police role. In contrast, another submitter was against a 'human rights approach' on the basis that rights are often "unresolvable," and legislating for them may lead to "an unsatisfactory result." A better option, the submitter felt, was to focus on the wellbeing of the community as a whole.

There was wide support for legislatively defining Police's role and functions, although participants at a discussion forum on the topic generally disagreed this was the best way to go.

Issues Paper 2: Governance and accountability

Q1 Do you support a move to legislatively clarify the relationship between Police and government?



GENERALLY
SUPPORTED

There was general support to clarify the relationship between Police and government in legislation. Of the 19 responses received on this question, 18 were in favour. (The one dissenting respondent believed the *status quo* works well, and that should problems arise, recourse could be had to the Governor-General as a politically neutral party.)

The most commonly mentioned reason for supporting such a clarification was the perceived need to “legitimise the current situation.” Other reasons included the inadequacy of current statutory provisions and the lack of understanding about the origin of the relationship.

Many supported emphasising the independence/political neutrality of Police, and there was also a large measure of support for clarifying the relationship between the Minister and Commissioner. As well as affirming Police independence, several respondents felt the fetters on Police independence should also be specified. One respondent suggested using comparable relationships, such as the Auditor-General and Commissioner of Inland Revenue, as a model.

One individual wished to see a requirement on government to “fund Police at the level it needs,” with a corresponding requirement on Police to account for all the funding it is given.

There was broad support to clarify the relationship between Police and government in legislation, in particular to confirm the independence of Police and to define the relationship between the Commissioner of Police and the Minister of Police.

Q2 Do you support clarifying the status of New Zealand Police as a legal entity in the new Act? If so, would you wish to see explicit reference to Police being an instrument of the Crown?



GENERALLY
SUPPORTED

Although there were mixed views on clarifying Police’s legal status during the discussion forum, 17 of the 18 written submissions were in favour of clarifying the legal status of Police.

One submission in favour stated the *status quo* can cause difficulties when Police and other agencies attempt to work cooperatively on operational matters. Another submitter believed doing so would help “clarify the roles, functions, responsibilities, and powers of the organisation and its members.” However, this same point was raised by others as a reason not to clarify Police’s legal status, believing the subsequent examination of the role Police plays would be unhelpful and overly complex.

Several respondents suggested a simple reference to Police being a legal entity that “continues to exist” or similar would suffice. One respondent believed clarification is necessary given Police at times “may also have to investigate and prosecute parts/employees of the Crown.”

Views were mixed about the prospect of referring to Police as an “instrument of the Crown”. Such specificity was supported by a number of respondents who believed such a statement would accurately reflect the current situation. However, one pointed out that while Police is an instrument of the Crown, it needs to “avoid being the instrument of different political parties,” while another worried it could undermine public confidence in Police independence. An academic who opposed an explicit reference noted: “Police is an instrument of the state and serves the interests of the state and citizenry as a whole. Reference to the notion of the Crown both clouds this reality and enhances the perception that Police serves the Executive rather than the people.”

There was general support for clarifying the status of New Zealand Police as a legal entity, although there were mixed views about referring to Police as an “instrument of the Crown”.

Q3 What do you think the official title of New Zealand’s police should be?

There was strong support to retain the official title ‘New Zealand Police’. Of 22 submissions received on this point, 18 sort to keep the current name. One submission supported the alternative name ‘New Zealand Police Force’ and one preferred ‘New Zealand Police Service’. Some discussion forum participants favoured a new title, such as ‘New Zealand Constabulary.’

Several submitters were against any rebranding, particularly to a “service focused” brand; one stating rebranding “will do nothing positive for the New Zealand Police.”

Some felt changing to ‘Police Service’ would “weaken the authority of the Police.” On the other hand, one submitter felt a change to ‘Service’ might “serve to underline the idea the New Zealand Police exists to serve the citizenry rather than to enforce.” In contrast to both views, several respondents preferred ‘New Zealand Police’ as a more neutral term; one believing the “provision of service and use of force will be evidenced from the legislation,” and so felt neither were necessary to use in the title.

There was strong support to keep New Zealand Police as the official title of New Zealand’s police, rather than shifting to other possible names (for instance, “New Zealand Police Force”).

Q4 Do you favour formalising the appointment processes for the Commissioner and Deputy Commissioners in legislation? If so, what processes would you like to see followed?



Of the 15 responses, all favoured formalising the appointment processes, although some had reservations. Almost all respondents favoured using the system described in the *Issues Paper* (pages 7-8) as the basis for achieving this formalisation.

Giving the State Services Commissioner some input was generally supported by respondents, saying it seemed effective, would be “a satisfactory method of delivering the required independence,” and would add transparency. One respondent said they wanted legislation to emphasise the final choice lay with the Governor-General, not State Services Commissioner.

Other submitters expressed views on the composition of selection panels for the top jobs in Police. One respondent felt an individual with police experience should be included in the selection panel, while another submitter felt there should be no police input into the selection.

A group submission from one Police district recommended there should be a significant input into such appointments from “the outgoing Commissioner or other recently retired senior member, or the serving

Commissioner of another Police department in a like jurisdiction.” Another suggestion was to specify in the legislation how large the pool of recommendations for consideration by the Governor-General must be.

Finally, one respondent believed the statutory guidelines for the appointment process should not be too detailed, to allow flexibility in the future. It was suggested such flexibility might be necessary if there was ever a desire to change the number of Deputy Commissioners.

Formalising the appointment processes for the Commissioner and Deputy Commissioners in its current form was favoured by most respondents.

Q5 Do you think there should be statutory criteria to guide the appointment of Commissioners and Deputy Commissioners?



There were 15 answers to this question, all of which supported the use of statutory criteria to guide appointments. Most respondents either favoured retaining a degree of flexibility in the appointments process, or requiring that all applicants had appropriate ‘operational experience’.

It was suggested by two respondents that any process laid down should be merit-based. Another suggested the criteria should include a list of factors that would exclude candidates, and also specify the range of skills required.

Views were split on whether ‘operational experience’ or flexibility was preferable in appointments. Those supportive of an ‘operational experience’ requirement pointed out that it gave a candidate constabulary independence when the Commissioner deals with the Minister. Conversely, others noted this may lead to a small pool of potential applicants, and extending the criteria could allow someone with useful outside experience and insight to take up the role.

There was support for statutory criteria to guide the appointment process of the Commissioner and Deputy Commissioners. Submitters tended to support introducing either an ‘operational experience’ requirement, or adopting more flexible criteria.

Q6 Who do you think should determine the pay and conditions of the Commissioner and Deputy Commissioners?



Almost all submitters supported retaining the Remuneration Authority as the body which sets the remuneration of the Commissioner and his or her Deputies (10 out of 11 responses). Two respondents expressed this as simply a preference for the current system, while one submitter suggested the Higher Salaries Commission should set the salaries of the Commissioner and Deputies [this being the former name of the Remuneration Authority]. Only one respondent took a different line, recommending Cabinet should set the pay and conditions of the most senior Police staff.

As for associated conditions of employment, one individual stated the current split system should be retained for the Commissioner, with the Remuneration Authority setting the pay, but with conditions being set using a process similar to that used for the Chief of Defence Forces. The respondent suggested the Commissioner would then set the pay and conditions for his or her Deputies.

Another submitter stated the Remuneration Authority should retain the pay setting function, with an “independent tribunal” in charge of conditions of employment. This was justified on the basis the positions are “constitutionally independent roles” and so require protection from political pressure. Community Law Canterbury added that, given the constitutional significance of the roles of Commissioner and Deputy Commissioner of Police, “it is right to use the Auditor-General and Solicitor-General as analogies.”

There was a strong preference to retain the Remuneration Authority as the body which determines the pay of the Commissioner and Deputy Commissioners. Fewer suggestions were received on who should set the Commissioner’s and Deputies’ other conditions of employment.

Q7 What performance review arrangements do you favour for the Commissioner and Deputy Commissioners?



The most common suggestion for performance review for the Commissioner and Deputies involved the use of the State Services Commission; although several respondents favoured the Commissioner reviewing the performance of his or her Deputies.

Several submitters felt performance reviews should be conducted by the Minister. In addition, a group of Police staff from one district felt the Commissioner’s Police colleagues should also have the opportunity to take part in the performance review in some way (a 360° approach).

One respondent felt the current arrangements were adequate, as did another submitter so long as the State Services Commissioner continued not to be the employer of the Commissioner or Deputies. A third submitter took a different view, agreeing “with the suggestion to bring the new Commissioner within the ambit of the State Services Commissioner’s performance review management.”

The Police Manager’s Guild commented that if the Commissioner and Deputies were on individual employment contracts, which included arrangements for performance review, it would be difficult to comment without having seen the contracts. However, the Guild did not believe the State Services Commissioner should have overly-wide powers of review.

There was a spread of views on the performance review arrangements for the Commissioner. Of those who addressed the Deputy Commissioners’ performance review arrangements, most favoured the Commissioner undertaking such reviews.

Q8 Do you favour specifying in legislation that appointments as Commissioner or Deputy Commissioner be for terms of up to five years, with the possibility of re-appointment?



There was mixed support for the idea of legislating for tenure. Of the 15 submissions, six were supportive, and nine rejected at least some part of the proposal. While fixed terms were generally supported, the suggestion of ‘five years with possibility of re-appointment’ was not.


Two respondents favoured the current ‘at pleasure’ tenure, one on the basis it recognises “the high level of trust and confidence of the public and their elected representatives in the Police.” Both respondents felt the public nature of removals would ensure due process was followed.

There was little discussion from those who supported legislating for tenure, although one submitter raised a concern over the present ‘at pleasure’ arrangements. The respondent favoured applying the principles of natural justice to the employment relationships, with a statement defining what the “pleasure of the Governor General” meant.

Those opposed to the idea generally believed a Commissioner who gained re-appointment would serve a 10 year term, which was viewed as too long. Some were concerned at the length of time the Commissioner and Deputies would be employed for with “no prospect of promotion for persons below them.” It was the total time in office that seemed to be an issue, rather than how the time should be split between the first term and a possible re-appointment.

Some believed that the initial term should be shortened to three years, retaining a possibility for re-appointment. This was justified as allowing “new ideas and skills” to come through.

Fixed terms for appointment as Commissioner and Deputy Commissioner were favoured, although some respondents felt a five year term was too long. A provision for re-appointment was supported by some, although others felt this might lead to overly-long tenures.

Q9  **Do you think the grounds for suspending or removing a Commissioner or Deputy should be spelt out in legislation?**
GENERALLY SUPPORTED


There was wide support for spelling out the grounds for suspension or removal. Of the 16 submissions, 14 were in favour of stating at least some of the grounds. The need for a non-exhaustive list was emphasised by many respondents.

One submitter who rejected the idea did so on the basis it would be too difficult to cover all eventualities, while another felt the publicity generated by suspending or removing a Commissioner would offer adequate scrutiny of the propriety of the actions. One respondent specifically sought to retain “loss of confidence” as a ground of removal, so the ‘at pleasure’ tenure of the officer holders was not compromised.

The inclusion of safeguards for a Commissioner or Deputy under threat of suspension or removal was suggested by several respondents. Procedural fairness and transparency were the most commonly-cited protections. Several other submissions suggested making things “clear and unequivocal,” and bringing the process as far as possible into line with what applies to other public sector Chief Executives. Safeguards were also seen as important by other submitters because they could protect the independence of the Commissioner

from the political executive. It was felt having a clear and transparent process that requires giving reasons for removal or suspension would help reduce the risk of politically-motivated actions.

There was support for non-exhaustively stating the grounds for suspending or removing a Commissioner or Deputy in legislation. Safeguards to protect appointees from political interference were also suggested.


Q10  **Should a new Act require a particular process to be followed (e.g., tabling a statement in parliament) if a Commissioner or Deputy Commissioner is suspended or removed in the future?**
MIXED VIEWS

Of the 14 submissions, 12 were in favour of a new Act spelling out a process, although there was no consensus on the most appropriate one. A number of submissions favoured tabling a statement in Parliament within a set time limit. One respondent advocated using a provision similar to section 12(7) of Ireland’s Garda Síochána Act 2005. Another respondent advocated creating an appeal process for a Commissioner or Deputy Commissioner in such situations.

One respondent believed if the issue was due to underperformance, involving the State Services Commission in the process would ensure independence, and all the relevant steps “should be clearly spelled out and be as transparent as possible.”

Of those who were against specifying a process, one gave reasons. The submitter believed that given the breadth of the Commissioner’s role, there was a “strong argument” against any particular process.

There was a level of support for specifying a process if a Commissioner or Deputy is suspended or removed, but some felt the breadth of the Commissioner’s role would make such a process unworkable.

Q11  **Do you support including a list of the Commissioner’s responsibilities in a new Police Act? If so, how do you think these responsibilities should be defined?**
GENERALLY SUPPORTED

Of the 14 respondents, 12 agreed there should be a list of the Commissioner’s responsibilities in the new Act,

in the same general form as suggested in the *Issues Paper* (page 12). Some additions were suggested by respondents - for instance, explicitly stating the Commissioner is responsible for strategic policy, ensuring members of Police discharge their duties satisfactorily, and stating the Commissioner is responsible for the command of Police. One submitter also suggested clarifying the powers and responsibilities of all senior Police staff.

Respondents were supportive of such a list because it could provide "useful guidance for the Commissioner," "aid public understanding and confidence," and provide "additional clarity and transparency." Others said it was important to ensure the list was worded "in broad terms" and was "not too prescriptive." For example, the Police Association urged: "Only the 'broad' responsibilities of the Commissioner should be included in the Act, with the 'detail' to be covered in his/her individual contract."

Some respondents, including the Police Manager's Guild and some individual Police staff, were opposed to including any list of the Commissioner's responsibilities in a new Act. It was felt this could result in the Commissioner "being made responsible to the Minister for the role and functions of the position," which was seen as a negative development. Concerns were also expressed about such a list possibly leading to governmental or ministerial 'interference' in the enforcement of the law.

There was some support for broadly listing the Commissioner's responsibilities in the new Act, however some felt this might create reporting responsibilities which could impede the independence of the Commissioner.

Q12 Are you in favour of a new Police Act seeking to clarify where ministerial direction of a Commissioner is appropriate?



GENERALLY
SUPPORTED

Respondents generally favoured clarifying where ministerial direction of a Commissioner is appropriate. Of the 16 responses to the question, 13 supported and three opposed clarification.

Some respondents who favoured clarification felt "reliance on the spurious operational/policy divide is not enough," while others believed not doing so could "leave Police at risk of political interference." Those who supported legislative clarification of the roles of Minister

and Commissioner tended to support a precise, clear and comprehensive definition, although one group suggested it would need to be broad to "allow for changes in individual style."

Of the respondents who rejected clarifying appropriate situations for ministerial direction, one felt it was not necessary, and one stated a Minister should never be able to give directions.

There was some support for clarification of when ministerial directions are appropriate, although there was no consensus on how precise the clarification should be.

Q13 In what situations do you think it would be appropriate for a Minister of Police to give directions to a Commissioner of Police?

Many respondents favoured the traditional approach where a Minister of Police could give directions on policy and administrative issues. One submitter stated it was a matter of defining the level of "generality" within these areas. Other specified areas included:

- Financial policy, when providing 'earmarked funds', and subsequent auditing of Police
- Strategic justice policy, and notifying the Commissioner of the government's view on policing priorities.

While 'earmarked funds' were suggested by some as suitable for ministerial direction, one submitter had concerns about this scenario, and thought it could be beneficial to include some clarification on how specific the Government may be in determining "additional" resources.

One group of respondents called for a lesser power to give directions. Suggestions ranged from it never being appropriate to give directions to requiring the approval of Cabinet before issuing a direction. Other submitters preferred directions to be given in consultation with the Commissioner, with an attached discretion for the Commissioner to modify any directions to allow them to fit with long term goals.

Situations where matters of policy and administration arose were considered appropriate for ministerial direction. The specificity of the direction was suggested as another way of classifying appropriate areas for direction.

Q14 In what situations would it be inappropriate for a Minister of Police to give directions to a Commissioner of Police?

Many respondents believed a direction from the Minister of Police would be inappropriate when it concerned operational matters. Others stated it was inappropriate in any situation where the direction would interfere with the constabulary independence of Police. Some gave specific examples, such as decisions on staff promotions, arrests, prosecutions, decisions which affect other agencies, and investigations into politically sensitive-areas.

One police officer identified an issue with the operational/policy distinction, in the context of command of New Zealand Police staff deployed overseas. During such deployments, the officer felt an exception to the operational exclusion of the Minister should be developed, so as to allow the Minister to command police to pursue New Zealand foreign policy objectives.

Another respondent proposed a different method of distinguishing inappropriate directions, based on the direction's level of specificity. Any directions on specific policing decisions would be inappropriate, the submitter said, regardless of whether they were operational or administrative.

Several respondents felt any direction would be inappropriate if the Minister had not consulted his or her Cabinet colleagues for approval, or had not consulted the Commissioner for his or her view. It was suggested requiring the Minister to consult with Cabinet would "foster considered ... rather than rash ministerial decision making."

The Police Manager's Guild stated they would be concerned if "matters of public safety and public order" were deemed acceptable for directions under the new Act, as proposed once in the past. Its view was such directions would be on operational matters and thus inappropriate.

Areas of operational/constabulary independence were generally seen as inappropriate for ministerial direction. Others felt directions would be inappropriate without prior consultation with the Commissioner and/or Cabinet.

Q15 Do you favour providing for a ministerial directions power in a new Police Act? If so, is there an existing legislative model for such a power that you would recommend as a precedent?



Of the 12 submissions addressing this question, eight favoured providing for a ministerial directions power in the new Act, one gave conditional support, and three were against.

Those who supported providing the power suggested it would be useful to define and limit it. Doing so would further define the roles of Minister and Commissioner, which was seen as positive. One respondent stated an ideal model was section 44 of the Broadcasting Act 1989, while others cited section 7 of the Corrections Act 2004, and Queensland's Police Service Administration Act 1990. Others did not cite legislative models, but suggested including requirements to consult and to table all directions in Parliament. Another submitter, although supportive of the general idea, was concerned "undue reliance on such a formal process could create administrative burdens, adversely affecting the free flow of information between the Minister and the Commissioner."

There was some support for providing a ministerial directions power in the new Act.

Q16 How should a new Police Act deal with making it publicly known the Minister has given a formal direction to the Commissioner?



Of the 11 responses to the question, nine were in favour and two were against legislating on this issue. Those in favour of publicising any directions generally felt they should be presented to parliament and/or published in the *Gazette*. Almost all felt the document presented to the House should be the same as the direction given to the Commissioner. One submission suggested using section 74(4) of the Corrections Act 2004 as a possible precedent. In addition to such measures, another respondent emphasised that all directions should be put in writing to the Commissioner.

The issue of directions which contain sensitive information was raised by two submitters. One felt that

before deciding to withhold the direction, it should be certified as being sensitive by a “secure committee of the House.” Another preferred to have all directions published on a website, but at a level of generality that removed the sensitivity of the information. (This respondent preferred to avoid publicising directions through parliament, as they felt it would create delays.)

Of the two respondents who were against legislating on this issue, one opposed such a move on the basis there was no need to publish ministerial directions, while the other thought this was not a case for legislation as the Minister or Commissioner could each publicise directions if they wished.

If a ministerial directions power is to be legislated for, respondents generally preferred presenting a copy of the direction to Parliament, and/or publishing a copy in the *Gazette*, as ways of making it publicly known the Minister has given a direction to the Commissioner.

Q17 Do you think the types of communication between Ministers and the Police Commissioner should be set out in statute?



There was some support to legislate for a Commissioner’s compliance with reporting requests by the Minister, with six of the nine responses in favour of such a provision. Reasons for support ranged from allowing the Minister to assess funding and resource use, to precluding any possibility of a Commissioner refusing to provide a report. One submitter argued parliament has a role in requesting such documents.

Those who rejected this proposal did so on the basis it could restrict the Commissioner’s independence, as some requests could be unacceptable or unlawful. Others simply “saw no value in it,” or thought it could be counterproductive.

There was no discussion of this question beyond the example of requests for reports, although two respondents gave support to codifying all types of communication, without elaborating.

There was some support for compelling a Commissioner to provide reports on the request of the Minister, with little discussion of whether other types of communication between Ministers and the Police Commissioner should be set out in statute.

Q18 What are your thoughts on the appropriateness of Police’s existing statutory reporting obligations?



Four of the eight submitters stated Police’s current reporting obligations were appropriate. However, an equal number of respondents felt they were not, with one describing them as “unstructured, bureaucratic and *ad hoc*.”

The most common change suggested was moving from specific reporting obligations to general ones. For example, one suggestion was to include a broad principle of transparency regarding police operations. Submitters also suggested differentiating between administrative and operational reporting, and incorporating all reporting obligations in the Act, including those listed in other legislation.

Creating a more extensive list of reporting obligations was favoured by another submitter, who also wanted them to be made more explicit. A different respondent recommended there be regular reports to parliament on the use and deployment of coercive/ intrusive powers, as a way of enhancing the transparency of Police.

Most submitters felt Police’s existing statutory reporting obligations needed to be rationalised.

Q19 Do you support retaining the power to set up an independent inquiry in a new Police Act? If so, what are your views on who should be able to convene such an inquiry, and whether the legislation should specify who conducts the inquiry?



Respondents were generally supportive of retaining the power to set up independent inquiries.

There were no responses favouring legislation specifying who conducts the inquiry. Most responses on the issue felt the composition of each inquiry should be dictated by the circumstances. One submitter agreed the perception of independence could be lost if a current police officer served on the inquiry, and that use of an officer from a similar jurisdiction overseas could be “the best compromise.”

Few respondents specifically addressed who should retain the power to convene the inquiries. Preferences were split between the Commissioner and the Minister, although respondents may have assumed that if the

power was retained, the Minister would retain the power to convene the inquiry. One submitter questioned the need for both to have such a power, as it could possibly lead to two inquiries being launched into the same matter.

The Police Association felt enquiries should not interfere with the operational independence of Police, and should also be funded independently of Police's budget. Linked to this was one submission which emphasised the independence of such inquiries should be beyond reproach.

Another respondent did not see an advantage in keeping the current power, stating there is currently a Commission of Inquiry into Police Conduct which did not need to be set up using the powers in the Police Act. Some discussion forum participants also believed the State Services Commissioner's powers were adequate to set up any inquiries that may be necessary, although some held doubts about whether this would or should extend to operational matters.

There was support for retaining the power to set up an independent inquiry, although views were mixed on who should hold such an inquiry. Respondents generally favoured leaving the make-up of the inquiry to the person convening it.

- Select and enact a funding model that allows Police to plan for the medium term, and ensures political independence
- Use the review for a "fundamental reappraisal of the role and purpose of the Police." (The submitter emphasised the role of Police is very different to ordinary departments and state owned enterprises, as "the Police serve the community of New Zealand." They considered the focus on accountability and governance "through the lens of the political executive" was unnecessary, and wanted the Police Act Review to consider a greater accountability to parliament and local communities instead.)

A small number of respondents brought forward additional ideas on governance and accountability which they wished to see explored within the context of the Police Act Review.

Q20 Apart from those already discussed, are there any other ideas around Police's governance and accountability framework which you think should be explored in the Police Act Review?

Four additional suggestions were made in submissions. They were to:

- Set up an advisory group of stakeholders to advise the Commissioner on relevant issues
- Consider a governance model for policing which would be separate from any part of the administration and oversight/responsibility of Police - as with the Armed Forces

Issues Paper 3: Employment arrangements

- Q1** Do you think new Police legislation should reflect the principle that whatever employment arrangements apply to the rest of the state sector should also apply to Police?



There was support for shifting Police's employment arrangements to ones that reflect the rest of the state sector. Of the 29 responses to the question, 18 favoured greater alignment with the mainstream state sector. A further seven stated Police's employment arrangements should reflect the public sector norm as far as possible, while four submissions opposed such a move.

Of those who supported aligning Police with the rest of the state sector, some saw no reason to differentiate Police staff from other state sector employees, even if policing involves different standards to other professions. Others saw a need to update current practice towards Police staff, particularly with respect to discipline and wage bargaining. It was felt that "in order to attract staff to Police there should be a greater alignment with current legislation."

One group submission by several Police staff members believed the appointment process for the Commissioner and Deputy Commissioners should be included in the proposed alignment, giving them the same attributes as other Chief Executives under the State Sector Act 1988.

Conditional support came from respondents who believed that while there should be greater alignment than at present, recognition of the 'uniqueness' of the role and functions of Police should be retained. Many argued that state sector employment arrangements should be carried over as far as appropriate and fitting for the Police environment. More specifically, some suggested special termination provisions for those who are convicted; whereas others did not support alignment which resulted in Police staff having the right to strike.

Opposition was often expressed for similar reasons as those who gave conditional support. For example, some said the right to strike should not apply to sworn Police staff, as with the Defence Forces, and current arrangements should allow greater flexibility in filling vacancies and deploying staff.

The Human Rights Commission emphasised Police's unique nature, and rejected the 'one size fits all' approach of alignment. This uniqueness was identified by one respondent as partly relating to the duties

of protecting the public and the oath to the Queen, meaning there are third parties to the employer-employee relationship in terms of rights and duties. It was felt the duties owed to third parties restrict the exercise of rights other state servants can exercise.

The Police Association also rejected the general principle of closer alignment with the mainstream state sector, because of features which distinguish Police from other public service agencies. Its view was that: "The overriding principle should be that the unique position of staff who hold the office of constable warrant some departures from the employment arrangements that apply to the rest of the state sector."

There was support for new policing legislation to reflect the principle that whatever employment arrangements apply to the rest of the state sector should also apply to Police, although some felt this should be limited due to the 'uniqueness' of the role and functions of Police.

- Q2** Do you favour a new Police Act reflecting the same 'good employer' principles that other state sector employers follow?



There was strong support for the notion that new policing legislation should reflect the same 'good employer' principles that other state sector employers follow. Of the 30 submissions, 26 were in favour of such a move. As with responses to Q1, however, there were some respondents who believed there would need to be some allowances for Police's unique aspects.

One respondent supported using 'good employer' principles because they felt Police is already a good employer, and another felt an "unconditional good employer message sends positive signals around the value we place on protecting the interests of our people." Others were less enthusiastic, tempering their support with a belief Police is "different" to other state sector agencies, hence some limits on the principle may have to be written into the Act. However, those respondents still supported use of the principle, and any limitations "should be express."

One submission stated limits on the principle may not be needed given the statutory defence to personal grievances which the Commissioner currently has (a matter covered later in Q12).

A number of respondents favoured using the 'good employer' principle to allow alignment with the state sector, and several believed this alignment should go beyond the principle itself. In addition to alignment with the state sector, consistency between sworn and non-sworn staff was also cited as a reason to use the 'good employer' principle in the Act. One submitter felt it would be better to apply the entire Employment Relations Act to Police employment arrangements, which would then automatically import the 'good employer' principle.

Of those who rejected the proposal, one felt the qualification usefully identifies "that there are situations where the employer is not in control of the environment to such an extent they can not guarantee they can fulfil their obligation." Countering this was the view of one respondent who stated the Defence Force operates without the use of any rider. Others did not elaborate.

There was support to remove the qualification on the 'good employer' principle which exists in the current Police Act. Alignment with the state sector was a common reason for supporting such a move. Some felt any limits due to the nature of police work should be explicitly stated, while others felt operational limits meant the "as far as possible" rider should be retained.

Q3 Do you support new Police legislation making more staffing options available than currently exists? If so, do you have any views on how increased flexibility could be introduced to this area, and what 'checks and balances' there might need to be?



There were many in-depth submissions on this proposal, with all but one of the 29 responses supporting some form of increased flexibility.

The one dissenting view came from the Police Association, which argued that "Police should continue to be organised around the appointment of sworn generalist constables." It added: "The identification of categories of employees that operate on the front line and have more limited powers than a constable is risky because of the inherently unpredictable nature of front line policing." The Association was also wary of using legislation to clarify specialist staffing options, noting: "There is presently sufficient flexibility in the current legislation to allow for the employment of specialists at every level." Moreover, the Association warned: "The

'siloing' of police that might occur through the hiring of specialist staff could threaten the unique 'team culture' of policing and should be avoided."

A more flexible approach was favoured for varying reasons. Some felt it would be beneficial for "good people who for some reason can't meet the Police entry standards, yet may have skills and passion in certain areas." Others felt with "an aging population you need to be more flexible," or a "move away from the omniscient constable towards a model that recognises the complexity of the environment we work within and the special knowledge required" would be a positive thing.

Options for flexibility

Varying degrees of increased flexibility were supported. Some suggested a model where training modules lead to specific powers. The appropriate powers would be attached to each position description, and the training module for each power would have to be successfully completed before employment. It was thought this would create "a continuum between sworn and non-sworn based on position requirements," and also allow for "lateral recruitment of experts who could be given sworn powers after limited training."

Other submitters favoured a 'division of duties' approach. It was commonly stated sworn staff should continue to discharge frontline duties, and it was explained that any review should "identify those elements that are particular to police, and protect them."

On the other hand, some roles currently sworn-only were seen as not requiring sworn staff. Some respondents suggested specialists could be recruited who would not need to go through the swearing-in and training process, but would receive targeted training, and be given powers which were required for the role. Another submission preferred full recruit training for specialised roles, with no probationary period, but with recruits moving straight into their chosen field. This was supported on the basis it would allow the officers to be transferred to general duties if needed.

Roles seen as suitable for specialists included crime scene attendants, electronic bail assessors, photographers and community officers. Several submitters noted such staff would need to be "clearly differentiated from sworn staff." One individual believed this would be similar to public perceptions of uniformed

nurses in a hospital, who may range from “a fully qualified registered comprehensive nurse” to “a hospital assistant.”

A further means identified to achieve greater flexibility was creating “a single employment framework,” opening up more positions to both sworn and non-sworn staff. In this regard, there was broad support for removing the need to resign before a sworn officer can take up a non-sworn position. It was thought this could particularly help with retention of older officers.

Checks and balances

A possible problem identified was public confusion over the roles and powers of new roles. In addition, one submitter raised a problem they currently perceived with the processes and identification of temporary staff. Suggestions to deal with identification issues included a “clear distinction in uniform,” and clear communication and consultation with the public. Engaging with the public was also seen as a way of avoiding the stigma of any changes being labelled “policing on the cheap,” which was a potential risk raised in several submissions.

Generic options put forward were:

- Constant evaluation of any schemes and ongoing training of officers in the new roles
- Shifting accountability for officers in new roles to managers, with emphasis on mentoring
- “Rigorous and extensive” pre-employment checks
- Full consultation with all staff before introducing any changes

There was enthusiasm to introduce more flexibility into Police’s employment arrangements. The three options with most support were a model linking roles to powers and training; some specialist jobs being removed from the sworn-only domain; and more flexibility between sworn and non-sworn roles. Many respondents favoured some form of checks and balances.

Q4 Should new Police legislation make clear provision for direct entry of suitably-qualified staff?

There was a mixed reaction to the idea of Police’s new legislation making clear provision for the direct entry of suitably-qualified staff. Amongst opposing voices, the

Police Association submitted that no specific legislative provision was required, consistent with its belief that Police should continue to be organised around the appointment of sworn generalist constables. Other respondents expressed support for some type of direct entry, but there was no consensus on the best system to use.

Several respondents felt some roles should no longer require sworn officers to perform them, thereby opening up the possibility they could be filled by suitably-qualified direct entry candidates. Others felt the same roles should allow direct entry, while leaving them in the sworn domain.

Support for direct entry to a rank above constable, or shortening the probation period, came from a number of respondents. Some believed it was an effective way of bringing in skilled police from overseas, or experienced officers who had left Police to gain external experience. Several submitters thought such a system could allow Police to be more successful in a competitive labour market, by “offering opportunities for suitably qualified and experienced members to enter the New Zealand Police at a point which reflects their skill level.” Several respondents felt if careers in Police are given a ‘head start’, candidates should still follow the full recruitment process and meet all the standard criteria, including a limited probationary period depending on each officer’s skills and experience.

Others rejected direct entry, one respondent doing so because it would be “unfair for senior sworn positions to be filled laterally.” In addition, one member of Police stated that while the integration of Traffic Safety Service staff showed that it was not necessary for all members to start at a recruit level, “it did cause considerable ill feeling.” It was recognised there is a risk direct entry schemes would create divisions in the Police, with those who have ‘worked their way up’ seeing others who have entered through lateral channels as being unfairly advancing without first having ‘served the time’.

Some respondents addressed whether certain specialised sworn roles should allow for direct entry of experienced professionals. One respondent suggested professionals from specialised areas may find spending time training and on probation a disincentive to joining Police to fill a specialised role. It was recommended such officers should receive constant evaluation and continuous training “to ensure individuals have the correct level of powers, skills and competence.” Others

rejected this on the basis it would “inflate” the numbers of sworn staff, even though these members would not have the full capabilities of traditional sworn officers.

As with responses to Q3, there were comments on the sworn/non sworn divide. Several respondents stated a more seamless process for sworn staff to move into non-sworn roles would benefit Police. One submitter added this would require a fair process “so that non-sworn staff are not disadvantaged.”

There was a mixed reaction to new legislation making clear provision for direct entry of suitably-qualified Police staff. Overall, a desire emerged for a “best person for the job” approach, with a fair process, appropriate training, thorough vetting and ongoing supervision.

Q5 What are your views on the appropriateness of legislation expressly allowing overseas police to work in New Zealand, under the authority of the New Zealand Police Commissioner?



Respondents addressed the issue of overseas police working in New Zealand in two ways. Some debated the benefits of allowing overseas police to work on a short term basis, during sporting events and similar sorts of assignments. Others focused on longer term secondments.

Respondents thought it would be “useful” and create “very clear benefits” if overseas officers could do short term work in New Zealand, although many respondents asserted there should be conditions on eligibility. Several respondents strongly supported such officers working under New Zealand authority, such as the Commissioner or another senior officer. One submitter saw no need for the officers to become temporary New Zealand Police officers if they were under New Zealand Police control. There were no rejections of this possible model.

There was also support from a number of respondents for longer term secondments of overseas officers, so long as they were under the Commissioner’s control. This approach was preferred by several submitters to having such officers sworn in as temporary New Zealand Police staff. One submitter felt such a scheme would be a solution to standing vacancies, while another felt it could be a “valuable recruiting tool.” Others felt the increased diversity and experience the overseas officers brought to Police would be a bonus.

There were a number of submissions on the need to maintain recruiting standards. Submitters felt the overseas training and background of the officers should be assessed, to ensure their “appropriateness” for the New Zealand policing environment. In addition, some felt overseas officers should “undergo the same recruiting criteria” as local recruits, including “some probationary period.”

Some negative reaction was received about the prospect of longer term police secondments. For example, one submitter thought it was “unlikely they would receive sufficient training in New Zealand law,” while another thought it was a “definite risk area,” comparing it to the current use of temporary constables as jailers. One submitter felt legislation expressly allowing overseas police to work in New Zealand was not necessary, given the officers could be sworn in as New Zealand Police. Another respondent felt any new legislative provisions would probably not be flexible enough, so suggested the Commissioner or Minister simply be empowered to establish such secondment schemes, but without going into too much detail.

There was one issue which several respondents raised unprompted by the question, relating to the possibility of extending secondments into a formal exchange programme. It was felt extending the idea to interchanges with overseas jurisdictions would “facilitate benchmarking and staff development,” with one submitter giving particular support to a mutual secondment programme between New Zealand and Australia. Another submission wished to see a smoother process for current overseas assignments, particularly with United Nations missions. Introducing legislation was seen as likely to assist in this regard.

There was support for legislation expressly allowing overseas police working under the Commissioner’s control for short term stints. Longer term work received a mixed reaction, with a strong focus on the necessary amount of training and vetting. Several respondents raised the idea of using overseas exchanges.

Q6 Do you have a view on whether new Police legislation should make explicit allowance for transfers of staff to and from non-police agencies?



There was support for legislation making explicit allowance for staff transfers. Of the 26 submissions on the question, 19 were in favour of providing for such transfers, with three opposing such an idea. Four respondents liked the idea of a general power to transfer staff to and from non-Police agencies, but they doubted whether it really needed to be legislated for.

Support came from those who thought it was “important to vary members’ experience,” “important for staff development and gaining exposure to innovation from other organisations,” and could allow for “the use of specialist services” from other organisations. Submitters also pointed out that other agencies could benefit from gaining Police experience, especially since “various government departments are involved in law enforcement.” One respondent commented that secondments to and from the Defence Forces would work well.

Some gave conditional support to the proposal. One group of respondents stated if people from other agencies were going to hold the powers of a constable, they should be required to undergo six months training at the Royal New Zealand Police College. Other submitters stated there would need to be an appropriate amount of skill evaluation and training, with all appointments merit-based. Another submitter felt the sort of powers training module suggested in Q3 would make the process of transferring state sector staff into sworn roles easier. In addition, one submission emphasised the need for care with promotions during transfers. They perceived a practice of allowing temporary promotions for projects or secondments that are not revoked after return, which they worried could possibly lead to unsuitable appointments.

The three submissions which rejected the transfer model offered few reasons for opposition. One respondent argued “if the person concerned wants to be a police officer they should apply to be one,” and felt staff from other agencies should only be able to take up non-sworn roles.

There was support for new policing legislation to make explicit allowance for transfers of staff to and from non-Police agencies, although some support was conditional on training expectations. Opposition to such a move was often based on a reluctance to allow staff from non-Police agencies into sworn roles.



Q7 In your view, should legislation for Police continue to limit senior managers to five year terms of appointment?

The reaction to continuing to place senior managers on fixed term contracts was mixed. Of the 27 responses, 15 supported continuation of the *status quo*, 11 rejected it, one was unsure.

Supporters gave various reasons, from allowing new ideas to come through and preventing managers getting into a ‘comfort zone’, to opening up jobs to staff who are awaiting promotion. One submitter noted senior managers “are the public face of Police,” and “public trust is linked to a few top names.” The submitter saw benefits in temporary appointments because they offer flexibility and an opportunity for trust in senior Police staff to be renewed.

There was one submission in favour of a two year term of re-appointment where warranted. One police officer thought if the difference between sworn and non-sworn staff was addressed, there could be better continuity of employment after a manager’s term had ended.

Those who were against retaining the current model most commonly argued it is contrary to standard employment practice, and that performance issues would be more effectively dealt with through performance management systems, rather than a re-appointment process. Others stated the present system inhibits continuity, and could potentially encourage short term strategies. There were also comments it seemed unnecessary “to get rid of someone who is doing a great job.” In a similar vein, one submitter argued that if staff performance was up to standard, there was no need to unsettle people by requiring them to reapply for their jobs.

The respondent who was unsure on the issue said it depended on making a good business case for term limits - noting that if a new operational plan takes three to four years to attain maturity, the fixed-term scheme can limit accountability of the manager who implemented it.

Mixed support was given to legislation continuing to limit senior managers to five year terms of appointment. Arguments for retention varied, while the most common reason for change was aligning with current employment law and dealing with performance issues in other ways.

Q8 Do you think it would be worthwhile to make it a legislative requirement for the Commissioner to build management and leadership capability within Police, or is this something that can be left unspecified and/or left to others (e.g., the State Services Commission's Leadership Development Centre)?



Support was evenly split for and against legislating to build management and leadership capability amongst the 26 submissions.

Supporters of including such a requirement in legislation felt it would improve management and leadership capability within Police by giving it greater prominence than at present. The Human Rights Commission wanted to see more focus on diversity and equal opportunities in the capability training. Another respondent believed there had been too much focus on career building for individuals, and not enough priority placed on roles staff fill before moving on.

There was some discussion of who should be responsible for building management and leadership capability within Police, with most respondents opting for the Commissioner to perform this role, one favouring an Executive/Commissioner mix, and several others preferring the Leadership Development Centre. One respondent who favours in-house training stated "we have a unique operational environment and therefore require direction and leadership that fits the New Zealand Police values and culture."

The main reason for rejecting a legislated requirement in this area was that it was unnecessary - as one respondent said, "why give legislative status to a natural requirement of leadership and effective management?" One submitter felt it would signal a failure by Police if another agency "needs to step in and impose management practices on Police." Others felt dealing with such an issue in legislation could limit flexibility, which would be better placed in the guiding principles of the organisation, or in the powers and functions of the Commissioner. Similarly, one submission stated it was a matter for human resources staff rather than an Act.

There were mixed views on who should be responsible for building management and leadership capability within Police. Reaction was also evenly divided between accepting and rejecting a statutory requirement for the Commissioner to build such capability within Police. The main reason for legislating seemed to be increasing the focus and priority of leadership building, while the dominant reason for opposition was a view it was inappropriate to legislate for what is a standard expectation of any state sector employer.

Q9 In concept, do you support the suggested move towards a professional policing model? If so, do you think such a model should be put on a statutory footing, potentially through the new Police Act?



There was general support for a move towards a professional policing model, with 17 of the 22 responses in favour of it, although only three stated they wished to see this in legislation.

Support was given by a respondent who stated "a move towards a professionalised model of policing would recognise the growing complexity and needs of modern policing and changing attitudes and approaches to career development." Another respondent thought it would allow those within police to use their qualifications and ability in other job sectors. One submitter wanted a form of Police registration that was overseen by an independent body.

Most respondents did not wish to see professional policing included in a new Act. A number of respondents thought it would be "too prescriptive," while others saw no need for it. Several submitters felt it was not appropriate for inclusion, given "significant work will be required" before a professional policing model like that discussed in the *Issues Paper* could be created.

Rejection of the idea came from those who felt "policing is a craft that is learned by doing the job and from senior members," and were fearful a paper-based learning system could emerge, "leaving the practical person floundering," and "'real' police officers will be disadvantaged." Another submitter felt the current system

works well - where Courts have the ability to recognise an officer's expertise and so allow them to give an opinion - and questioned why accreditation would be prioritised over experience.

There was little in-depth discussion on this issue. Overall, there was support for a professional policing model, although there was little support for enshrining such a model in legislation.

Q10 Should new legislation for Police continue to enable the Commissioner to prescribe minimum standards of fitness? If so, are there any particular matters that should be taken into account when refreshing the legislation in this area?



There was wide support for the Commissioner retaining the statutory right to prescribe minimum standards of fitness. Of the 27 responses to the question, 25 were in favour of this.

One of the reasons given for retaining fitness standards was the physical nature of policing. As one submitter put it, "as a recruitment issue we are looking for people who are prepared to extend themselves beyond average," regardless of fitness standards in the general population. Another reason given for retaining the current legislative provision was to allow for removal of officers "who are not sufficiently fit and healthy to carry out their duties," presumably where transfer to other roles is not possible, and so would allow for medical disengagement.

A number of respondents thought the relevant statutory provision should be permissive, to allow for regular review of the standards by the Commissioner. Indeed, many submitters supported a review of the current testing regime. To this end, several respondents stated fitness testing should correspond to the role being performed. One gave the example of a "community cop who couldn't run to the mail box," but was "worth his weight in gold to our station, community and youth." The Police Association commented: "It may be necessary to establish criteria for determining what positions within Police may be made exempt from the minimum fitness requirements (for instance, an officer that performs mainly a desk job as opposed to an officer serving on the front line)."

Respondents also favoured strategies to redeploy those who became too old or unfit to succeed in the test,

either in non-frontline roles, or in non-sworn roles. Conversely, some submitters wished to see medical exemptions for those who cannot complete the current testing regime, and/or age bands introduced. One submission wanted measures to avoid unlawful discrimination against those with disability included in any standards. (A different respondent observed that without legislation to cover-off this area, Police would have to carefully justify use of such a policy under the Human Rights Act 1993, given "physical disability or impairment" and "physical illness" are included in the definition of "disability".)

One submission stated it was "perverse" to be able to set standards relating to fitness levels without setting other "key standards," such as "being tactful or honest." The respondent felt all such standards should be able to be imposed with the backing of legislation, or none at all.

There was support for the Commissioner retaining the right to set fitness standards in legislation. However, numerous submissions sought a review of the current testing regime.

Q11 Do you support the Commissioner being able to (continue to) compel superannuation scheme membership for sworn staff? If not, would you prefer retirement savings scheme issues to be dealt with in the context of staff employment agreements?



Of the 20 submissions offering a view, 11 were in favour of retaining the Commissioner's power to compel superannuation scheme membership for sworn staff. While many of the supportive submitters were definitive in their backing, stating it was "very important" that the current scheme continues, few gave reasons. One respondent which did elaborate was the Police Association. It noted: "A compulsory superannuation scheme will enable officers to plan for their financial future, and it will also ensure that the potential for graft and corruption within policing ranks are minimised."

One submitter gave support conditional on wage increases, without which they felt disposable income would be too limited. Another opposed compulsory superannuation contributions on principle, quoting the Employment Court's observation in *New Zealand Police Association Inc v Commissioner of Police* [2005] 1 ERNZ 1021 that compulsory superannuation for sworn

Police staff “leads to sworn and non-sworn members being paid different base salaries to do the same jobs.” Others felt it was a matter of individual choice; several advocated using the generic state sector scheme. One respondent suggested offering incentives to staff to join.

The Police Manager’s Guild stated “the original scheme was very much based on staff joining Police as a career and continuing in employment until retirement. Such is no longer the case.” Some submitters also pointed out that employees who join later in life may already contribute to their own superannuation scheme, making Police’s scheme inappropriate in its current form.

Reaction was mixed to keeping the Commissioner’s power to compel sworn staff to contribute to a superannuation scheme. Perceived benefits of this model were highlighted by supporters, while opponents argued for better alignment with non-sworn staff and the wider state sector.

Q12 Should the Police Commissioner retain a statutory defence to personal grievance actions in relation to operational matters? If so, do you have a view on where such a defence should most appropriately be located in legislation?



Of the 19 responses to this question, 14 were in favour of retaining the existing statutory defence, and five were not. Supporters felt the defence was important to “counter the good employer obligations,” and avoid Police operations being compromised. One submitter believed it could be worded as a rebuttable presumption.

In terms of its most appropriate placement in legislation, few submitters stated a preference. Of those who did, the views were split between an amendment to the Employment Relations Act 2000 and inclusion in new policing legislation (with one respondent suggesting it should be woven into a section on the Police Commissioner’s role, obligations and responsibilities).

Others, including the Police Association, felt the defence should be dropped. One submitter believed “operational decisions should be available for intelligent discussion for the purpose of meaningful evaluation.” Other respondents felt if Police “embrace a commitment to being a good employer then the Commissioner should be subject to the same scrutiny as any other employer,”

or that the defence is unnecessary because Police is already a good employer.

There was support for the Commissioner to retain the currently-available statutory defence to personal grievance actions on operational grounds, although few respondents expressed a preference for where it should be located in legislation. Those who supported doing away the defence felt it would conflict with the Commissioner’s ‘good employer’ obligation.

Q13 Do you favour the specialist employment institutions having comprehensive jurisdiction over Police employment disputes?



Overall, there was support for this proposition. Of 23 responses, all but two were in favour.

Respondents gave their support to this proposal for a variety of reasons, the most common of which was alignment with the state sector and current employment standards. In addition, one submitter believed using the High Court as the alternative “does not make sense,” with another stating the current process is too “government driven.”

In its submission, the Police Association stressed the importance of the specialist employment institutions maintaining a supervisory role over Police’s disciplinary processes. It argued: “enabling the employment courts to maintain some kind of jurisdiction will safeguard the integrity of the police disciplinary process.”

Those opposed to the concept seemed opposed to the employment institutions generally. One submitter felt they “have shown themselves to be heavily biased against employers and are unlikely to be able to recognise the particular operational requirements of the Police.” Another respondent against retaining the current system argued the “criminal focus does not work either,” as it is “too brutal and inflexible.” The submitter favoured a ‘middle ground’ instead.

There was wide support for transferring comprehensive jurisdiction of Police employment disputes to specialist employment institutions. The dominant reason for this was increased alignment with the state sector, and with mainstream employment practice.

Q14 In your view, should Police staff have the right to take industrial action; with or without meeting a public safety test? If so, should the same rules cover sworn and non-sworn staff?



MIXED VIEWS

There were divergent views on the possibility of Police staff having the right to take industrial action. Of the 32 answers, 14 were in favour of some right to strike, but 18 were against this.

A justification given by several respondents for strike action was the lack of leverage in wage negotiations. The Police Association suggested it may be necessary for police officers to have the ability to take some form of industrial action in the future “as a precautionary measure.” Supporting work to explore industrial action options as a part of the Police Act Review, the Association stated: “The only way police may be able to protect their interests in a changing political, legislative and industrial environment is through a form of industrial action”.

One Police staff member felt although there was “much public kudos to be gained in sending the message that the Police themselves recognise that they should forfeit their right to strike,” “the right to strike is a fundamental one that underpins employment relations in every democracy,” and so “the situation must therefore be balanced with a robust, powerful and fair minded resolution process in statute.” This theme was echoed by several other submitters.

Those who supported access to industrial action often only favoured a limited right to strike. An example commonly cited was working to rule, such as not issuing tickets. A number of respondents also believed a public safety test should be met before any strike action could be taken, with some believing this would in practice prevent police officers ever going on strike.

Submitters who rejected a right to strike often did so on the basis sworn members would be “in violation of their oath,” and public safety would be affected.

Almost all of those who submitted on the difference between sworn and non-sworn staff felt there should be one rule for all, regardless of whether they advocated a right to strike or not. One submitter noted that if non-sworn staff conducted a strike, then Police’s Communications Centres and the emergency call-taking and dispatching service they provide “would fall over.”

There were mixed and strongly held views on whether Police staff should have the right to take industrial action. Support for the ability to take strike action was generally limited to action meeting a public safety test and/or ‘working to rule’. Opposition came from those who felt industrial action by police would imperil public safety, and possibly violate the constabulary oath of office. Many felt that whatever the final position, there should be one rule for both sworn and non-sworn staff.

Q15 Do you have an opinion on whether the current ‘final offer’ arbitration system should be maintained in a new Police Act? If not a ‘final offer’ system, would you prefer another model?



MIXED VIEWS

Overall, there was some support for retaining the current ‘final offer’ model. Of the 23 responses to the question, 16 favoured keeping the current system, whereas seven rejected it.

Of those who elaborated on their support for retention, ‘final offer’ was said to be “a useful method to moderate extreme demands or unreasonable behaviour,” which helped to resolve disputes that “tend to drag on otherwise.” In addition, four submitters gave conditional support for the current model as the *quid pro quo* for sworn staff having no right to strike.

Qualified support for the ‘final offer’ arbitration system was given by the Police Association. It encouraged legislative recognition of the ‘good faith’ model of negotiations, but suggested “that ‘final offer’ arbitration should remain as a backstop to ensure that matters are resolved, reinforced by the obligation for both parties to negotiate in ‘good faith’”.

Several respondents noted there was a perception the arbitrator will “take the fiscal view,” or be “influenced by the Government’s ability to pay,” leading them to reject the ‘final offer’ system. Others felt that a ‘down the middle’ offer system would be “more in line with current practice.” Another suggested the new facilitation model of bargaining in the Employment Relations Authority environment was more appropriate. Finally, one submitter did not specify a preferred model, but wanted a system which would lead to a consensus.

There was some support for retaining the current 'final offer' arbitration model, including some which saw this as the *quid pro quo* for sworn staff having no right to strike. Others rejected the 'final offer' arbitration model, often in favour of a 'down the middle' approach.

Q16 If a statutory arbitration system for Police is kept, should the arbitration criteria be reviewed to ensure their balance and consistency, as far as possible, with state sector standards?



Amongst the 22 submissions received on the issue, there was unanimous support for this proposal. Several submitters believed the arbitration criteria should go "much wider" than those presently contained in the Police Act. One respondent argued: "There should be no limitation over the matters that can be lawfully arbitrated."

There was unanimous support for a review of the present arbitration criteria, with some stating they should go wider than the current criteria.

Q17 Do you support both parties to an arbitration run under such a system being able to nominate matters for consideration by the arbitrator?



Of the 22 responses to this question, 20 were in favour of both parties having the right to nominate matters, primarily because of the inequity of the current situation. One respondent went further, suggesting there could be a discretion for the arbitrating body to disregard or give limited weight to matters it did not consider relevant, unless nominated by both parties.

Of the two responses against the proposal, one thought it could reduce openness in negotiations by parties 'saving' things for the arbitrator to consider, while another thought no party should "have the right to effectively modify the criteria."

There was strong support for a system of arbitration where both parties are able to nominate matters for consideration by the arbitrator.

Q18 Do you think Police staff should have the same general options for representation as do other employees?



There was some support for this proposal. There were 21 answers in total, with 16 in support and five against.

The Police Manager's Guild was in favour of increasing options for representation. Likewise, the Police Association stated it did not "have any difficulty with a contestable regime being implemented." The Association asserted, however, that "legislative steps should be taken to ensure that other organisations have the necessary skills and expertise to recognise the unique nature of the policing craft." Additionally, the Association felt it should be able to refuse to represent a member of staff in appropriate circumstances.

Few elaborated on their reasons for supporting greater representation options. One respondent stated "it would be good to have an agency outside of Police to call on." Another submitter agreed, adding "the ability for the Police Association to capture membership through holiday housing and welfare should be dismantled." One respondent felt if Police become more flexible with specialised roles, increased options for representation would be an advantage.

Several supportive submitters thought there was convenience in having a limited number of unions dealing with issues, with one worrying increased representation options could lead to an undesirable divisive effect on the workplace. However, none saw this as a compelling reason to retain the *status quo*.

The proposal was rejected by one respondent on the basis there was a "potential for conflict of interest," and by another submitter because the Police Association "is well versed in sworn and non-sworn conditions" and is thus "in the best position to represent us."

There was some support for allowing Police staff to have the same general options for representation as other employees, rather than limiting rights of representation to pre-defined police service organisations.

Q19 In your view, should conditions for secondary employment be lifted to a statutory level?



Lifting conditions for secondary employment to a statutory level was supported by 18 of the 27 respondents to this question. Those favouring such a move thought it would bring more consistency, increase awareness, and preserve members' roles in Police as "paramount."

Three of those supporting the proposal were in favour of a provision like that contained in Ontario's Police Services Act 1990 (as described in pages 21-22 of the *Issues Paper*), although two had doubts about subsection 2 of the Canadian precedent [which provides for members of police to do paid work in a private capacity, so long as such work is organised by their force].

One submitter suggested the conditions be empowered at a statutory level, with the specifics "contained in regulations." Another respondent suggested this was an area suitable for inclusion in a Code of Conduct, which could be recognised in legislation.

Several of the submitters who rejected legislating on secondary employment rules believed locating them in *General Instructions* was sufficient, with others commenting that legislation was not necessary. One submission wanted to retain the "case by case" review of applications.

Overall there was a positive reaction to lifting conditions for secondary employment to a statutory level, although some felt legislation on this topic was not necessary (recommending instead that this could be dealt with in a Code of Conduct). Of those who mentioned a possible legislative model, Ontario's Police Services Act gained some support.

Issues Paper 4: Community engagement

Q1 Do you support a legislative process to underpin connections and priority setting between communities and the Police? If so, do you have a preference for the type of process adopted (e.g. district policing partnership, community policing board)? If you do not support the need for a legislative basis, do you have any comments on how current Police-community engagement is conducted?



Of 34 responses received, 18 favoured and 16 opposed legislating for the relationship between communities and Police.

Support for the proposal

Support for legislation was often given on the basis that current practice is adequate, but would benefit from formalisation. Some respondents felt formalisation would help “ensure continuity of informed consultation” and “also ensure a consistent and transparent process of consultation and reporting with the community.” Legislation was seen as a way of providing an accountability mechanism, should current engagement practices be discontinued.

Other submitters stated they wanted Police to maintain their impartiality, and give councils and local communities more opportunity - and a clearer process - to give formal comments. One respondent said a failing of the current system was the lack of a budget for responding to local needs, which they felt “destroys the credibility and intent of the process.”

Possible Processes

Few respondents expressed a preference for the type of process for consultation, aside from the current system.

One respondent supported creating an annual Area Plan with each local council. One specifically rejected the United Kingdom model mentioned in the *Issues Paper* (page 3), with another supporting that model. Several submitters preferred the use of the Long Term Council Community Plan (LTCCP) provisions of the Local Government Act 2002. One respondent suggested using sections 8(k) and 12(d) of the Corrections Act 2004 as a model.

Another respondent wanted more engagement by Police with new migrant groups. They felt informal ‘ethnic community boards’ could help address a perceived

disparity between Police’s engagement with such groups and engagement with other, more established, ethnic groups. One discussion forum participant proposed Police take it upon themselves to address language barriers that hinder community engagement, rather than leaving it to the community.

Discussion forum participants also suggested various principles for Police-community engagement. These included transparency, ongoing commitment to a reciprocal relationship, and making consultation a two-way process.

Opposition to the proposal

Around half of those rejecting the proposal did so on the basis that current practice works effectively. Several of these respondents stated memoranda of understanding were preferable to legislation. Other alternatives suggested were putting a requirement in either Police’s *Statement of Intent*, or in a Code of Conduct. Six respondents felt legislating a process would decrease current flexibility, with several discussion forum participants emphasising a legislated national approach could hamper engagement being tailored to local conditions. Another common concern was that “forcing people to engage” could be counterproductive.

A number of respondents mentioned a concern about political motivations of councils who undergo less scrutiny than central government, and fears about minority factions ‘taking over’ agendas, who felt their concerns could be exacerbated by legislating a process for consultation. Some discussion forum participants felt it was important Police avoid “capture” by various interest groups, which would defeat the purpose of attempting to engage all of the community. Another respondent was concerned “the silent majority” would remain unheard.

There was no consensus on a legislative process to underpin connections and priority setting between communities and Police. Those who supported legislation often stated formalising current practice was their preferred option. Opposition to this idea came from those who believed current arrangements work efficiently and allow for greater flexibility.

Q2 Do you support the idea of spelling out in legislation a process for consultation between territorial local authorities and Police?



There was no consensus on this proposition: of the 28 direct responses, 13 were in favour and 15 were opposed.

Supporters thought it would “foster a commitment from both organisations towards effective policing,” ensure a transparent process, and provide an obligation to consult. Local Government New Zealand stated that while some councils were satisfied with existing relationships, others had various concerns about current engagement and accountability, which they felt demonstrated “that the current approach is *ad hoc* and heavily reliant on the willingness of individuals within organisations to work together.” Several councils therefore supported legislation which provides a standardised national framework.

One council submission stated local community priorities should be linked to Police District Plans and to Police’s national *Strategic Plan* so resources could be allocated to community priorities. Different perspectives were expressed by other respondents, however, with one submitter being vigorously opposed to allowing any local councils to “direct” Police on issues.

Several submitters stated that if such legislation was put in place, the consultation process should not take priority over wider community engagement. Concerns were also raised that national and local priorities may conflict. However, it was thought concerns like this could be addressed through education, with one discussion forum participant suggesting police could report to local communities how work on national priorities was benefiting those communities.

Opposition generally came from respondents who felt things were working fairly effectively, and that voluntary consultation resulted in better engagement between groups. Several stated the Local Government Act and LTCCP process would be duplicated if any formalised process was included in new policing legislation. Another concern raised was whether an obligation to consult would result in encroachment on the operational independence of Police.

A number of respondents thought a legislated process would not be flexible enough to deal with the “many

different ‘communities’ with whom police must engage, each one requiring specific connections and priorities.” They felt too much detail in legislation could thwart the development of locally appropriate relationships. Several submitters also felt prescribing a process to consult was unnecessary, although an obligation to consult could usefully be included in legislation. This was seen as an appropriate compromise between accountability and flexibility.

There was divided opinion on the idea of spelling out in legislation a process for consultation between Police and territorial local authorities. Opponents felt it was unnecessary and would duplicate the Local Government Act 2002. Supporters felt it would ensure greater consultation through a consistent and transparent process.

Q3 Do you support the idea of making it a legislative requirement for police to report results of their activities to local areas? If so, do you agree that reporting those results at territorial local authority levels would be appropriate?



Mixed support was given to this proposal; of the 29 submissions directly on the issue, 16 were in favour and 13 were against.

Support was given on the basis that national reporting discourages community involvement, and local reporting is “a means of highlighting police community accountability.” Another submitter felt it would test whether public consultation had been factored into local Police priorities. Others believed it would help “bring the police and members of the community closer together,” encouraging “the community to work with police to make their communities safer.” As discussed in Q2, it was thought reporting the results of national priorities to local boards could promote understanding of the benefits that national efforts bring to local areas.

One member of Police felt it would not be too onerous to expand the current local road safety reporting to other areas, although along with others they noted the boundaries of territorial local authorities sometimes differ to those of Police. Discussion forum participants also noted possible difficulties in local reporting related to the national structure and funding of Police.

Many councils stated they already receive regular reports from Police, but believed a legislative requirement around reporting would enhance accountability, and would create a standardised method of reporting. One respondent believed any legislative process for this “must not tie up additional police resources but rather should look at streamlining the consultation process.” A further submission advised “burdensome reporting requirements” should be avoided where possible.

Some respondents did not believe legislation was necessary, given “Police already do this without the need for legislation,” and that LTCCPs under the Local Government Act provide a process to monitor outcomes that result from the partnership between Police and local authorities. Other respondents were opposed to the idea because they did not believe reporting required statutory-level support, although they approved of reporting in principle. One stated “it could inadvertently result in statutory non-compliance if data collection methodologies change or are unable to be continued.” Several preferred a policy or framework-level obligation based on best practice techniques, while another advocated for memoranda of understanding. Concerns over the potential for conflict between national and local priorities was again raised by some submitters.

One individual, a member of the Combined Watches of Canterbury, felt that as territorial local authorities in New Zealand “do not contribute directly to policing ... nor have they the knowledge, background or expertise to set policing priorities, the present liaison between police at all levels from the town board to regional authority cannot be criticised.”

Overall, few respondents addressed whether they thought reporting to territorial local authorities would be appropriate. Of those who did, four favoured reporting to local authorities, three favoured community boards, and two favoured a “wider group than local authorities.” Participants from one discussion forum held some reservations about using local authorities, but also noted that community boards have ‘patchy’ coverage in some areas. Another discussion forum gave strong support to using local authorities as a mechanism for reporting. Countering this, some respondents criticised some metropolitan authorities as being so large they have lost the ‘local touch’ and links with the communities which they represent.

There was a mixed response to the idea of making it a legislative requirement for police to report results of their activities to local areas. Respondents often supported this concept on the basis it would increase Police-community engagement, while those who rejected it either felt it was unnecessary or favoured less formal incentives for greater reporting, such as a policy guideline. There were few submissions on whether it would be appropriate for Police to report to territorial local authorities, with mixed support for the idea in those submissions which did.

Q4 Do you support the idea of formalising police volunteer roles in new legislation? If so, do you hold a view on whether volunteers could be provided a limited range of powers (e.g. to target nuisance offences)?



Of the 22 responses addressing whether police volunteer roles should be formalised in legislation, 10 were in support, and 12 were against. An underlying issue which seemed to polarise views was whether Police-related volunteers should be formally incorporated into Police’s structure or remain outside of it.

There were three responses from volunteer community watch groups. Manurewa Crime Watch Patrol was in favour of formalising roles, stating it was “long overdue.” Conversely, Community Watch Hornby rejected this idea outright, and a representative of the Combined Watches of Canterbury cautioned “voluntary organisations cover too broad a spectrum to be covered by one set of rules.”

The most common reasons for supporting formalisation was the belief it would result in greater consistency, clarity, coordination, accountability and transparency over the roles. There was a feeling formalisation could also more effectively utilise the skills of volunteers. Some supported legislation requiring a more stringent vetting process, with close scrutiny and regulation. Countering this was a concern that such regulation may not fit in with the ‘ethos’ of volunteering.

Those who rejected formalising Police-related volunteer roles thought legislation would be unnecessary if volunteers were not given any more powers, that it could overstate the actual work undertaken, and could confuse the roles of sworn personnel and volunteers. Several respondents believed that if Maori Wardens were included they “will lose some of their mana and may become known as a wing of the police which may turn some of their ‘clients’ away.”

Should volunteers receive a limited range of powers?

There were 15 submissions against the idea of giving volunteers a limited range of powers, with four in support. A number of submitters from both points of view stated they did not wish to see volunteers used as “an alternative to mitigate a shortage of frontline police numbers.” There were concerns over the possibility of vigilante activity by volunteer groups, and public confusion over the identity of volunteers and regular police officers.

Of the community watch groups, the Combined Watches of Canterbury doubted the United Kingdom provisions would be successful in New Zealand. Community Watch Hornby worried “volunteers could inadvertently be placed in dangerous situations through the public’s perception and expectations of volunteers’ powers,” and that such groups could attract people with “the wrong motives.” Manurewa Crime Watch Patrol stated they had some volunteers who would welcome targeted powers, but emphasised the need for considerable training.

Those in support of the proposal were concerned that volunteers in empowered roles should be given adequate training, undergo a stringent vetting process, have a clearly identifiable uniform, and not be given powers of physical restraint or use of force. Wider issues of safety - both for volunteers and members of the public - were also raised in a number of submissions.

Several respondents stated if there was a policing role that needed to be filled, it should be filled by paid employees - with a “different category of employee” and system of direct entry to specialised roles being raised as possibilities.

There was a variable response to the idea of formalising Police volunteer roles in legislation. Generally speaking, there was opposition to giving volunteers a limited range of police-like powers, with concern expressed that such volunteers could be used as a ‘stop-gap’ for a shortage of fully-trained Police staff, and could even lead to vigilante activity.

Q5 Do you have a view as to whether formalising police support roles would be desirable in New Zealand? If so, are there any particular features which you believe should be incorporated into such roles - such as a requirement to complete appropriate training, carry special identification, or the ability to exercise limited police-like powers (such as those described for Maori Wardens)?



There was a mixed response to formalising Police support roles, with 14 of the 24 responses in favour. Some support came from those who favoured merely formalising current practices and those who also wished to see some form of auxiliary police created. In some cases it was difficult to discern which option respondents preferred.

Of those who gave reasons for supporting formalisation, an increase in professionalism and greater national consistency was mentioned, as was a wish to avoid “ungovernable informal police roles,” and to enhance roles such as Maori Wardens who “act as mentors and behaviour models.” One respondent believed it was necessary to formalise the roles due to the fact such individuals have “access to confidential information about people.”

Possible models for new roles were given by some respondents. One respondent suggested an “organisation similar to the Territorial Force Army” to give back up to Police when necessary. The submitter anticipated that the same training as sworn officers would be required, with individuals serving for a set period annually to keep skills and training current. Another submitter preferred “special constables” holding limited powers in non-core

police roles such as jailers and prisoner escorts. Other respondents seemed to contemplate an auxiliary police similar to the models described in the *Issues Paper* (page 7).

Supporters of formalisation also suggested various features for such roles, the most common being appropriate training and identification, so support officers were “clearly distinguishable” from sworn police. Other features mentioned by some respondents were a careful selection process, clear protections (both for the public and support officers), and adequate resources.

Many submissions supportive of this model came with caveats. For example, it was thought any attempts at formalisation would have to be carefully balanced to avoid the “impression that Police are attempting to civilianise the role of police officer.” Another felt it could be “seen as dangerous and undemocratic to have a great number of volunteer police groups touting police-like powers.” One submission cautioned against using special constables in a “general policing role, due to the unpredictable nature of situations which we face everyday.”

Opposition to the proposal came mainly from those who felt current legislation is sufficient, and that in emergencies (as well as the support role non-sworn Police staff could play) extra assistance could be called on from the Defence Force, Civil Defence, and other agencies Police has existing relationships with, such as the Customs Service and Immigration Service.

The Human Rights Commission felt current legislation is adequate given there is already provision for “appointment of ‘special constables’ and for the establishment of Maori Wardens who carry out some basic policing functions.” Several submissions stated policing roles should only be carried out by members of Police, as to do otherwise may be seen as “policing on the cheap.” Similarly, one submitter stated if there was a need for “a greater visible police presence on the streets, then it should be provided by recruiting full-time constables.”

Some concerns were raised over the scope of possible powers Police support officers would have, with several submitters opposed to “the provision of coercive powers to volunteer citizen’s groups.” In addition, the Police Association recommended a review of the current procedures for appointing temporary constables; on the

basis the current practice results in temporary constables receiving all the powers of a constable, whereas the Association believes it would be more appropriate for the Commissioner to be able “to determine the types of roles needed, and to limit the powers specifically to those roles as deemed appropriate.”

There was some support for formalising police support roles, although this was qualified by a number of respondents. Supporters suggested checks and balances, such as appropriate training, identification, selection processes and protections. Opposition came from those who thought current legislation was adequate, with one submitter proposing an alternative to the current practice of giving temporary sworn officers all the powers of a constable.

Issues Paper 5: Powers and protections

Q1 Do you agree that the Police Act is an inappropriate place to locate most police powers? If so, why? If not, why not?



GENERALLY SUPPORTED

There was a general consensus the Police Act is an inappropriate place to locate most police powers. Of the 18 responses received on this issue, 12 agreed, two felt the Act should only include a cross-reference to powers contained elsewhere, three disagreed, and one was unsure.

A commonly-cited reason for not consolidating powers from other Acts in policing legislation was the necessity of amending Police's legislation every time a power under another Act was changed. Another reason for opposition was said by one submitter to be that "the Police Act is primarily related to administrative aspects of policing, rather than the execution of duty." One respondent stated that powers "should be located in the legislation that is most accessible to those most likely to be affected by the powers," and given it is "more likely that people would be interested in a specific subject, such as Biosecurity or Land Transport" than police powers generally, the powers should remain in the specific Acts to aid accessibility.

Several submitters stated only powers not contained in other Acts should be included in the Police Act. One submitter believed any reference to police powers under the new Act should focus on "acknowledging a general specific power of arrest as well as acknowledging police powers assigned by other legislation," with another preferring to include only sufficiently generic powers. Several submitters agreed individual powers conferred under specific statutes would be out of context if included in a Police Act. On the other hand, one respondent stated the Act should include a reference to the "non-coercive powers of Police, particularly the Commissioner and District Commanders."

Two submitters stated the Act should contain a cross-reference to the powers contained in other Acts to allow for ease of reference, both suggesting a compilation of the powers with the details left elsewhere. Another submitter suggested a consolidation of the powers in another document - with the possibility of it being non-statutory - to enable ease of reference.

Two respondents stated it was appropriate to include "most, if not all police powers in the interests of transparency and accountability," believing this would

make the powers of Police accessible to the public. One also stated they should be in 'plain English' to aid understanding.

The unsure respondent stated their view would depend on the purpose of the legislation: if it was primarily about the governance and management of Police then they stated it "would not make sense to include enforcement powers," although if it was to empower Police and outline their role and functions, they felt including such powers could be appropriate in the new Act.

Most respondents believed the Police Act would be an inappropriate place to locate most police powers, mainly due to the need for continual revision as other statutes are amended. One respondent felt it depended on the purpose of the new Act. Some respondents suggested a cross-referencing system in the new Act.

Q2 Can you suggest any ways that enhanced understanding of police powers could be achieved (e.g., consolidating statutory powers police can access in a single Act; or cross-referencing to statutory powers police can access in a Schedule to a new Police Act)?



GENERALLY SUPPORTED

Suggestions for improving understanding of police powers included:

- Cross-referencing the powers in a schedule to the Police Act (6 submissions)
- Collating all powers in one statute (3 submissions)
- Creating a list of powers and placing it on Police's Internet website (3 submissions)
- Listing all powers in one of Police's corporate documents, such as the *Statement of Intent* or *Annual Report* (1 submission)
- Cross-referencing the powers in a schedule to the Police Regulations (1 submission)
- Listing all powers in a schedule to the new Act (1 submission)
- Parliamentary Counsel Office could compile statutes with a law enforcement nature or significant police powers in a special reprint series (1 submission)
- Legal publishers could produce a law enforcement edition which covered the Acts with Police powers and case law similar to *Hall on Sentencing* (1 submission).

Cross-referencing the powers in a schedule to the Police Act was most popular option. It was thought a schedule could be easier to amend than an Act, and that it would enhance the ability for people to comprehend the various police powers scattered throughout the statute books. It was further suggested it would also be a “useful way to identify” all pieces of relevant legislation, which could aid public awareness about the reach of police powers. Community Law Canterbury commented: “a comprehensive Schedule which cross-references all statutory police powers would be a useful guide for educators and providers of legal information to the public. Such a Schedule would also simplify the task of researching in this area for interested individuals and organisations.” However, not all respondents were enthusiastic. For instance, one member of Police doubted it would offer greater clarity, asking “who, other than those directly affected, lawyers and academics read schedules to Acts?”

Using a statute to collate all powers was supported by a number of submitters, one of whom advocated using the Police Act for this purpose. One submitter believed doing so “would enhance the ability for lay people and those involved in the legal system to clearly see what powers are available to the Police.” Conversely, one respondent stated their preferred option as being for Police to “establish clear communication on the various powers they have, rather than rely on legislation as a form of communication in itself.”

Other suggestions included creating a list of powers to be placed on the New Zealand Police website, on the basis this would be “easily locatable” and help improve public understanding.

The most commonly proposed suggestions to increase understanding of police powers were cross referencing the powers in a schedule to the new Act, and/or making the powers more accessible by publishing them on Police’s website.

Q3 **What (if any) current powers available to police do you think might usefully be transferred to other enforcement agencies, or dispensed with altogether?**



MIXED VIEWS

This issue prompted a range of suggestions, with mixed views on the merits of transferring existing police powers to other enforcement agencies.

Highlighting civil offences, one respondent stated some areas where Police have the power and duty to investigate, but lack resources to do so, should be transferred to other agencies. This was countered by a respondent who rejected what was seen to be a “trend over the years of handing off tasks to other agencies or the community because it reduces workload.” The submitter felt Police should perform policing tasks “and have the resources provided to do it.”

Investigating alleged breaches of electoral law were suggested by two respondents as being appropriate for investigation by another agency. One did so on the basis it is a “secondary enforcement role,” the other because “the hours spent pursuing allegations against an electoral participant come at the cost of investigation of matters such as burglaries, robberies and assaults,” and the additional risks of being accused of partisan bias. Nevertheless, it was felt that a residual power should remain with Police to investigate serious breaches and corruption.

One secondary role seen as suitable for transferral was Fisheries Act enforcement. This was echoed by several submissions supporting the transferral of more powers (e.g., arrest) to the Customs Service and Ministry of Fisheries, as they have regulatory powers and “a common need to enforce the law.” One submitter gave an example of a fisheries officer who finds cannabis in a car while searching for fish. They thought in this situation the fisheries officer should be able to make an arrest as a police officer would, if police were unable to attend.

Transferring powers to various agencies was supported by one submitter who added that a police presence should then only be necessary to ensure no breach of the peace occurs.

One respondent rejected transferring or delegating any powers to other agencies without careful consideration, stating “it is important that when people’s freedoms and civil rights are being curtailed or affected that they are being done so by a highly accountable and visible organisation,” and “police receive extensive training for this reason.” The Police Association concluded: “Although it might seem attractive to shed responsibilities to focus on ‘core duties’, it would also dilute the status of Police in modern society as the coercive arm of the state.”

One respondent took a different approach to the issue, stating the development of “specialist offending” and the

emergence of new forms of criminality would be best countered by more joint agency work and specialisation of staff, as opposed to “the simple transfer of powers.”

Finally, one respondent suggested consideration should also be given to which powers other agencies hold that should be transferred to the Police.

Varied suggestions were received on which (if any) current police powers should be transferred to other agencies. Some of the more common suggestions included the enforcement powers of agencies such as Customs, Immigration and the Ministry of Fisheries. However, some respondents were against transferral of powers where it was done because of insufficient Police resources. Concerns were also raised that the enforcement staff of other agencies might not be as accountable or as well trained as police.

Q4 Do you support the new Police Act giving statutory recognition to police practices that currently have no legislative backing? If so, are there any particular policing practices you would like to see included in statute (e.g., use of assumed identities to help safeguard personal and public safety)? Do you think further protections should also be incorporated in legislation?



There was some support for giving statutory recognition to police practices that currently have no backing, with 10 of the 14 responses directly in favour of it. Support was given on the basis it would give the processes greater transparency and accountability. One respondent felt the sorts of police practices given as examples of uncodified schemes should “be sanctioned by Parliament rather than simply adopted by the Police.” They felt codification could also “assist in overcoming difficulties with the Privacy Act” and provide suitable safeguards.

The most common suggestions were those mentioned in the *Issues Paper* (pages 7-8), relating to undercover officers and the voluntary fingerprint scheme. Also included were the process for securing/examining scenes, the witness protection programme and the Police diversion scheme, to “ensure consistency.”

Opposition to giving such practices statutory recognition came from four submitters, who were concerned “Police’s ability to undertake practices that do not have

any legislative backing will be eroded,” with any other practices possibly challenged as being *ultra vires*. One felt statutory recognition should only be used where the conduct would be illegal or render evidence obtained inadmissible. Another respondent stated the current arrangements between Police and other agencies work effectively and should not be changed. A fourth submitter expressed objections to any “informal police practices” being recognised in statute, and added: “there is also the danger that legislation of informal police practices would trump the Bill of Rights Act, if the two statutes ever came into conflict.”

General support was given to codifying practices that currently have no statutory backing, such as the youth fingerprinting scheme and use of undercover agents. Cautions were expressed that such a move could allow non-codified practices to be challenged in the Courts.

Q5 Do you support amending the current section 57 power to clarify when particulars can be retained or must be destroyed? If so, what are your reasons for seeking such amendments?



There was broad support for carrying over an amended section 57 of the current Police Act, but views on how it should be amended diverged significantly. Some suggested defining “on a charge” in the interpretation section to the Act would be sufficient, while others went further.

In terms of when identifying particulars may be taken, three submissions opposed extending section 57 to cover all people in lawful custody, two on the basis it “could be inconsistent with the New Zealand Bill of Rights Act.” The Office of the Privacy Commissioner also identified concerns about “lowering the threshold for the taking of identifying particulars”.

Overall, though, the majority of submissions supported extending the scope of section 57 to cover all people in lawful custody, including one that sought to extend it to when police have “good cause to suspect” an offence has been committed.

Several respondents also favoured extending the power to people who have been summonsed; one believing it could help reduce arrests; while another stated it should only apply to summons for offences punishable

by imprisonment. There was also a submission in favour of allowing section 57 identity checks of prisoners to occur in prison, to avoid the need to temporarily release them from prison in order to perform such checks in a police station. Another respondent stated a power to take particulars from all people in police custody should "include persons refused entry into New Zealand by Immigration."

There was general support for defining when particulars should be destroyed; although again, views differed on when this should be. One respondent argued "section 57 should specify that identifying particulars must be destroyed unless the person is *convicted* of an offence." Several submitters supported amending section 57 to require the destruction of particulars when a charge was withdrawn. The Office of the Privacy Commissioner commented it would support a law change "to ensure that identifying particulars are not retained where a person's charges are resolved through some other means short of prosecution and conviction".

Taking a different tack, one submission stated "the only time the particulars of identity should be destroyed is when it is clearly shown that the person from whom the identifying particulars were taken from was innocent." Another respondent went further and suggested if a defendant is acquitted, it should be up to him or her to apply to have identifying particulars destroyed. Three other submissions favoured retaining the information if a case ended in conviction, a Family Group Conference or Police diversion. One Police staff member noted the basis for bringing 'alternative resolutions' into this equation was that for such a resolution to be offered, "acknowledgement of guilt is required."

There was a further submission on retaining section 57 in some form, but placing it in another Act. The respondent felt the level of detail it required meant it was inconsistent with the "quasi-constitutional status of the [Police] Act."

There was support for revising section 57 of the current Police Act to clarify when identifying particulars can be retained or must be destroyed. Some respondents favoured extending powers to take particulars, while others rejected this. There was a similar mix of views on when identifying particulars should be destroyed.

Q6 Do you favour amending section 57 to allow a wider range of biometric data to be used for identity confirmation purposes? If so, what added safeguards might need to accompany such amendments?



Of the 13 submissions directly responding to this question, all but one were in favour of allowing a wider range of biometric data to be used.

Support was mainly given on the basis it would allow Police to "take advantage of emerging technologies." Suggestions included ear prints, eye recognition technology, and including a power to take DNA (with some respondents also suggesting any new Act be broad enough "to accommodate any new technology that may come along in the foreseeable future"). It was suggested DNA sampling be extended from serious offences and "should be looked on as the modern day fingerprints." It was thought this could be achieved by allowing only biometric data collection methods which have obtained Ministerial approval, avoiding the need for an amending Act when new methods emerge.

One respondent urged caution, and stated any new power would have to be considered in light of the current requirements of the Criminal Investigations (Bodily Samples) Act 1995. Environmental Science and Research Limited (ESR) also recognised the necessity to amend the Criminal Investigations (Bodily Samples) Act, which it thought would "have the potential to further increase the effectiveness of the National DNA databank as a crime-fighting tool."

The one respondent who was opposed to a broadening of section 57 stated "powers to obtain body samples from suspects already exist." The respondent added that if any extension was contemplated, it should be done in a way "which minimises any infringement on the right to be free from unreasonable search and seizure."

Safeguards

According to the Office of the Privacy Commissioner, "the corollary of the kinds of amendments discussed in this part of the *[Issues] Paper* must be robust privacy safeguards to ensure that reasonable expectations of privacy are met." Continuing this theme, several respondents advocated allowing collection of biometric data only when someone is charged with an offence, with one specifying only offences punishable by

imprisonment should qualify. One submitter advocated destruction of data if no conviction was entered or if the case failed to proceed. This may be contrasted with another submission which preferred all cases (including acquittals) be dealt with on the facts. As noted earlier, one respondent suggested a provision which restricts police to the use of methods which have been given a Ministerial seal of approval. Several advocated “clear parameters” or safeguards without giving examples.

There was support for updating section 57 to allow a wider range of biometric data to be used for identity confirmation purposes. A number of suggestions were offered on safeguards which could usefully accompany such a revision.

Q7 Do you support amending section 57 to enable police to require production of identifying particulars (biometric data) outside of police stations? If so, why; and what additional safeguards (if any) do you think may need to be provided for?



There was some support for amending section 57 to enable police to require production of identifying particulars outside of police stations, with nine of the 12 respondents in favour.

Those in support believed it would streamline the process, and allow identification of individuals without having to subject them to detention. Some respondents listed the various locations where being able to require identifying particulars would be useful, such as airports, hospitals, prisons and mass arrest situations. Another believed that if there was a law change to allow defendants under summons to have their biometric data taken, then being able to take these particulars outside a police station could allow this to happen in a more flexible manner.

Several respondents stated they wished to see allowance for future technologies, including the use of LiveScan fingerprinting. As an example of future possibilities, ESR identified the possibility of DNA profiling done in ‘real time’ in the field.

By contrast, several respondents felt the best way to safeguard the information and system from abuse, misuse, or error, was to restrict it to police stations. One submission said it would help “maintain public support of

the Police.” Others argued identifying particulars should only be taken when an individual has been charged, was in custody, or under arrest, as it was the status of the person that should be decisive, not their location. One respondent stated that photographic driver licences should be sufficient to confirm a person’s identity, and that if an officer suspected a forgery he or she could always arrest the individual.

Safeguards

Several respondents said existing safeguards would be sufficient if section 57 was broadened to enable police to require production of identifying particulars outside of police stations. Others advocated “clear parameters” on the collection and retention of data. One respondent stated if safeguards could not be complied with in the field, then collection should only be permissible at police stations.

One submitter felt the data should be destroyed “after it has been used for its express purpose,” and another stated it “is vital to ensure that adequate privacy safeguards are in place as these should not be sacrificed in the name of administrative efficiency.” Noting that the collection, use and storage of biometric data has “significant privacy implications,” the Office of the Privacy Commissioner indicated that “in general terms we would likely support a rule that the data must not be retained and stored on police databases for further use”.

There was some support for broadening section 57 of the current Police Act to enable police to require production of identifying particulars outside of police stations. Some respondents believed existing safeguards would suffice, although others made additional suggestions. Ideas included setting clear parameters on where and how biometric data could be collected, and rules to ensure data collected would not be retained or stored on any Police database.

Q8 Do you have any suggestions on how to ensure police powers like section 57 under other legislation might most effectively support modern technology? Do you have any suggestions for how the rights of individuals would be properly safeguarded?



There was a suggestion that biometrics are being considered in a wider Government context, and a respondent felt there would be advantages in proceeding in a consistent manner. The respondent felt newer technologies could make data collection and checking “easier, less intrusive and more accurate.” Another respondent stated the Commissioner could be empowered to authorise suitable technologies as they arose, which might not be possible were they specifically mentioned in an Act.

One submitter questioned whether legislation should enable information sharing with forensic testing laboratories. In its submission, ESR stated it would be useful to take fingerprints at the time of taking a DNA sample, as they had detected examples of fraudulent identity use in connection with profiles in the DNA Databank (e.g., a person giving a sample in the name of someone else).

Another respondent suggested establishing a system whereby information is “placed onto a driver’s licence on a chip that is unique to one person,” with information including questions to which “only the legitimate owner of the licence would know the answers.” It was thought this system would target the use of ‘borrowed’ licences. The respondent further suggested that when an individual was not in possession of a licence, “additional checks such as LiveScan” could be undertaken in the police car.

One submitter believed it should “be up to internal police policy, not legislation, to set out the details,” while another observed “the innocent have nothing to fear.”

There were several suggestions on how to ensure police powers under other legislation might most effectively support modern technology, including sharing identification information with ESR to reduce identity fraud, empowering the Commissioner to authorise suitable technologies as they arise, and adding a verification scheme to licences to target their fraudulent use.

Q9 What (if any) aspects of the current section 57A power do you support being updated?

Most submissions on this question identified difficulties with the current search process and drew comparisons with the Corrections Act 2004. Some felt the requirement that a person be in lawful custody and ‘to be locked up’ should be widened, as “all the rest of the

prisoners whom we deal with” had to be assessed “on an individual case by case basis in order to search them under our common law power of search.” A statutory power of search was said to increase “the safety of prisoners and police staff.”

One respondent noted that since the enactment of the Corrections Act, “various legal opinions state there is no statutory power for Police court staff to search persons who have been remanded in custody or sentenced to prison,” restricting the power to Corrections staff.

A further submission was received in support of widening the power to search under section 57A, although it was doubted whether the power should continue to be located in policing legislation given its detailed nature and the “quasi-constitutional status of the Police Act.” The submission suggested the section 57A power should be moved to the Crimes Act 1961.

One respondent suggested any revised section 57A search power should be combined with a power to seize and consequently destroy, dispose of, or forfeit to the Crown any items found during a search, such as controlled drugs and offensive weapons. The example of section 32 of the Misuse of Drugs Act 1975 was highlighted as worthy of consideration.

A common suggestion was to incorporate the power to require a person believed to have swallowed a Class A drug to undergo an x-ray or ultrasound scan, as found in sections 5 and 6 of the Drugs Act 2005 (UK). Several respondents also saw benefits in being able to draw an inference of guilt if a detainee refused to allow an x-ray or ultrasound scan to be conducted. One submitter pointed out there is a similar provision under section 13A of the Misuse of Drugs Amendment Act 1978, which authorises police and Customs officers to detain a person suspected of ingesting a Class A or B drug, and ‘offer’ them an x-ray. A submission from the Department of Corrections stated they held a similar power under section 98(9) of the Corrections Act, but it remains unused as the necessary regulations have not been made.

One respondent specifically rejected any possible reform of section 57A to allow for police-ordered drug tests, as discussed in the *Issues Paper* (page 11), stating: “Police is not the appropriate body to pass judgement on personal alcohol, drug, or mental health problems.”

Electronic screening of those entering police buildings was suggested as beneficial for Police staff safety by one submitter. Another stated it would be important to affirm the common law power of a constable to conduct incidental searches during any review of this area.

Finally, one respondent believed “the whole lot” should be updated to help ‘future proof’ the Act. Several submitters stated the Law Commission’s project on entry, search and seizure (when it is completed) could further inform discussion on this topic.

Some widening of search powers (particularly in light of the Corrections Act 2004) were suggested, as was allowing scans to search for drugs or to promote staff safety.

Q10 Are you in favour of providing more certainty in legislation around the use of equipment by police? If so, do you have any suggestions as to how this might be achieved?



MIXED VIEWS

There was some support for using legislation to provide more certainty around the use of equipment by Police, with 12 submissions for and five against. A number of respondents wanted legislation to include a general summary of the type of equipment used by Police, with one believing the specifics should be left to secondary or tertiary legislation. Others suggested a process for decisions on using equipment in the future, with one stating “such a process may have helped deal with the concerns some groups have had around the Taser trial.” They cautioned that legislation could “provide such groups with the basis for Court injunctions,” and “impact directly on the Commissioner’s independence.” One submitter thought this section could be extended to other agencies that may use force, such as Customs.

One respondent suggested leaving specific equipment out of legislation, as they felt it would thwart a goal of ‘future proofing’ the Act, given the rate of technological development. However, they still supported including in the Act criteria for using any approved equipment.

Those rejecting the idea felt the use of equipment was an area where “an operational decision” should be “made or delegated by the Commissioner without political interference.” Others felt it could prevent adaptations in the future, thus “if we shifted from bracelet handcuffs to rigid handcuffs we would need

to get an amendment.” The Police Association also worried that “Any attempt to codify or provide a specific statutory basis for the use of police equipment could unnecessarily hinder the future development of good police practice.”

Opponents of the proposal often felt Police equipment issues sat squarely in the domain of the Commissioner, with one believing the current use of force provisions were appropriate. Contrasting this was the view of one respondent who advocated for legislation to specify “ministerial responsibility in relation to the admissibility and use of equipment use in exercising force,” with the aim of providing “more accountability for use of force.” A number of respondents also suggested providing a legislative presumption for the application of handcuffs to all arrested and detained individuals, with one noting Police’s tactical options work has indicated “the most likely place for a police officer to be assaulted is in a patrol car whilst returning an offender to the police station.”

There was some support for providing more certainty in legislation around the use of equipment by Police. While some were in favour, others believed it could limit future flexibility and restrict the independence of the Commissioner.

Q11 Do you support legislation strengthening the ability to share information between Police and its partner agencies? What are the pros and cons that affect your thinking on this issue? If there was to be greater information sharing with Police, what (if any) additional safeguards would you expect to see?



GENERALLY SUPPORTED

While respondents recognised any moves in this direction would raise “significant privacy issues” and be “rigorously debated,” there was general support for enhanced information sharing between Police and its partner agencies. There were 10 submissions in support, and two against. Submitters advocated a “whole of government approach” that increases “convenience and speed of access under simplified processes.”

One respondent stated that while Information Privacy Principle 11(e) under the Privacy Act 1993 “makes it very clear that any information can be shared for ‘law enforcement purposes’, a number of agencies either

wilfully ignore this principle or are deliberately ignorant of it," choosing to make "their own internal policies which are considerably more restrictive than the legislation requires." The Human Rights Commission supported Police having the ability to share information as it "helps ensure cross-agency cooperation and undoubtedly plays an important role in law enforcement." However, it was cautious about any amendments to the Privacy Act which would allow "unfettered Police access" to pre-release prisoner information, on the basis it "would infringe the privacy rights of individuals."

Alcohol Healthwatch stated that to reduce alcohol-related crime, "access to information and data is a must." It suggested data sharing would help identify target audiences and stakeholders, prioritise and plan appropriate responses, and evaluate effectiveness.

Opposition was expressed for differing reasons. One respondent affirmed the importance of information sharing, but believed legislative amendments "could have the opposite effect," creating difficulties in getting concurrence from all interested parties. Two submitters preferred memoranda of understanding, one stating they are a "better way to get useful information sharing." Joint taskforces were also suggested as an alternative.

Legislative amendment was rejected by another submitter who held "grave concerns with regard to allowing 'information mining' between agencies in order to uncover undetected crimes." They were supportive of "strengthening existing measures limiting information sharing between police and partner agencies to ensure it is scrutinised and controlled by independent bodies such as the courts."

The Police Association submitted that enhanced information sharing powers should not be codified in a Police Act, recommending instead that such matters "might more usefully be dealt with through a consequential substantive amendment to the Privacy Act." It added that "the public interest" supports the permissible sharing of any lawfully stored information held by one agency being shared with another agency "for the purposes of crime detection."

Safeguards

Some respondents suggested information given to Police by other agencies should "remain with the Police and not be divulged further." Another submitter felt a retrospective look at any issues that arose would be the best approach.

There was general support given to strengthening the ability to share information between Police and its partner agencies. Some saw this as a role for policing legislation, while others preferred non-legislative mechanisms, such as memoranda of understanding.

Q12 Do you support new legislation for Police extending police enforcement responsibilities for some offences? If so, do you have specific suggestions in mind? Do you have any views on possible safeguards that should accompany such extensions?



There was support for extending Police enforcement responsibilities for some offences, although much of it was conditional.

The examples given in the *Issues Paper* (pages 15-16) gained support from a number of respondents. One went further and advocated the extension of the infringement notice system to all "offences punishable only by fine or by fine and a maximum of three months imprisonment," while the Hospitality Association of New Zealand (HANZ) supported using infringement notices for additional underage alcohol offences under the Sale of Liquor Act 1989. The New Zealand Drug Foundation also identified a need to give Police more options for dealing with vulnerable young people.

Police taking on "secondary enforcement roles" was stated as the reason for opposition to the proposal by one respondent. They felt "other organisations should have greater enforcement and prosecutorial functions." Another respondent opposed extending Police enforcement powers on the basis the powers could possibly be of a "quasi-adjudicative" nature, which could raise issues about a lack of separation of powers. A third respondent cautioned that the public could construe moves in this direction as profit driven.

Several submitters doubted whether such an extension would most appropriately be placed in a new Police Act, preferring to see any changes remain within the relevant Acts. Another submitted there is "a trend for central government to let local government authorities deal with community issues with bylaws as opposed to statutes," suggesting Police's new legislation could simply authorise members of Police "to act on and enforce any lawful council bylaw."

Public drunkenness was specifically suggested as a candidate for infringement notices, to “discourage people from getting into that state in the first instance.” One submission gave support to reviving sections 41 and 50 of the Police Offences Act 1927, to place “the onus back on individuals to maintain sobriety (or be removed from a public place), or to account for property or cash in their possession.”

Several respondents held longer term views of such a system. One suggested a consequence be imposed if any fines issued under the system “were not paid in a reasonable time,” and another proposed that “once a person has a certain number of Liquor Infringement Notices there should be further action such as an appearance in court.”

Safeguards

Several submitters stated any system should comply with the principles of natural justice and be applied exclusively to minor offences. One respondent stated any developments should be postponed until the reviews mentioned in the *Issues Paper* (pages 15-16) are completed, and another felt any proposals should be discussed in partnership with the Ministry of Justice.

One respondent stated ‘minor’ liquor-related offences could indicate a drinking problem developing in a young person, and emphasised the need for early intervention in these circumstances, which may mean involving other agencies.

There was qualified support for legislation to extend police enforcement responsibilities for some offences, with some respondents supporting an extension mandated through other Acts, while others sought safeguards around the use of any extended powers.

Q13 Do you favour new legislation for Police extending general police powers in particular areas? If so, do you have specific suggestions to offer (e.g., a statutory ‘move on’ power)? Do you have any concerns about extending the powers of police?



Most responses to this question gave support for extending police powers in particular areas, although some submitters, such as the Police Association, were opposed to any such powers being codified in new policing legislation.

Suggestions for extending police powers were most commonly given in respect of disrespectful or offensive behaviour towards police officers. It was suggested this be made an offence as “this behaviour is only a small step away from assaulting an officer.”

Several respondents wanted more extensive powers to detain and question suspects, with one preferring the Scottish model which “allows detention for up to six hours.”

One respondent wanted a power to enter ‘massage parlours’, stating that since the legalisation of prostitution, police powers of inspection have been restricted. The submitter believed police still need access to record names and ascertain if there are underage workers on the premises.

Other suggestions included more powers to restore order at out of control parties, to enhance Police’s ability to deal with people causing a breach of the peace, and several submissions on dealing with individuals who are drunk in public. Despite its caution about seeking to extend powers in new policing legislation, the Police Association noted “there may be potential for powers to be extended in one or two cases, for instance in police crime scenes where there is a need to gain control quickly in order to preserve evidence and protect witnesses and victims”.

A ‘move on’ power

Some respondents were against a ‘move on’ power, seeing it as unnecessary. One commented that police “can ask people to move on now by way of warning” if they are committing an offence. However, there were also a number of submissions in support of a statutory ‘move on’ power, with some feeling it would be a “logical development of policing powers” for those who were drunk and/or disorderly, but not to “dispel protestors who are engaging in their lawful right to protest.”

Several submissions encouraged any such power to be clearly drafted, to ensure it would only apply in appropriate circumstances. HANZ was not in favour of it being used “unreasonably” in circumstances where there may be patrons queuing outside premises, or where smokers congregate outside licensed premises. Another respondent stated it should only apply in a limited range of situations.

One respondent cautioned consideration should be given to the impact on other agencies whose staff may hold police powers, as under section 21 of the Corrections Act.

Although some respondents thought it would be unnecessary, most submitters gave support for legislation to extend general police powers in particular areas.

Q14 What are your views on the adequacy of current police powers in specialised areas? Do you support any extension of these powers (e.g., to enhance the safety of high-profile events)? Conversely, do you support any reduction of current powers?



There were mixed views on the adequacy of current police powers in specialised areas.

While a number of respondents stated current powers seem adequate, others disagreed. For instance, one submitter stated the evidential breath alcohol procedure was inadequate, and believed a power to “deal with motorists at the roadside” should be introduced. Another believed police powers in relation to organised crime and terrorism could be strengthened. The respondent was in favour of enhanced powers in this area being located in a specific Act. In a similar vein, another submitter thought police powers for special events should be dealt with in a statute specifically aimed at the event, rather than in new policing legislation. Another suggestion was for the relevant territorial authority to pass bylaws in such situations.

There were several submissions in support of the use of x-ray machines at large events, although one submitter limited this to events involving a Head of State or similar diplomatic level attendees. Others questioned the need for such powers in New Zealand, given “Police rarely get involved in screening people who enter events.”

One submission was opposed to any extension of police powers, citing “concerns about the misuse of emergency police powers such as those under section 18 of the Misuse of Drugs Act.” The respondent did not support further powers without safeguards to prevent abuses, with the backstop of an independent Police Complaints Authority.

Finally, another respondent stated greater powers, resources and priority could be given to alcohol-related

crime, suggesting special events, family violence/ protection and gang-related violence as possibilities for development.

There were mixed views on the adequacy of current police powers in specialised areas. Several respondents felt powers were generally adequate, while others highlighted areas of concern. Some submissions suggested that, where special powers were needed, they might be better located in separate legislation.

Q15 Do you agree new policing legislation should allow for a greater range of powers to be exercised by staff who are not fully-warranted constables? If so, do any particular powers suggest themselves as suitable or unsuitable for support staff to exercise?



There was some opposition to this proposal, with nine submissions against it, and four in support. One respondent stated “only a fully trained sworn officer should exercise the full coercive powers of a police officer,” and another believed the proposal “negates the entire point of training and swearing in of police officers.” A third submission stated “existing provisions are adequate,” given that “non-sworn are already involved in areas of policing previously the domain of sworn staff.”

One respondent was specifically opposed to transferring powers and duties under the Sale of Liquor Act. They felt sworn police would be best suited to these roles given their training and interpersonal skills. In contrast, the Alcohol Advisory Council of New Zealand (ALAC) supported extending sworn officers’ powers relating to liquor enforcement to a “wider range of police staff,” quoting the example of liquor policing work done in the United Kingdom by Police Community Support Officers.

Overall, a number of submitters gave some support to the proposal, while others saw value in further exploring the issue. Of these, one respondent gave support only to limited roles such as jailers, prosecutors and prisoner escorts, while another respondent suggested non-sworn staff could be empowered to act as electronic bail assessors. Another felt it could lead to long term flexibility and the development of innovative ideas, such as a new investigative unit model. However, the respondent stated such powers should not detract from the centrality of the omni-competent constable in Police’s structure.

One alternative raised was the removal of sworn functions from tasks, so appropriate roles were open to non-sworn members. For example, a respondent stated the temporary constable provision works to fill roles such as jailers in some areas. Several submitters believed the temporary constable role - and the power to designate people as temporary constables - should be better defined in legislation, to clarify and limit the duties people in such jobs can perform.

Several respondents held safety concerns about giving non-sworn staff 'sworn' powers. One stated any change would require "some sort of staff safety tactics training (SSTT) so they are trained to use OC spray, batons etc." Another felt there should be the same protections in place as for sworn staff, such as staffing requirements on night time motorway patrols. Another submitter felt there should also be "considerable community engagement" and the creation of protection mechanisms if a 'blended role' was created, whilst another emphasised the staff would require "some sort of uniform" that was "clearly different from regular police."

There was some opposition to new legislation allowing for a greater range of powers to be exercised by staff who are not fully-warranted constables. Balancing this, there was some support for extending limited powers to non-sworn staff for specific roles, such as jailers and prisoner escorts, so long as adequate training was provided.

Q16 Do you support new policing legislation making allowance for special 'ring-fenced' powers to be used by supra-warranted officers? If so, do any particular powers suggest themselves as suitable for 'ring-fencing' in this way?



MIXED VIEWS

There was mixed support for this proposal. One respondent stated the Arms Act 1983 and Children, Young Persons and their Families Act 1989 had good examples of ring-fenced powers, while another gave support to the idea if it was felt current legislation and the use of delegated authority from the Commissioner were not working efficiently. A more detailed plan for the New Zealand context, to discuss the relative advantages and disadvantages, was suggested by one respondent.

Some submitters felt ring-fencing was unnecessary. One advanced this view on the basis that existing powers

were sufficient. Another thought ring-fencing only arises if integrity concerns exist, "rather than from policing practicalities," but the respondent did not see any such integrity concerns being connected with New Zealand Police. The same respondent did not support supra-warranted officers, as they opposed the codification of police powers generally.

Another submitter questioned why 'supra-warranted officers' were not being referred to as 'non-commissioned officers', as they "make significant operational decisions on a day-to-day basis." A further respondent did not support making allowance for ring-fenced powers beyond those that may already be exercised by senior supervising staff, such as under the Arms Act.

There was mixed support for legislation to allow for new ring-fenced powers to be used by supra-warranted officers. However, no respondents argued against existing examples of where additional powers are allocated to senior and/or specially-trained Police staff.

Q17 What are your views on the prospect that police(-like) powers could be exercised by other than New Zealand Police staff? Do any possible extensions of police(-like) powers make more sense than others?



GENERALLY OPPOSED

This idea was opposed by most submitters. For some, the main reason for opposition seemed ideological, with statements made such as "Police-like powers should be exercised by Police." Respondents also felt "if police have sufficient staff, enough resources, and competent capable staff which includes supervisory positions, the above questions would not arise." Another common reason given for opposing the concept was that other organisations' staff may not have the appropriate accountability and levels of training and education. At least one respondent felt this could create the potential for misuse of power. Others thought the idea was 'turning back the clock'. "The trend is to eliminating these groups with police-like powers rather than creating more," one submitter said, giving the example of Civil Defence Police.

With regard to overseas police officers working in New Zealand, several respondents favoured the Commissioner retaining control of such officers while they remain in the country. One respondent believed

the easiest way would be to swear the officers in as constables, while another supported them “being vested with some powers to carry out a particular task in New Zealand.” One submitter took a different approach, stating that in a professional policing environment, a “registered investigator” from another jurisdiction or a separate government department could be ‘registered’ as a New Zealand officer, and attain the appropriate powers to carry out duties for a specific purpose.

One submission supported properly trained non-Police staff conducting enforcement and prosecution in “secondary” areas. The investigation of Electoral Act offences was given as an example of where it would be appropriate for another agency to take responsibility for things, because otherwise Police is “committing resources to relatively minor crime because of political considerations/perceptions rather than dealing with more significant criminal acts.”

The prospect that police(-like) powers could be exercised by other than Police staff was opposed by most submitters. Examples cited of where extending police(-like) powers to other agencies might make sense included ‘secondary’ law enforcement roles, such as investigating Electoral Act offences.

Q18 Do you wish to see the office of constable maintained as an access point to general police powers, or would you prefer to see a new pathway established which is based in legislation? In forming your view, are any factors particularly significant?



There was unanimous support in submissions for retaining the office of constable as an access point to general police powers (although only four submissions were external to Police). Respondents particularly emphasised the oath’s “historical significance,” its centrality “to the constitution of Police,” and that it has attained “a special place and respect in New Zealand.”

Several respondents stated there was no significant reason for change, while another submitter emphasised the “constitutional conventions around the independence of the office of constable” as a reason for retaining the current system. One respondent also felt an entry point that allowed access to all Police powers should be retained, given its usefulness from an operations perspective. Conversely, one respondent predicted that if

the sworn/non-sworn division was ever removed, then “a different entry point may be necessary to provide greater flexibility to access police powers.”

There was a suggestion the office of constable should be defined in the new Act, with one submitter defining ‘constable’ as “a current member of the New Zealand Police of any rank, who at the time of appointment has sworn (or affirmed) an oath of office to uphold the rule of law in the Dominion of New Zealand.”

There was unanimous support for maintaining the office of constable as an access point to general police powers; the main factors being the historical nature and respect for the oath, and the lack of compelling reasons to change the *status quo*.

Q19 Can you see any opportunities to strengthen the current set of legal protections which apply to police work? Alternatively, if you believe police in New Zealand are over-protected now, what would you like to see changed, and why?



There were suggestions both to strengthen legal protections that apply to Police, and to strengthen the scrutiny of actions by Police staff.

Most common was a suggestion to provide protection against criminal and civil liability, generally where an officer was acting lawfully or in good faith. More protection against potentially baseless civil proceedings were advocated by a number of respondents. One suggested aspiring litigants be required to apply for consent before launching proceedings.

Name suppression was also raised as an area that could be strengthened in legislation. Some advocated it should apply until an officer was found guilty, while one submitter stated it “would be difficult to support conditional name protection given the grounds of the Court’s decision and subsequently developed media conventions.”

One respondent felt undercover officers should also receive protection for their true identities.

Another respondent sought increased sentences for offences against police officers, as compared to sentences for the same offences against civilians. This was said to be necessary given police “are required to deal with the nastiest members of an increasingly violent society.”

As a counterpoint to these suggestions, several respondents also advocated for an independent review body for policing “to ensure that internal investigations are not over-protecting police.”

Further protections were suggested for Police staff, such as limits on civil and criminal liability and name suppression. As a counterpoint, an independent review body for policing was suggested by several respondents, to strengthen the scrutiny of actions by Police staff.

Q20 Are you in favour of new legislation for Police clarifying the duties of care police owe to particular members of the public (e.g., people incapable of properly looking after themselves due to intoxication) and/or addressing statutory protections for members of the public who provide assistance to police?



MIXED VIEWS

Duty of Care

Some felt there was no need to clarify duties of care police owe to particular members of the public, believing it is sufficiently clear Police has a duty of care to all people in its custody.

One submitter felt there should be a “legislative duty of care to govern the relationship between Police and those with mental illness, intellectual disability and other disabilities (e.g., deafness),” a sentiment echoed by another respondent who suggested section 9(a) of the Corrections Act as a model. A respondent countered this on the basis that it would be “problematic to identify particular members of the public,” questioning whether police should “owe a greater duty of care to intoxicated fat men with alcohol addiction because of the risk that they might die when restrained, than they do to other intoxicated people.” There was a further submission in favour of an overhaul of the current provisions for the duty of care, which was described as “murky.”

Given that a duty of care to some individuals in custody has been legislated for, other respondents were in favour of creating a universal duty of care, possibly by extending section 9 of the Corrections Act. One submitter thought there was some benefit in including “a general principle that identifies all interactions with members of the public will be ‘fair, humane, and culturally appropriate.’” However, another respondent argued this could

distort or diminish the importance of Police’s “general commitment” to “act impartially and legally, and the duty to maintain the peace and enforce the law.” Another felt it could leave Police staff liable to civil suits.

One respondent identified problems which could arise when Police have to distinguish between whether people are being held in custody for health and safety reasons, or because of the risk they pose to the safety of the community. Another submitter added: “the time that a person can be held to protect his/her welfare should be unlimited.”

Protections for those who provide assistance to police

There were mixed views on whether there should be statutory protections for members of the public who assist police. One submitter stated: “every protection available to police acting lawfully as part of their duty should apply to all members of the public who provide assistance to police, providing the member of the public is acting within the law and in accordance with the particular request for assistance.” Others also advocated for some form of statutory protection. Contrasting this, one submitter believed “the statutory protections in section 34(1) and 39 of the Crimes Act are sufficient for members of the public required to assist an officer.” Another sought “clarification of the role of people assisting Police and exactly what their duty is.”

There were mixed views on whether new policing legislation should clarify the duties of care police owe to particular members of the public. In general, concerns centred on how a duty of care could workably be defined without overriding other principles. There was also some support for addressing the roles and protections of members of the public who assist Police staff.

Issues Paper 6: Relationships

- Q1** Would it be a good idea to spell out in legislation the type of relationships Police has with other agencies? If so, how detailed should this description be? If not, at what level should Police's relationships be described (e.g., corporate documents, or perhaps via a set of high-level principles)?



Legislating for Police's relationships elicited a mixed reaction, with four responses in favour and five against.

Support came from those who believed it would "provide greater transparency to Police's relationships." One respondent thought legislation should include a principle "identifying the need to work collaboratively with other agencies to achieve government goals and justice sector outcomes." Another believed legislation should only specify the "high level principles."

More detail was suggested by one respondent, who sought legislation describing "the type and scope of relationships Police has with other agencies." Such a level of detail was rejected by others, who worried "to detail too specifically could hamper constabulary independence." The Police Association seemed to share this concern, noting that an "overly prescriptive requirement would detract from the quasi-constitutional status of the Police Act and the operational flexibility of the Commissioner". The Association acknowledged, however, "a high-level statement recognising the role of Police in cooperating with other government agencies (and overseas agencies) may be appropriate as part of a larger set of principles."

Opposition was received on the basis legislation could "limit the ease with which new and innovative relationships could be developed between agencies, and allow a blurring of the boundaries between agencies, leading to inappropriate informal role and/or information sharing." One respondent felt it would be inappropriate given "government agencies are not static," while another submitter worried it would require a "corresponding amendment to each agency's enacting legislation as well." Another stated "any principles specifying the nature of working relationships between Police and other agencies must be sufficiently broad to ensure that lengthy amendment Acts are not required to make changes in the future."

Instead of legislation, several respondents suggested using corporate documents. Another felt "if there are currently issues relating to the legislated roles and powers of other agencies in relation to the police, the appropriate place to amend them is in the legislation governing the other agency." In terms of Police's own arrangements with other agencies, one submitter felt further detail around working relationships could be "outlined in statutory documents such as the *Statement of Intent* and *Annual Report*," and in memoranda of understanding.

There was a mixed response to spelling out in legislation the type of relationships Police has with other agencies, with varying suggestions on the level and detail of any such statements. Some saw an opportunity to include in legislation a principle outlining Police's relationships, while others thought Police's relationships were better described in corporate documents.

- Q2** Do you think it would be useful to clarify in legislation Police's relationships with justice sector agencies and law enforcement partners? If so, how detailed do you think this description should be?



As with Q1, there was a mixed reaction to the idea of clarifying in legislation Police's relationships with justice sector agencies and law enforcement partners, with four positive and five negative responses.

Support was given principally on the basis such an approach would provide more clarity. One respondent favoured identifying Police's justice sector and wider enforcement relationships in new policing legislation. Others suggested a broad approach, affirming a commitment to work collaboratively with partner agencies, "rather than to codify all existing relationships under the new Act."

There was opposition from a number of respondents who believed clarifying Police's relationships with other agencies would require too much inappropriate detail. One respondent suggested memoranda of understanding. Several respondents felt issues around other agencies' powers (or lack of powers) would be more appropriately addressed in their respective Acts, with one submitter stating "the Police Act Review should not be the catchall to rectify the identified shortcomings or situations" identified in the *Issues Paper* (pages 5-6).

There was a mixed reaction to clarifying in legislation Police's relationships with justice sector agencies and law enforcement partners, with those in support generally suggesting a broad or principle-based approach.

Q3 Do you favour exploring a new oversight mechanism which might recognise the range of public and private agencies involved in policing and security activities? If so, do you have any models or views on what sort of oversight body might be useful in the New Zealand context?



There was some support for this proposal, with eight respondents in support and two opposed.

Opposition came from the Police Association, which felt "the national and integrated nature of New Zealand Police renders an overseas model for additional cross-agency oversight entities largely inapt," plus a respondent who believed the Courts provide adequate oversight.

Support came from some respondents who believed a new model could "help ensure greater accountability in the exercise of coercive powers," and "ensure safe, fair and humane treatment" of all people who were policed. One submitter stated "it would be an advancement of human rights to bring security-type agencies and so on under a statutory oversight body." A number of different models were proposed, with submitters variously suggesting:

- an Independent Police Complaints Authority to investigate all agencies, or just Police
- extension of the current Police Complaints Authority (PCA) or the creation of a new body to oversee all agencies, including Police
- an internal, independent Police Inspectorate function, with a similar function to the system which operates under the Corrections Act
- an oversight mechanism similar to the Health and Disability Commissioner, overseeing all agencies except Police (which would continue to come under the watch of the PCA).

Additionally, one respondent suggested it would be appropriate to consider a model like America's District Attorney scheme. This was seen to be a

way of addressing concerns "with the Police being both prosecutor and witness in most Court cases," and "removing the onus of prosecution would free police resources to focus on investigation and law enforcement."

One submitter supported a Policing Authority, but thought there would need to be some discussion over what 'policing' and the 'law enforcement sector' constitute. They also felt it would probably not be necessary to include private sector agencies, as they "have existing associations and professional bodies, and in many cases do not exercise powers."

There was some support for a new oversight mechanism which might recognise the range of public and private agencies involved in policing and security activities, although no consensus emerged on the best model for such a body.

Q4 Do you think the process of the Commissioner of Police seeking independent advice on prosecutions should be set out in legislation? Would you recommend going further, and providing a statutory ability for the Police Commissioner to transfer prosecutorial responsibility (e.g., to the Solicitor-General) in certain cases? If so, in what circumstances would you consider it appropriate to transfer responsibility for prosecutions?



A process for the Commissioner to seek independent advice on prosecutions

There was a range of views on whether legislation should address the process by which the Commissioner seeks independent advice on prosecutions. Of the six submissions directed to this issue, two were supportive, three were opposed, and one was undecided.

Arguing in favour of such a move, one respondent felt legislation was necessary given there has been "a number of high profile cases that have occurred where there has been a real lack of clarity around the decision making process in relation to whether to prosecute or not."

Another respondent felt it was sufficient that there are various Acts which require the consent of the Solicitor-General before a prosecution may take place. A further submitter stated the Solicitor-General's guidelines on the topic were adequate, although a requirement to take notice of them in certain cases was seen as appropriate if legislation on the issue was required. Another felt the Commissioner should have the right to do this "as and when" appropriate. A different submitter thought the current situation of allowing this discretion except where required by various statutes (where consent from the Solicitor-General was required before a prosecution could commence) was adequate. Others thought there should be a "broad requirement" to seek advice and possibly assign prosecutorial responsibility in some circumstances in a new Act, with detail set out in Regulations, in order to retain flexibility.

Possibility of the Commissioner transferring prosecutorial responsibility in some cases

Four respondents were in favour, and two against, providing a statutory ability for the Commissioner to transfer the prosecutorial responsibility for cases in certain circumstances.

According to one member of Police, the organisation "could do with some honest feedback on prosecutions which would cause us to rapidly change practice and be more responsive to community needs." Others sought to identify particular categories of case for which it would be appropriate to transfer prosecutorial responsibility.

Three submitters favoured allowing "the transfer of prosecutorial responsibility from Police to the Solicitor General in cases where Police personnel have been charged with conduct or rights violations." One felt this could result in greater transparency and public accountability. However, these respondents felt in any other situations, "the Commissioner of Police should have independence in prosecutorial decision-making," as this was considered to be "a fundamental principle which underlies policing in New Zealand and the rule of law generally."

Expanding on the idea of a separate process for prosecutions involved Police staff, one respondent

suggested an "independent prosecutorial ability be afforded to an Independent Police Complaints Authority," which was envisaged would both investigate and prosecute accusations against police officers. The respondent stated this would give the public confidence the alleged offence would be investigated and prosecuted without bias or favour.

One of the respondents opposed to changing the *status quo* felt "the prosecutorial decision is one for Police to make", and debate over whether Police should be investigator and prosecutor had already been resolved by forming the Prosecutions Service Centre to 'distance' the prosecution arm of Police from the investigative arm. Another respondent felt changing current arrangements would cause a displacement effect and "potentially create resource issues elsewhere."

There was a mixed reaction to whether legislation should set out a process for the Commissioner to seek independent advice on prosecution decisions. There was some support for providing a statutory ability for the Commissioner to transfer prosecutorial responsibility to someone such as the Solicitor-General, where police officers were charged with offences.

Q5 Do you think it would be useful to clarify in legislation Police's international relationships? If so, how detailed should this description be?



Respondents generally supported clarifying in legislation Police's international relationships, with six submissions for and two against.

Three respondents wanted the clarification to be in broad terms, and specifically cited the example of the Australian Federal Police Act 1979 given in the *Issues Paper* (page 9) as their preferred option. Another wanted a "brief concise statement." Of the others, one was supportive because New Zealand Police has "played an important role in maintaining regional and international security," and saw it as continuing to contribute to the maintenance of security and the rule of law, particularly

in the Pacific. They supported a legislative framework with high level principles for the relationships, which was not overly prescriptive and reflected a human rights approach. Conversely, another respondent favoured a more detailed approach, stating it was necessary to clarify relationships with other Government agencies, giving the examples of “spies, escorts bringing weapons into New Zealand, and the pursuit of fleeing felons.” One respondent specifically suggested including Interpol.

There was a suggestion that in legislatively clarifying Police’s international relationships, thought be given to recognising the role of Police Liaison Officers posted overseas. Additionally, one respondent stated it could be useful to state Police’s international obligations, roles and responsibilities in legislation. Two respondents were also in favour of incorporating the United Nations (Police) Act 1964 and the Crimes and Misconduct (Overseas Operations Act) 2004 into the Police Act. But another rejected this idea on the basis it would add “a layer of complexity to the guiding legislation,” and could lead to extra amendments.

One respondent felt clarifying Police’s international relationships would be “an overly prescriptive requirement,” which would “detract from the quasi-constitutional status of the Police Act.” They felt it could also ‘freeze’ future relationship developments between Police and others. Another respondent felt it was unnecessary.

Respondents supported clarifying Police’s international relationships in a non-restrictive way, with a number approving of the Australian Federal Police Act model. Opinions were divided on whether this should include incorporating the United Nations (Police) Act 1964 and Crimes and Misconduct (Overseas Operations Act) 2004 into new policing legislation.

Issues Paper 7: Administration

- Q1** Do you favour including a statement about New Zealand Police's staff composition in a new Act? If so, how could this be expressed? If not, do you think non-legislative means should be used to achieve extra clarity and transparency in this area?



GENERALLY
OPPOSED

Of seven responses to this question, only one supported including a statement about Police's staff composition in a new Act. Another respondent recommended nothing "beyond a general statement" should be included, while a third thought a statement on the status of sworn officers "might be able to put into primary legislation," but felt other aspects should be left out to allow legislation to remain flexible. They also questioned whether Police's composition would necessarily remain the same over the next 25 years.

One respondent felt the current Act achieves a good balance of clarity and flexibility. Others emphasised the importance of leaving "police organisational" matters under the Commissioner's control, and were concerned legislation could "restrict the Commissioner's flexibility to respond to emerging needs by deploying resources where necessary." Observing that Police's *Annual Report* already "provides adequate detail on staff composition," another respondent urged the use of either non-legislative means to raise awareness about Police's staff composition, or look at placing details about staff composition in the Police Regulations.

Including a statement about Police's staff composition in a new Act was generally opposed.

- Q2** Do you support or oppose including provision for maximum and/or minimum staffing strengths in new policing legislation? What are the reasons for your view? If you do support such legislative provisions, do you think they should only relate to sworn staff numbers?



GENERALLY
OPPOSED

The possibility of providing for maximum and/or minimum staffing strengths in new policing legislation attracted little support. Reasons for opposition included that such a provision could "impede the flexibility in the day-to-day use of police resources," be "too rigid and bureaucratic" and "impair the operational independence of police." Others emphasised Police should be "looking for greater flexibility in staff numbers and deployment."

Another respondent stated there should be a "minimum staffing level agreed to, covering all frontline" positions, although this "should be done under conditions of work agreement, not legislation."

Of the six submissions received on this issue, one supported it as worded, without elaborating. One submitter stated it could be contentious, and "without much in the way of precedence in New Zealand." One respondent stated that although discussion of staff numbers should be avoided for the reasons given in the *Issues Paper* (page 4), as well as because other departments in the state sector do not have it, a provision similar to section 13(2) of the Defence Act 1990 could still be included ["The maximum number of officers, ratings, soldiers and airmen in the regular forces shall be such as the Minister authorises from time to time"].

Providing for maximum and/or minimum staffing strengths in new policing legislation was also opposed, mainly because respondents believed it would unnecessarily restrict flexibility.

- Q3** Do you support or oppose specifying in legislation the ranks Police staff can hold? What are the reasons for your view?



GENERALLY
OPPOSED

There was general opposition to specifying Police ranks in legislation. Of the six responses, one favoured specifying in legislation the ranks Police staff can hold, but not limiting the numbers of those who can hold the ranks. Two supported specifying ranks in regulations, with one suggesting the statute acknowledge the regulation in a similar way to section 5(1) of the Queensland Police Service Administration Act 1990 ["The ranks of officers are those declared for the time being by regulations"]. It was felt that this would allow for future change without requiring an amendment to legislation.

Several respondents favoured leaving organisation of ranks to the Commissioner's discretion. Although one was concerned "that police ranks and structures have become too flat," they remained convinced that issues around ranks "are not appropriate for a quasi-constitutional piece of legislation."

One respondent believed ranks were not sufficiently enduring and permanent to be placed in legislation, although felt if ring-fenced powers were available to those above a certain rank, the affected ranks should be defined.

There was opposition to specifying the ranks Police staff can hold in legislation. Some respondents thought this would be more appropriate in regulations made under the new Act, while others believed it should be left to the Commissioner's discretion.

Q4 Do you think it would be helpful to clarify in legislation the Commissioner's ability to designate particular ranks held by sworn (and potentially non-sworn) staff in certain situations? What are the reasons for your view?



MIXED VIEWS

There was little consensus on this issue.

Two respondents supported the proposal, one stating "the Commissioner should have power that gives both warrant and mandate to structure the Police how he sees fit." The other supported it on the basis it would secure flexibility for the Commissioner.

Another respondent was in favour of "more discussion and debate" around the Commissioner's ability to designate ranks to non-sworn staff in certain situations, and believed there were inconsistencies in the way ranks are given to non-sworn staff at present.

One respondent was not in favour of clarifying the issue in legislation, although thought it could be "appropriate to recognise the link in the public mind between rank and status as a sworn officer in primary legislation."

Another submitter felt the Commissioner "should have the general authority to appoint a person to a position subject to their ability to perform," although they did not support legislation on the issue, and were against extending ranks to non-sworn staff.

No consensus emerged on whether it would be helpful to clarify in legislation the Commissioner's ability to designate specific ranks held by sworn (and potentially non-sworn) staff in certain situations.

Q5 Are you in favour of giving legislative backing to any further administrative issues relating to Police personnel (e.g., helping people to recognise police)? If so, what do you have in mind?



GENERALLY
OPPOSED

A number of respondents supported legislation addressing how Police staff are identified. Two believed a minimum standard of identification could be legislated for, while another suggested a review of the current Police identity card, which they viewed as "inadequate" and "meant for internal use only." Safeguards against "impersonators or fraudulent use" were sought, although these were seen to be inappropriate issues for a Police Act, and better suited to be dealt with "by the Commissioner of the day." Several other respondents also rejected giving legislative backing to any other administrative issues, with one stating "the current system of *General Instructions* works."

Taking a different tack, one submitter believed methods of confirming identity should be dealt with in legislation due to several legislative provisions requiring Police (and Customs) officers to identify themselves, without always specifying a method of doing so. The example of section 12A of the Misuse of Drugs Amendment Act 1978 was highlighted. Another submitter suggested "the Act should make it explicitly clear that the police have to show their identification before they take any action, especially if they are plainclothes staff."

The issue of name badges arose in two submissions. One respondent suggested "the benefits of identification need to be carefully balanced with promoting and maintaining staff safety." Another rejected their use, agreeing with the suggestion in the *Issues Paper* (page 7) that they "could expose officers to safety risks unnecessarily."

One submitter specifically rejected formalising the status of commissioned officers with a ceremony, as they believed it would "detract from the egalitarian nature of the New Zealand Police." The submitter also rejected sworn officers 'reaffirming' their oaths.

Although a number of respondents supported addressing the need to help identify Police staff, there was little support for giving specific legislative backing to such administrative issues.

Q6 Do you support clarifying in legislation the duties of Police staff to act under the Commissioner's direction and control, and to follow the lawful orders of superiors? Why or why not?



GENERALLY
SUPPORTED

There was some support for this proposal. Three respondents were in favour of it, one stating “we are the type of organisation that needs this leadership given the role we play and the work we do.” The other supported a “simple statement that provides clarity and is consistent with the oath of office.”

Further support came from another respondent, who felt proper clarification could occur from carrying over the relevant provisions of the current Police Act and Regulations to a new Act.

One respondent believed an appropriate solution would be “elevating the command and control requirements” of the current Regulations into a new Act “to reiterate the importance of these functions to policing.” They were against any erosion of the Commissioner’s ability to delegate control and supervision functions to supervisors, and were keen to affirm that “there remains the ability for non-sworn supervisors to be able to direct sworn staff in subordinate roles to comply with any lawful instruction required of them.”

There was some support for clarifying in legislation the duties of Police staff to act under the Commissioner’s direction and control, and to follow the lawful orders of superiors, although suggested methods of doing so varied.

Q7 Are you in favour of appointment of acting office holders and delegation of functions being addressed in Police legislation? If so, do you have recommendations as to how these matters are covered off? If not, what are the reasons for your view?



GENERALLY
SUPPORTED

There was some support for addressing the appointment of acting office holders and delegation of functions in legislation.

One respondent was in favour of a “general authority” which was backed up by regulations or policy. Several stated the Commissioner should have more discretion when appointing Acting Commissioners. One argued the Commissioner should have the power to look beyond current Deputy Commissioners, although “they should still meet the statutory criteria for appointment to the office.” In the event a Commissioner is unable to pick someone to act up, one submitter suggested an Acting Commissioner could be selected by the State Services Commissioner.

One respondent rejected any legislation on this issue, believing it was unnecessary and would “stifle the organisation’s ability to adapt to change, needs, and the environment we work in.”

There was some support for policing legislation to address the appointment of acting office holders and delegation of functions, particularly to give the Commissioner more choice in appointing an Acting Commissioner.

Q8 Do you have any thoughts on the role legislation might play in the process by which the Commissioner issues circulars, Codes of Practice or other forms of guidance to Police staff?



MIXED VIEWS

There was a mixed reaction to the role legislation could play in this area.

One respondent supported legislation on “the development and promulgation of instructions or policies,” and on the power to issue instructions. They suggested using sections 8 and 196 of the Corrections Act as a model. Another respondent supported clarification and continuing review of the hierarchy of Police policy, such as “whether Policy Pointers take precedence over *General Instructions*,” and more work to ensure the consistency and currency of policy.

Others were satisfied with the *status quo*. One respondent did not believe that it was necessary for a new Act to confer a specific power on the Commissioner to issue directions, nor to statutorily require such directions to be published, believing the “current vehicles for issuing lawful instructions are sufficient.” But others suggested there should be an obligation on staff to read the internal *Police Gazette* [which, in more recent times, has been renamed *Ten One*].

There was a mixed reaction to legislation playing more of a role in the process by which the Commissioner issues circulars, Codes of Practice or other forms of guidance to Police staff. Some felt the current largely unlegislated situation works effectively. Others felt it might be useful for legislation to clarify the hierarchy of corporate documents.

Q9 Do you have any views on how Police's administration of physical property should be dealt with (if at all) in legislation?

Most respondents felt issues around Police property did not need any legislative backing. Several were satisfied with the *status quo*, one stating "adequate options exist already - existing provisions from areas such as [the Public] Finance Act and the State Sector [Act] could be expressly stated in the [Police] Act." Submitters seemed to feel the Commissioner "should not be constrained by legislation over the utilisation of physical property," and the "selling and closing of police stations are operational matters that should remain in the Commissioner's domain." If there was to be any legislation on Police's property portfolio, respondents believed it should not be too prescriptive. The one exception to this general view was a submission which argued that further defining police stations could allow for some future options or flexibility in developing site-specific powers.

With regard to the disposal of unclaimed property, one respondent supported reforming the current system, stating it is "overly prescriptive and often confusing."

A common theme was that any legislation relating to Police's administration of physical property should not be overly prescriptive, with the general feeling being that these matters were more appropriate for informal directions by the Commissioner.

Q10 Do you support or oppose strengthening the current offences of impersonating a member of Police and unauthorised use of Police uniforms and related articles? Further, do you have a view on whether new policing legislation should directly protect against the use of the word "police" or derivations of it? If so, what are the reasons for your view?



There was some support for strengthening the current offences of impersonating a member of Police and unauthorised use of Police uniforms and related articles. For example, strengthening penalties (both fines and custodial sentences) was justified by one respondent who stated that "any person who attempts to impersonate a Police member has the potential to seriously undermine the support of the public," as well as potentially contribute to offences.

Another respondent was concerned that uniforms of other organisations, particularly the Fire Service, were "undermining the identity of the Police uniform," and wanted a legislative provision requiring police officers and their uniforms to be "clearly identifiable to the public."

While one submitter felt current laws relating to Police's intellectual property are sufficient, several respondents supported legislating for restrictions around the use of the word 'Police' - one stating penalties should be "significant," including a fine and term of imprisonment. Another believed there should be further work done on intellectual property. One submission advocated for stronger protections of "Police's intelligence information through strong penalties for unauthorised access to resources such as Police databases and email systems."

There was some support for strengthening the current offences of impersonating a member of Police and unauthorised use of Police uniforms and related articles. In addition, there were suggestions offered on offences relating to unauthorised use of Police's intellectual property.

Q11 Do you favour including any new ways of contributing to Police's funding base in new policing legislation? If so, do you have any specific suggestions, or do you wish to highlight any particular factors it will be important to take into account?



There was some support for new ways of contributing to Police's funding base via legislation.

Licensed premises

The Alcohol Advisory Council of New Zealand (ALAC) was generally supportive of including new ways of contributing to Police's funding base in legislation where this had the potential to contribute to reducing alcohol-related harm. If 'user pays' was considered for policing liquor bans and alcohol-related offending, ALAC suggested Police should consider also charging local authorities, as they "are responsible for licensing decisions through their district plans."

Alcohol Healthwatch believed financial contributions to Police directly from licensees should be avoided, as it could undermine "public confidence in the neutrality of the Police or creating situations of conflicting priorities." They suggested exploring increased liquor licensing fees, and additional levies on "problem premises." It was

thought the additional levies could be put towards more security or collaborative projects, “thus reducing demand on Police resources.”

A submission from one group within Police was also in favour of some ‘user pays’ system, stating “licensed premises should also have to contribute to Central Business District policing of drunken idiots who roll out of them.” Balancing this was a submission from the Hospitality Association of New Zealand (HANZ), which was “not supportive of any power in legislation enabling police to recover for policing costs.” HANZ felt Police funding should continue to come solely from general taxation “to reflect its public good status.” It considered Police resources should be allocated according to policing demands, irrespective of ability to pay, adding hospitality venues already pay “a specific tax on alcohol products that is paid into the Consolidated Fund and is intended to contribute to the public funding of alcohol issues.”

As a counterpoint, the New Zealand Drug Foundation submitted that “the costs of local monitoring and enforcement of alcohol regulation far outweigh the funding received for those roles.” It believed that, given the significant level of alcohol-related work done by Police staff, consideration of the “polluter pays principle” would be appropriate.

Commercial events

Large commercial events which “make a substantial profit” were put forward by the Police Association as being suitable for charging for policing services. It suggested the payment would “be purely to secure Police attendance,” with the Police event commander able to make all operational policing decisions, and the organiser having no power to direct police officers. The Association did have concerns over direct contributions from non-government organisations, as they recognised a risk of ‘perverse incentives’, and stated such payments may conflict with the current funding model which is “based on defined outputs and outcomes.”

Charges for policing large sporting events, commercial or not, was rejected in a submission by Sport and Recreation New Zealand (SPARC). It was concerned charging for the presence of Police staff at sporting events could “restrict sport and physical recreation opportunities for New Zealanders,” and any proposals to charge for such events would have to include “detailed

consideration of public good elements” under the guidelines of The Treasury and Auditor-General. SPARC noted charging for police services was rejected during the 1980s, and suggested there be more discussion on the issue, including consultation with parliament’s Regulations Review Committee.

A submission from the Tourism Industry Association of New Zealand stated the tourism industry would oppose cost recovery for policing at major events, pointing out the events attracted visitors who feed money into the local, regional and national economies. It was felt this money would eventually end up in the government’s Consolidated Fund. It noted some events also provided their own security, so it was a matter of assessing things on a case by case basis.

Charging for event management police services was rejected by another respondent, who felt it was “becoming less of a responsibility with most major events privately policed.” Funding from ‘user pays’ or confiscation of assets was also broadly rejected, as they believed any such income “will be reduced from direct government funding.” This sentiment was shared by another submitter. One further submission was also in favour of retaining the current system.

Search and rescue

Cost recovery in some circumstances for Police search and rescue call outs was put forward as a further idea for consideration.

Other suggestions

Amongst miscellaneous ideas, one respondent suggested exploring whether seized property could be used to support Police’s undercover programme, while the Police Association commented the Land Transport New Zealand funding arrangement had merit, and might extend in future to cover general policing and investigative services for other departments.

There were divergent views on the possibility that policing legislation include new ways of contributing to Police’s funding base. Some advocated for cost-recovery in relation to alcohol outlets, large commercial events and certain search and rescue call outs, while others raised concerns about chipping away at the model of policing being funded through general taxation.

Q12 Beyond things already covered, are there any administrative issues which you think should be included in legislation (e.g., a regulation-making power; more consistency in references to Police and its staff across the statute book; or providing for a review of the Police Act at a future date)? Alternatively, do you know of any matters currently in the Police Act or Police Regulations which no longer require legislative backing?



There were three submissions in support of a review to ensure the “relevancy and accuracy” of the Act. One respondent felt it would be an opportunity “to revisit major strategic issues, look at new innovations and approaches, and to take into account major changes in the policing environment that emerged in the intervening period.” Another respondent noted a review could not guarantee any changes would be enacted. They also advocated “careful consideration” before cross-referencing the powers of a police officer to other agencies’ staff.

One respondent felt the current Police Act Review should aim to produce legislation with “quasi-constitutional status that will provide a foundation for policing in New Zealand for the next several decades.” On this basis, it rejected an automatic review provision in a new Act, believing it would be inappropriate to focus on the medium term.

One submission recommended looking at section 22(5) of the Land Transport Act 1998, which specifies one of the duties of a driver/rider in an accident involving an unoccupied motor vehicle is to “...report the accident to the nearest police station ... as soon as practicable and in any case within 60 hours after the time of the accident”. It was suggested that reporting such an accident by phone to a Police Communications Centre worker (or in future perhaps using the Internet to file such a report) would not fulfil the requirements of section 22(5) to notify Police at a ‘bricks and mortar’ police station. The wider point being made by the submitter was that in a forward-looking Police Act Review, other legislation which affects policing should also be examined.

Finally, a respondent raised a concern over Police’s funding model requiring “detailed specification of outputs.” It was felt this could restrict the operational independence of Police, and believed such references to funding should “expressly respect the need for independence.”

There was mixed support for a clause in the new Act to initiate an automatic review. No submissions were received on the likely need for a specific regulation-making power, or on other matters currently in the Act or Regulations which no longer require legislative backing.

Issues Paper 8: Conduct and integrity

Q1 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 private?



There was support for Police employees to display standards of integrity higher than generally expected of others in the community, with all but three responses to the question in favour. There was a mixed response (10 of 20 responses) for a distinction between 'on the job' behaviour and conduct in an officer's private life.

Respondents generally felt Police staff must adhere to a set of standards regardless of whether the wider community's standards are lower, with one recognising "the public legitimately expects very high levels of personal and professional integrity from police officers."

Some respondents drew a distinction between standards for behaviour at work and away from work, with one believing out-of-work incidents should be dealt with on a case by case basis. Some felt those in smaller areas were more visible, and thus any off duty/private behaviour is likely to reflect on Police. They contrasted this with an officer whose excessive drinking causes behavioural problems in a major centre, who may well remain anonymous and unnoticed. One member of Police who responded put it this way: "when the Police start paying me 24 hours a day they will have the right to control/regulate my out-of-work behaviour."

Others felt that due to the nature of the position Police staff hold, the standard should remain consistent regardless of whether a person is at work or not. One respondent said "trust is most often acquired through visible integrity, and as Police are highly visible, a high level of conduct is expected," both on and off duty. Another stated that inferences may be drawn from an individual's off duty behaviour and character, as to whether they are "a fit and proper person to be a member of Police."

Several respondents stated the key question was not one of on/off duty or public/private behaviour, but whether an "officer's actions could bring the Police into disrepute." One submitter believed it would be impossible to legislate "a set of standards to meet all situations," and another felt standards would be better

set in a Code of Conduct, rather than in an Act. One respondent stated although Police is not a public service department under the State Sector Act, there was still a need for "consistency with the wider *Public Service Code of Conduct* principles."

There was support for Police employees having to display standards of conduct and integrity higher than is generally expected of others in the community, with mixed support for a distinction between on-duty and off-duty/public and private behaviour.

Q2 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 purpose)? If not, why not? Are there any other vetting-related issues which you think should be addressed as part of the Police Act Review?



There was some support in the 20 submissions for clarifying and boosting Police's ability to vet staff, with 16 responses in favour of such developments. The rest did not wish to see the issue legislated for, although several volunteered thoughts on vetting practices within Police.

Various vetting possibilities were suggested:

- Financial background checks
- Convictions
- Information from the Criminal Investigations Unit
- DNA
- Fingerprints
- Past employment
- Psychological health/psychometric testing
- Physical health
- Photographs

One submitter stated legislation on this issue was not necessary, because if an applicant "doesn't want to give information, then they shouldn't be able to join." Several others rejected legislation on the basis it that was unnecessary, or that it would be too inflexible and prevent the evolution of vetting practices.

Several respondents stated clear guidelines around vetting should be in place, including guidelines around the use of information regarding an applicant's relatives. One submitter, although in favour of other vetting,

specifically rejected DNA testing, stating it made them feel "as though I'm already under suspicion." A number of other respondents suggested DNA should be destroyed when an applicant leaves Police, with one stating clarification would also be needed on the type of DNA testing programme instituted for Police staff, and how samples would be stored. Conversely, ESR said that any DNA profile would need to be retained indefinitely, as historic unsolved cases involving DNA samples may need to be re-examined, in which case ex-employees' DNA might remain in the sample as a result of contamination.

ESR also addressed the issue of familial testing that was raised in the *Issues Paper* (page 6). It stated the current agreement between Police and ESR does not allow for familial testing, so on this basis any "anxiety around this as an objection to an elimination database is unfounded."

One submission encouraged discussions with the Ministry of Justice "to extend the current exemption under section 19 of the Criminal Records (Clean Slate) Act to include non-sworn staff." This was balanced by another respondent who thought non-sworn staff should be under the 'clean slate' regime. They felt "the composition of Police should reflect the community as a whole," and "if a person has committed a minor offence in the past but has turned their life around they should have the same employment options as other members of society."

One submission raised an issue around excess breath alcohol convictions. The respondent felt instead of Police barring anyone who had such a conviction, a five-year stand down period would be more appropriate, in order to allow those who had "sorted themselves out" to apply.

A group submission stated consideration should be given to the spouses of all staff, as they felt members may change spouses, and so suggested "some sort of reporting clause in the Act which requires Police employees to disclose who their spouse is, and also when they change spouse." Countering this was a submission that urged caution, referring to section 21 of the Human Rights Act 1993, which "lists specific prohibited grounds for discrimination, including being married or related to a particular person."

There was wide support for legislation to clarify and boost Police's ability to vet staff. Common suggestions were the use of DNA checks and audits of financial records.

Q3 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?



Out of a total of 17 responses, 10 supported a broader 'oath of service' for all Police staff.

Some supporters believed such an oath of service could be linked to a Code of Conduct or similar values statement, to help set behaviour standards, with one suggesting it be combined with the constabulary oath. Several respondents supported it given the amount of confidential information non-sworn staff have access to, although one stated it should not be allowed to diminish the importance of the constabulary oath.

Opposition came from those who saw it as "window dressing" and unnecessary. Another respondent felt "there should be a distinction between those who have served on the street and those who have not," and stated "the terms sworn and non-sworn are appropriate." Retaining a clear distinction between sworn and non-sworn staff was supported by several others as well.

Most of those who commented on when the constabulary oath should be taken stated the appropriate time was at the end of training, although one felt station duty would preclude this. One respondent differed, stating "if it is signed before you start, then you know at the outset what is expected of you." Supporting this was one respondent who relayed that taking it at the start "helped me feel as though I belonged and instilled a feeling of responsibility, or even obligation, that my training was extremely important, and it served as a motivating factor when things became tough at the college."

There was a mixed reaction to the idea of a broader 'oath of service' for all Police employees. A majority of submitters supported the constabulary oath being taken at the end (rather than at the beginning) of recruit training.

Q4 Do you support giving a legislative basis to any new Police Code of Conduct or Code of Ethics?



GENERALLY
SUPPORTED

There was support for giving a legislative base to a new Code of Conduct or Code of Ethics, with 11 of 17 responses in favour. Four respondents rejected legislation, while one submission wanted to see the Code before making a decision.

Support came from one respondent who felt it would “reinforce ‘independence’ rather than some other models, such as a Code issued by the Minister.” Another suggested it should be along the lines of section 57 of the State Sector Act 1988.

Several respondents favoured a provision authorising the Commissioner to issue a Code, with the Police Association stating the Commissioner “should not be able to change or amend the Code without prior consultation with service organisations.” The Police Association also suggested the Code itself could be placed in regulations.

Opposition came from one respondent who felt a Code was unnecessary, and should not “limit or spell out the importance of exercising discretion.” Another felt it would be too difficult to amend if placed in legislation (although the option of having the Code simply enabled by legislation was not explored). Two respondents worried that legislating for a Code introducing a risk of politicisation, with one suggesting any such Code should be administered through a neutral avenue, mentioning either the State Services Commission or the office of the Governor-General.

Several respondents were unsure, with one stating that before any Code was introduced, there would need to be “a wide range of views taken from frontline officers.” Others were anxious about what might be in the detail of any Code. For example, one submitter expressed concern over moving minor misconduct matters to managers, questioning: “in a large organisation like the Police, is there also a risk of enabling inconsistencies in approaches and remedies to creep into decision making even if these are handled at a local level?” But another respondent welcomed the review, stating the current system is “untenable” and that Police “should be moving to manage staff primarily under the provisions of mainstream employment law.”

There was some support for giving a legislative basis to any new Police Code of Conduct or Code of Ethics, with the most common suggestion being for a provision enabling the Commissioner to issue such a Code(s).

Q5 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?



MIXED VIEWS

There was a mixed reaction to the proposition. Of the 19 responses, 11 were in favour of retaining legislative provision aimed at political neutrality, with eight opposed to this concept.

Support was given because Police “should be a neutral agency,” because the “potential for conflicts of interest - whether actual or perceived - is very much greater today.” Opposition came from those who emphasised Police staff are members of the community, who should not be “excluded from the democratic processes in this country.” One respondent felt there would be no issues provided the individual’s views were not put forward as those of the Police. Others felt a political neutrality provision would be redundant, given a new Code of Conduct is likely for sworn members, and non-sworn staff are already covered by a Code of Conduct.

There was less support for extending political neutrality rules to local government: of the 13 submissions on the issue, five were in support with eight opposed. One submitter felt the issue should be seen as an opportunity - “instead of seeing this as a conflict of interest, see it as part of the legitimate partnership created between Police and the Territorial Local Authority.” Others emphasised the contribution Police could make to local areas, especially in rural areas. However, there were also those who believed the provisions of the Electoral Act 1993 relating to national-level politics should also apply to local body elections, meaning that in addition to taking leave while campaigning, a member of Police would have to stand down or resign if successfully elected.

There was a mixed reaction to retaining separate legislative provisions aimed at ensuring the political neutrality of Police staff. Just over half the respondents favoured retaining such a provision for national politics, and approximately a third of respondents supported extending these requirements to local body politics.

Q6 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?



There was wide support for incorporating the concept of “incompatible behaviour” into a Code of Conduct or Code of Ethics, with such a move endorsed by 16 of the 17 responses which directly addressed this issue. Submitters generally indicated they were opposed to a stand-alone provision on principle, arguing “the provisions of [section] 5A [of the Police Act] could successfully be incorporated into a Code of Conduct that examines the ability of the member to perform in the role, rather than the member’s sexual orientation”.

One respondent wished to see a ‘catch all’ provision included in the relevant part of the Code. Another wanted any Code to be as comprehensive as possible, catering “for all possible adverse conduct and integrity matters.”

Several respondents gave support conditional on there being a power of instant dismissal if the misconduct was serious enough. One respondent was unsure, stating “the explicit ability to remove a person may be a useful tool to have in particular circumstances,” perhaps contemplating that a Code not enshrined in legislation may not provide the necessary powers.

There was wide support for removing the existing legislative provision dealing with “incompatible behaviour” and placing it in a Code of Conduct or Code of Ethics.

Q7 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?



There was opposition to new policing legislation containing provisions encouraging the reporting of Code breaches - of the 15 responses to the question, only three were in favour. One of the responses in favour stated “like most other jurisdictions and other New Zealand agencies, there must be encouragement to report breaches, with the *quid pro quo* being significant whistle blowing provisions such as the Protected Disclosures Act.” The submitter felt provisions designed to encourage reporting of any Code breaches would be “fundamental to ensuring integrity.”

Another respondent stated there should be “an environment of organisational support for the reporter” of apparent Code breaches. However, only three responses favoured communicating the results of any investigation to the reporter, with one submitter opposed to such reporting.

A number of respondents did not support placing any reporting requirement in legislation, but suggested an equivalent provision could be placed in the Code itself. Several others felt such a requirement could damage relationships and team work within police, and emphasised the “rough ride” someone would be in for “if they ‘dob’ someone in” is a disincentive to reporting. Finally, one respondent stated a requirement to report was not necessary given that “a police employee has to address a criminal offence.”

The option of legislative provisions to encourage reporting of any Code breaches was generally opposed. Several submitters favoured encouraging such action through a Code of Conduct or Code of Ethics. Few respondents expressed a view on whether Police should have ongoing involvement with individuals who bring apparent Code breaches to Police attention.

Q8 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?



One respondent stated it might be necessary “to provide protection for persons in or outside of the Police who do report misconduct,” perhaps along the lines of a protected disclosures regime. They also suggested creating an offence of interfering or being uncooperative with an internal Police inquiry or investigation.

The Police Association wished to reiterate “that issues of police conduct and integrity have no place in an Act with quasi-constitutional status.” In a similar vein, the Police Managers’ Guild stated the Code of Conduct is the right place for all conduct and integrity issues, and felt there was “little to be gained by putting these in legislation.” Other respondents agreed with the thrust of these submissions, one commenting: “all of the disciplinary breaches defined in the police regulations need to be dispensed with My answer is to remove the defined disciplinary regulations and incorporate [them] into a general Code of Conduct.”

Other Police conduct and integrity related provisions in current legislation suggested as being appropriate for carry-over or deletion were: providing protection for individuals who report misconduct; using a more mainstream approach to employment law issues within Police; and placing all Police conduct and integrity issues into a Code of Conduct, rather than in an Act.

Q9 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?



Few submissions were received on this issue, although one respondent argued a “strong robust Code of Conduct, combined with ethical clarity, should provide the required level of assurance.” Most submitters preferred to address the idea of alcohol and other drug testing.

There was general support for alcohol and drug testing, with 16 of the 19 responses in favour of some form of testing. Most respondents did not state a preference for a particular testing regime, although three supported targeted testing only, and another only supported random testing. One submitter supported testing, but only for sworn staff and non-sworn crime scene staff. Several respondents felt further investigation into logistical issues would be necessary before any scheme could be implemented.

One respondent who supported targeted testing stated it should “only be undertaken when an employee has exhibited behaviour or a reduction or change in work effectiveness which indicates possible drug/alcohol impairment.” Another respondent supported targeted testing as they felt random testing would require excessive resources, which “could be better spent on the basics, such as sniffers, cars and a secure radio channel.”

Several submitters were in favour of alcohol and other drug testing, but did not want it codified in legislation. One who rejected using legislation on the issue also rejected random testing, on the basis it could “be an interference with civil rights.” They stated any policy would need to allow officers to have private lives. Others urged that “a health and welfare approach is more within law trends and a far cheaper option when there is nothing to suggest a problem exists”.

Several respondents considered processes to address positive tests. One thought positive results from targeted testing should be seen as serious misconduct, whereas positive results from random testing should lead to a specific programme the employee must go through. Another felt “drink and drug issues should be at the first instance viewed as mental health issues,” and wanted support for employees in a stressful job “if a person can’t cope.” This sentiment was echoed by another submitter, who emphasised the stressful nature of policing. Other submitters advocated checks and balances before any such scheme was put in place.

Opposition to testing came from two respondents. One stated “drug and alcohol testing might be acceptable for an identified purpose,” but rejected codification of the issue. Another stated “prescriptive employment practices such as drug and alcohol testing have no place in the [Police] Act.” They felt it was more appropriate

for the collective bargaining processes between service organisations and Police, whereas another felt it should be left to the Commissioner. The remaining respondent did not support testing, arguing “the expense and time are needed for our service,” given they felt drug taking was not an issue in Police, and “most members would not tolerate a colleague who used drugs or turned up to work drunk.”

Few submissions were received on additional legislative measures which might provide reassurance about Police conduct and integrity. Several submitters were in favour of alcohol and other drug testing for Police staff, but did not want such a scheme codified in legislation. Nevertheless, a majority of respondents supported making provision for alcohol and other drug testing in new policing legislation. Several submitters rejecting random testing, however, only giving support to targeted testing.

Q10 Do you have any views on whether new policing legislation should make provision for integrity testing?



MIXED VIEWS

There was a mixed reaction to integrity testing; of the 19 responses received, six rejected the need for any integrity testing programme, while nine cautiously supported such an initiative (albeit four of the responses only endorsed the introduction of risk-targeted integrity testing).

Testing was rejected outright by several respondents who felt there were adequate options to address integrity issues. One felt it would be more effective to encourage, and not enforce, more open communication between employees on the subject, so as to “prevent inappropriate behaviour at an early stage.”

Several respondents also raised concerns around testing: one respondent worried it “will lead to a climate of mutual suspicion and mistrust amongst fellow police officers.” There were further submissions on the risks testing could create, with several advising a need for caution to avoid entrapment. One submitter stated the proposal should consider the resources it would entail. Another commented: “Anecdotal evidence from the jurisdictions that enjoy integrity legislation suggests that the process is costly, ineffective and rarely catches anyone. It is the deterrent effect that comes with the process that has the greatest impact. The deterrent effect however cannot be measured.”

Others still advocated random integrity testing, or at minimum targeted testing. For example, one respondent said targeted testing could “remove a slur from others working in an area under suspicion by discovering the dishonest one.” They supported using ‘bait’, noting it had been traditionally used in investigations like theft as a servant. Targeted testing was also supported by some who felt a testing programme was worthwhile, but random testing was unnecessary, given that “New Zealand Police is one of the least corrupt services in the world.”

Several other respondents supported more debate, with one respondent believing integrity testing should be phased in for new staff. A number of respondents also doubted whether testing would require a legislative basis, or believing it would be out-of-place in “an Act with quasi-constitutional status.” One submitter preferred the possibility be negotiated with police service organisations, while another wanted it left to the discretion of the Commissioner.

There was a mixed reaction to the possibility of providing for integrity testing in new policing legislation. Of those who supported such a move, the majority supported targeted testing only. Random testing was felt by most respondents to be unnecessary given New Zealand Police’s international reputation as a non-corrupt police service, with additional concerns about the likely costs of any random testing programme.

Q11 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?



GENERALLY SUPPORTED

Seven submitters favoured clarifying remedial options for use when dealing with performance or misconduct issues, while two were against dealing with such issues in legislation. There was also some support for policing legislation to reflect more mainstream arrangements, with nine submissions in favour and two opposed.

Of the submitters who favoured clarifying remedial options, several wanted the Commissioner to have a power to dismiss any staff guilty of serious misconduct. One stated the present process “is very cumbersome” and drawn out. Another respondent saw great potential in moving away from what was described as a ‘two systems approach’, commenting: “If Police operated within the same general employment law provisions as the rest of the country, with a few added extra provisions, then this in my view would be the single biggest contribution that the Police Act rewrite could bring to the effective operation of the New Zealand Police on a daily basis”.

Several respondents favoured clarifying remedial options by using mainstream requirements. Support for this approach came from those who felt the current system is “outdated”, “antiquated and convoluted;” a more mainstream system would “ensure both procedural and substantive requirements are met;” and it would allow Police “to dismiss members for serious misconduct in a timely manner.” One respondent emphasised the mainstream principles of due process and natural justice must be used.

Some submitters were opposed to a mainstream approach because they felt it would be too easy “to get rid of someone,” having “seen too many good cops bullied out of their jobs under minor provisions.” Another respondent seemed to favour a review of the current options, as they doubted whether a modern Commissioner would consider using all of the currently-available options. A further submitter wanted the disciplinary charge and Tribunal system to be retained for use only at the Commissioner’s discretion, as they felt the current process “is far too adversarial and introduces unacceptable delays in resolving matters.” In addition to a mainstream approach, another submitter felt “both performance and misconduct issues should be aligned to a Code of Conduct.”

There were three submissions against using legislation to address these issues. One respondent felt regulations or ‘procedures’ would be more conducive to a broad and flexible range of options to deal with any conduct and integrity issues that could arise, while another specifically rejected using a Police Act, contemplating instead a separate piece of legislation.

There was a mixed reaction to legislatively clarifying the remedial options which can be used to deal with performance or misconduct issues, although few submissions were received on this issue. In general, there was support for policing legislation to reflect more mainstream arrangements for dealing with performance or misconduct issues. Respondents did not approach the two questions as being mutually exclusive, however.

Q12 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?



Views were split on whether the Commissioner’s options to deal with poor performance or misconduct should be supplemented or narrowed. No submitters advocated narrowing the current options, seven were in favour of broader options, and two stated the current options were sufficient. Several respondents stated they did not want the existing framework retained.

Wider options were supported by several respondents, including several who felt the Commissioner should “be able to remove a member if the member’s competence, integrity, performance or conduct means s/he is no longer suitable to continue service with the Police.”

Several respondents suggested a panel could be used to deal with some misconduct issues, one favouring it because they thought Police use open Court too often, and felt an internal process would be more effective. There was a stated preference for panel members to be independent, with one suggesting panel members be officers from outside the relevant district who held extensive frontline experience.

There was also support for the Commissioner to have an ability to take employment action despite criminal charges being contemplated or underway. Eight respondents were in favour and three were against this concept. One supportive respondent stated that “as an employer, we must take responsibility.” Another noted “we have had too many cases over the years of members dragging out criminal processes while retained on full pay, essentially ‘milking the system’, and that has been viewed very critically by public commentators.”

There was one submission which reasoned that as “the applicable burdens of proof and thresholds for establishing offences/misconduct differ, as do the penalties” it would be appropriate for an employment investigation to be launched parallel to criminal proceedings.

One respondent who opposed such a power stated any criminal matters must be dealt with first, noting an acquittal could still justify the Commissioner taking employment action. Another agreed, stating that given Police is both an employer and criminal investigator, there would be few situations where it would be appropriate to complete an employment investigation where a criminal hearing is pending. Another stated: “I have difficulty envisaging how any provision could be passed the overrides issues such as the right to silence and prejudice issues”.

There was majority support for the Commissioner to have an ability to take employment action against staff despite the fact criminal charges may be contemplated or are underway. Views were split on whether the Commissioner’s options to deal with poor performance or misconduct should be supplemented or remain in their current state, with several suggestions on how to improve on the *status quo*.



Additional issues raised in responses

As well as answering the specific questions posed in the eight *Issues Papers*, some respondents took the opportunity to raise other issues which were thought significant, and which may have a place in new policing legislation. For completeness, these additional ideas are listed below.

Promoting understanding of Police powers

- One submitter expressed a desire for any section in the Act on policing powers to be in all languages, so all members of the community could understand it.

Reducing bureaucracy

- One submitter suggested there should be a review of police powers to determine which are obsolete or unnecessary, in particular to relieve frontline Police staff of tasks such as serving summonses, and doing 'bail checks' to assess the compliance of bailed offenders with the conditions of their release.

Removing Police's exemption from the Sale of Liquor Act

- The Alcohol Advisory Council of New Zealand (ALAC) advocated removing Police's current statutory exemption from the Sale of Liquor Act 1989, stating: "ALAC and Police are partners in the drive to change the drinking culture, and the closed door nature of police bars means fewer moderating influences, irresponsible drinking, and intoxication."

The translation of Police's name in Maori

- Referring to the translation of "New Zealand Police" listed on official documents ("Nga Pirihimana o Aotearoa"), one Police staff member stated the word "Pirihimana" needs to be reviewed. On the understanding that "Pirihimana" translates as "policemen", the submitter stated that use of this word in the Maori translation "demonstrates an exclusion of women and their role in policing to both Maori and non-Maori."

Formalising the use of abbreviations

- One respondent believed that an updated name for New Zealand Police could be adopted, such as "NZPol", similar to the format used by overseas organisations. Abbreviations were also suggested for police constables and sergeants ("PC" and "PS" respectively).

Formalising the role of advisory structures

- In addition to legislating for the ability to ministerially review the Police Commissioner's performance (in those areas where this would be appropriate), one submitter suggested there could be an advisory group to give the Commissioner feedback from various community stakeholders. It was not clear from the submission whether such an advisory group would be given a legislative basis.

Engagement with youth

- A participant at one of the discussion forums felt there was little discussion of how Police could engage with young people in the Police Act Review *Issues Papers*. The speaker felt this should be addressed in further work on community engagement.

Improving understanding about the make-up of Police

- One respondent suggested Police's internal organisation and boundaries could be included in a new Act, on the basis it could "reduce the potential for confusion and raise general awareness about Police internal power structures and organisational hierarchy."

Focus on Internet safety

- Another submitter stressed the importance of Internet safety, emphasising the importance of policing websites, and efforts to counter cyber-bullying and "the exponential growth in electronic crimes."

Additional protections around Police's voluntary fingerprinting programme

- Two respondents believed further safeguards were necessary around Police's voluntary fingerprinting scheme for children and young people, given its "privacy invasive nature." One suggested parental consent should always be sought, and that consent should be able to be withdrawn, resulting in the fingerprints being destroyed. [Note: this process has recently been clarified internally within Police to align more with the recommended protections.] It was unclear from this submission whether these further protections should be incorporated in legislation. The Office of the Privacy Commissioner sought further information on how the scheme works, noting that "before statutory codification of such a scheme was considered, this Office would appreciate being involved in the policy development."

Name suppression for officers involved in firearms incidents

- Two respondents wished to see anonymity for any officers involved in shootings, with a preference for such officers to have their identities protected unless they are convicted of a criminal offence.

Support for retention of the Fire Police scheme

- One submitter indicated support for keeping a scheme under section 33 of the Fire Service Act 1975 which allows for designated Fire Police to exercise some constabulary powers.

Police's role in caring for 'detox' cases

- Problems with the Alcoholism and Drug Addiction Act 1966 identified in *Issues Paper 5: Powers and protections* were described by one respondent as more about "a shortcoming of that Act itself rather than a need to impose new legislation." Another respondent felt the situation could be improved by identifying the duties other agencies may have in taking responsibility for intoxicated individuals, where it is more appropriate for them to do so. The respondent had no problem with initial police attendance or intervention, but had reservations over "taking responsibility because the organisation who should be looking after these people can't/won't." Another submitter stated that while they wished to see a "durable authority for still intoxicated persons to be detained by Police," they also wished to address the "considerable risks" in detaining intoxicated persons in police custody where officers are not available for full-time monitoring and surveillance of drunken detainees.

Annex: List of submitters

There were 226 responses received on the *Issues Papers* from 132 different individuals, groups and organisations. The 132 respondents can be grouped under the following headings:

Police staff and bodies representing Police employees

- Police Managers' Guild Inc
- Individual Police staff members (70)
- New Zealand Police Association

Government departments and Crown entities

- Alcohol Advisory Council of New Zealand
- Crown Law Office
- Department of Corrections
- Environmental Science and Research Ltd
- Human Rights Commission
- National Library of New Zealand
- Office of the Privacy Commissioner
- Sport and Recreation New Zealand

Non-governmental organisations, community groups and members of the public

- Alcohol Healthwatch
- Campaign against the Taser
- Community Law Canterbury
- Community Watch Hornby Inc
- Dunedin Community Law Centre
- Grey Power
- Hospitality Association of New Zealand
- Individual members of the public (20)
- Manurewa Crime Watch Patrol
- Nelson Women's Rural Issues Group
- New Zealand Drug Foundation
- Prison Fellowship of New Zealand
- Safer Communities Foundation New Zealand
- South African Support Group in New Zealand
- Tourism Industry Association of New Zealand

Local government sector groups

- Botany Community Board
- Hamilton City Council
- Howick Community Board
- Local Government New Zealand
- Malvern Community Board
- Manukau City Council
- Masterton District Council
- Nelson City Council
- Tasman District Council
- Waitakere City Council
- Otara Community Board
- Pakuranga Community Board

Academic commentators

- Auckland University of Technology discussion forum
- Individual university academics (4)
- Victoria University of Wellington discussion forums (3).

Notes

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