

**POLICING**

**DIRECTIONS IN**

**NEW ZEALAND**

**FOR THE**

**21ST CENTURY**



**MAY 2007**



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## MINISTER'S FOREWORD



Throughout its history, those serving in New Zealand Police have sought to do so “without favour or affection, malice or ill-will”. It is a little ironic, then, that the organisation which carries the primary burden of upholding the law itself operates under an out-of-date statute: the 1958 Police Act.

This discussion paper, *Policing Directions in New Zealand for the 21st Century*, sets out the government's proposals to introduce new, contemporary, legislation for New Zealand Police.

It outlines ways legislation could help to renew Police's mandate to protect life and property, maintain law and order, prevent and detect crime, and minimise crashes.

Fundamentally, the ideas are about further strengthening the way policing is done. In some cases, it involves being clearer about current practices or removing sources of ambiguity. In other areas, we can look to improve on the *status quo* by taking measured steps forward. The end result should be a new form of legislation which lays a solid platform for New Zealand Police to contribute even more effectively to “Safer Communities Together”.

Of course, legislation can only do so much. As a government, we've invested heavily in giving Police the tools needed to get the job done. We now have record numbers of police officers (with more on the way), many operating out of refurbished stations, and backed by new protective equipment.

We've also encouraged a focus on tackling the root causes of crime by intervening early, and effectively, to help stop cycles of offending from developing. Police staff have a critical role to play at the point of entry to the criminal justice system, and they are increasingly looked to for their ability to influence people (especially young people) away from a life of crime.

These positive steps create the space for a national conversation about the future of policing. This paper contributes to that debate by describing the government's vision for a legislative framework for Police suitable for the 21st century.

In bringing these proposals forward for consultation, I acknowledge the efforts of those who have already volunteered their thoughts on a new legislative framework for Police. The proposals advanced in this paper are the outcome of a comprehensive review undertaken over the past year, and draws on input from a diverse range of individuals, groups and organisations (including the staff associations which represent Police employees). The ideas have also been informed by research into public expectations of New Zealand Police.

The government intends to draft a Policing Bill at the end of this year in the light of responses received throughout the review, and ongoing discussion with key stakeholders. I therefore encourage you to seize this further opportunity to have a say on how policing might best be enabled by legislation. All New Zealanders have a stake in policing, and everyone stands to benefit if we can agree on the most effective form of legislation to support the work of Police.

A handwritten signature in blue ink that reads "Annette King". The signature is fluid and cursive, with the first name "Annette" and the last name "King" clearly distinguishable.

Hon Annette King  
Minister of Police

## **EXECUTIVE SUMMARY**

This document outlines ideas for the future of policing in New Zealand which might form part of a new Act of parliament. The options identified could assist New Zealand Police meet the challenges of the 21st century, and help deliver a world class policing service. Views are invited on these proposals.

### **THE CASE FOR CHANGE**

New Zealand's policing legislation needs to change. With the passage of time and after multiple amendments, weaknesses of the 1958 Police Act and 1992 Police Regulations include:

- a lack of statutory principles to guide policing
- unclear responsibilities and confused lines of accountability
- constraints around the ability to place the right people in the right jobs
- an overly prescriptive system for managing staff performance and discipline issues
- little guidance to work with partner agencies, domestically or internationally
- few supports to enable the use of modern policing tactics
- inadequate legal protections for some Police staff and for Police as an organisation.

### **KEY PRINCIPLES TO GUIDE POLICING**

Trust and confidence in Police hinges on policing being conducted in a principled way. A new Act could establish principles to help guide how New Zealand policing is done. Important principles which might usefully be included in new policing legislation include:

- acting impartially, so policing occurs free from improper influence or direction
- upholding appropriate standards of conduct, personal integrity and professionalism
- providing a national service, yet linking strongly with local people and communities.

The new Act could also reflect other principles. For example, it could highlight policing is a shared undertaking, by emphasising all citizens can help uphold the law, keep the peace, prevent crime and crashes, and bring offenders to justice.

### **EFFECTIVE POLICING FOR NEW ZEALANDERS**

Effective policing is at the heart of safe and confident communities. Ways in which legislation could support Police's effectiveness include:

- reinforcing clear command and control of Police
- improving the allocation of powers to members of Police
- sharing information to improve the chances of preventing re-offending
- supporting frontline policing by:
  - enabling faster identification of people being detained by police
  - ensuring searches can be conducted in police-controlled buildings
  - inviting views on a new power to move people away from danger or crime scenes
  - creating a statutory presumption that police use of minimal restraint (including, if appropriate, the option of handcuffing) is a reasonable use of force
  - offering more certainty for police taking incapacitated people into safe custody
- enabling modern policing tactics to fight serious and organised crime
- assisting with the recognition and status of members of Police
- upping penalties for impersonating police and unauthorised use of Police's name.

### **PEOPLE IN POLICING**

A key focus is to ensure Police has a modern workforce. New policing legislation should support the Commissioner's ability to employ a workforce with the range of skills, powers and protections needed

to meet current and future demands. A modern Police employment environment could flow from legislation which includes the following major elements:

- the Commissioner's commitment to act as a good employer
- strengthened approaches to pre-employment vetting
- a common basis for setting employment terms and conditions
- reinforcing the unity of Police with a single *Code of Conduct* and solemn undertaking for all Police staff
- more options for empowering appropriate people to perform specific policing tasks
- clear provisions to facilitate temporary secondments to and from Police
- acknowledging the importance of developing Police's leaders and managers
- expanding use of certification within Police to move towards a registration system, as part of a transition to a professional model for New Zealand Police.

## **PLATFORMS FOR SUCCESS**

Legislative building blocks will also be put in place for the oversight, management and daily running of Police. Specific measures in the Policing Act may include:

- confirming the legal status and functions of New Zealand Police
- defining the process for settling the appointment, terms of engagement and tenure of the most senior Police personnel, as well as delegation arrangements
- clarifying the respective roles of the Commissioner of Police and Minister of Police, and the constitutional relationship between the Commissioner and the Minister
- offering more certainty about the Commissioner's position in charge of New Zealand's constabulary
- strengthening the Commissioner's accountability for Police performance
- widening the ability for arms-length inquiries into any issues of concern
- enabling regulations to be issued under the new Act to address matters of detail.

Another way to help Police advance is to continue its movement to a mainstream employment relations environment. The new Act could balance further progress in this area with continued assurances policing will not be impacted by industrial action, and proven mechanisms (with updated arbitration criteria) to resolve disputes if they arise.

## **ANTICIPATING THE FUTURE**

It is proposed to 'future proof' legislation for Police by including some elements which may only be triggered or fully implemented at a later point in time. Opportunities initially identified for discussion are:

- using technology-neutral language to allow future advances in identification processes
- cautiously expanding options to use infringement notices for lower-level offences
- enabling the introduction of integrity testing, as a further support for ethical behaviour
- providing for the creation of a policing oversight and improvement agency
- mandating the recovery of costs for special policing services in certain circumstances.

## **NEXT STEPS**

The proposals set out in this discussion paper seek to preserve and build on strengths of the past. In many cases, they simply confirm and clarify long-understood features of the way New Zealand Police is organised and operates. There are also proposals to do things better.

A contemporary Policing Act is long overdue. While not every proposal discussed in this paper can be progressed through Police's own legislation, the intention of the new Act is to equip New Zealand Police with the legislation it needs to confidently meet the challenges of 21st century policing.





# *CHAPTER 1*

## ***THE CASE FOR CHANGE***



## INTRODUCTION

- 1.1 Many features of policing remain as relevant today as they were for the earliest police, including commitment to service, concern for all, and high ethical standards. But the context for policing has changed. Today's society is more open; family and community relationships have evolved; and technological advances and globalisation have brought high-speed communications, more outward-looking citizens, as well as new forms of crime which threaten people's security.
- 1.2 The challenges of today's world cannot be met by laws designed for a different age. *Policing Directions in New Zealand for the 21st Century* sets out proposals to update the legislative platform for Police to better meet these challenges.

### Key points

- 1.3 This Chapter summarises the main reasons why New Zealand's policing legislation needs to change. It highlights factors propelling away from the 1958 Act and 1992 Regulations, as well as a number of factors pulling towards a more modern legislative framework. Important 'push factors' under the current legislation include:
  - a lack of statutory principles to guide policing
  - unclear responsibilities and confused lines of accountability
  - constraints on being able to place the right people in the right jobs
  - an overly prescriptive system for managing staff performance and discipline issues
  - little guidance to work with partner agencies, domestically or internationally
  - few supports to enable the use of modern policing tactics
  - inadequate legal protections for some Police staff and for Police as an organisation.
- 1.4 These weaknesses can be addressed through a new Policing Act. Removing needless obstacles or outdated language should help Police make an even more effective contribution to New Zealanders' safety and security.

## POLICE IN A CHANGING WORLD

- 1.5 The key legislation governing New Zealand Police - the 1958 Police Act - has not been comprehensively updated in nearly half a century. Yet a raft of changes since the 1950s demand a stocktake and careful thinking about the sort of policing legislation New Zealand needs in the 21st century. To kick-start this process, in March 2006 the government launched a broad-ranging review of Police's current legislation.<sup>1</sup> The review highlighted the changing environment New Zealand Police now operates in, and drew attention to the pressure this places on Police's 1950s era legislation.
- 1.6 Some of these changes have been reflected in New Zealand Police's structure, as successive administrations have sought to adapt to demographic, cultural, technological, and governmental shifts. For example, Police's staffing base has grown from around 2,200 in the 1950s to upwards of 10,500 today. Fifty years ago, almost all roles within Police were filled by uniformed police officers, with little specialisation beyond general duties and the Criminal Investigation Branch. Today, uniformed police

<sup>1</sup> For an overview of the Police Act Review, see Appendix 1.

are supported by an increasing number of other Police staff in both operational and support roles, working in a diverse range of specialist teams (from dive squads and strategic traffic groups through to youth aid and electronic crime [e-crime] units).

- 1.7 Other changes have pressed in on Police from outside. Policing today encompasses common assaults and car thefts on one hand, through to transnational crime and terrorist threats on the other. One of the biggest changes in the policing environment has been the need to post New Zealand police off-shore, to combat cross-border crime, assist in peacekeeping missions, and respond to large-scale emergencies. These international roles were not dreamt of when the 1958 Police Act was written. Equally, some traditional policing functions in the 1950s have, over time, largely become the responsibility of others – for example, protection of livestock and prosecution of animal welfare cases.
- 1.8 Not only is the business of policing more complex today than it was in the 1950s, it is also less reliant on New Zealand Police as the sole law enforcement agency. These days, the private security sector plays an increasingly prominent role in policing large shopping centres, sports stadia and other privately-controlled public spaces. Fisheries, immigration and customs officers now exercise coercive police-like powers. And local government city safety officers, volunteer community patrols and Neighbourhood Support groups bring extra eyes and ears to the task of policing. The end result is a policing environment which is more networked and more co-operative.<sup>2</sup>
- 1.9 Policing today is certainly very different to what faced lawmakers half a century ago. In an effort to keep pace with a fast-changing environment, the 1958 Act has been amended more than 25 times. However, this has occurred in a patchwork, piecemeal way, usually only tackling the issue of the day. It has left a legislative framework which lacks coherence and is internally inconsistent in several places.

## **ISSUES WITH THE CURRENT LEGISLATION**

- 1.10 On its own, the fact the 1958 Police Act is increasingly out-of-date would be enough to justify an overhaul. Few would disagree New Zealand Police should be supported by the best and most modern legislation. But the case for change is made more powerful because of defects or omissions in the current law.

### **Lack of guiding principles**

- 1.11 For instance, the current Act says nothing about principles which underpin policing. Putting principles of policing into statute would provide a source of guidance about what police are expected to do, and how they are expected to do it. It could act as a compass for police and the public to check policing in New Zealand remains 'on track'.
- 1.12 New Zealanders recognise the value of including high-level principles in policing legislation.<sup>3</sup> Proposals for how a clear set of principles might be included in a new Policing Act are discussed in Chapter 2.

<sup>2</sup> Police Act Review, *Securing the future: Networked policing in New Zealand* (2006).

<sup>3</sup> UMR Research, *What the New Zealand public want and expect from their police in the 21st century* (2007), p 13.

## Unclear responsibilities and confused lines of accountability

- 1.13 Another peculiarity of the 1958 Police Act is its lack of a role or function statement - an omission which stands New Zealand's policing legislation apart from most other comparable countries.
- 1.14 Police is a large state agency which draws on more than \$1 billion of public resources each year to deliver services that matter to every New Zealander. It is no longer satisfactory for the mandate of such a significant public organisation not to be set out in statute, even at a constitutional level. Including a broad purpose statement in a new Act may also help Police and the government clearly understand their respective areas of responsibility. It would provide a firm bedrock for Police to build on with confidence in other areas - for example, developing policy and strategy.
- 1.15 A particular concern is the current Act and Regulations allow for misunderstandings about the respective roles of the Commissioner of Police and Minister of Police. The existing legislation contains virtually no guidance on the boundaries of the Commissioner-Minister relationship. Some commentators see a strength in this relationship.<sup>4</sup> Others have criticised it for failing to secure a sufficient legal separation between the Commissioner and government in matters of day-to-day law enforcement.<sup>5</sup> Parliamentarians from across the political spectrum have also recommended clarifying in statute the relationship between Police and government.<sup>6</sup>
- 1.16 The importance of confirming Police's constitutional position, and ensuring there are understood lines of accountability, is accepted; so long as attempting to capture the relationship between the Commissioner of Police and Minister of Police does not create a 'legislative strait jacket'. This topic is explored in Chapter 5.

## Unnecessary personnel-related constraints

- 1.17 Further difficulties are evident in employment-related parts of the existing legislation. For example, appointments and transfers are covered by a complex and overlapping set of provisions in the Act and Regulations. There is considerable ambiguity over what constitutes an "appointment" versus a "transfer", and it is unclear if decisions are reviewable in various circumstances. Managers also face hurdles in providing suitably-empowered staff to perform particular functions, such as escorting prisoners or acting as jailers. Because of the 'one size fits all' approach to constabulary powers under the current Act, staff working in these custodial roles are sworn in as "temporary" or "casual" constables. Barriers also exist to staff easily moving between sworn and non-sworn roles within Police. The current Act requires staff to exit the organisation before rejoining in a different capacity, despite the fact they remain Police employees throughout. This requirement is needlessly bureaucratic.
- 1.18 Overall, the current personnel provisions are inflexible and inhibit the Commissioner's ability to manage Police's human resources in the most efficient and effective way. New policing legislation should ensure Police commanders have the flexibility needed to employ people with the right skills to undertake the diverse range of policing tasks. Proposals in this area are detailed in Chapter 4.

<sup>4</sup> For example, see Russell Hogg and Bruce Hawker, 'The Politics of Police Independence' (1983), p 165.

<sup>5</sup> Philip Joseph, *Constitutional and Administrative Law in New Zealand* (2001), para 9.5.4.

<sup>6</sup> Justice and Electoral Committee, *Inquiry into matters relating to the visit of the President of China to New Zealand in 1999* (2000), p 47.

## Overly prescriptive system for dealing with staff performance and discipline issues

- 1.19 Police's existing legislation also contains an outmoded system for dealing with staff performance and discipline issues. The rigid nature of this system sees Police supervisors trying to manage poorly-performing staff through inappropriate, costly and time-consuming disciplinary hearings, while cases of the most serious misconduct become ensnared in a statutory process which prevents the Commissioner responding swiftly and decisively.
- 1.20 By way of example, because the current legislation fails to distinguish between unsatisfactory performance and actual misconduct, formal disciplinary action is taken to address performance issues. The disciplinary provisions invoke a court martial style Police Tribunal which concentrates on offences, charges, guilt and punishment. This is despite most actionable issues in Police relating to poor performance and minor misconduct, which are more appropriately dealt with on a managerial basis. The absence of a *Code of Conduct* for sworn Police staff compounds these difficulties.
- 1.21 Weaknesses in Police's current legislative framework for managing performance and discipline issues have recently been singled out by the Commission of Inquiry into Police Conduct. Summarising key findings from her report, Dame Margaret Bazley identified the urgent need to enable "a more sensible and efficient system" than that provided for under the existing Act and Regulations:<sup>7</sup>

The current police disciplinary system for sworn staff is cumbersome, time-consuming, and outdated. It needs to be replaced with a modern approach to managing misconduct and poor performance, based upon a *Code of Conduct*, applying standard employment law and best practice human resource management principles.

- 1.22 Police leaders and the government welcome these recommendations. It is an area where there is significant room for improvement, and both Police and the government share a determination to modernise the performance management and disciplinary systems for Police staff. Chapter 5 spells out proposals for how to achieve this much-needed step change.

## Little guidance to work with partner agencies

- 1.23 Building safer communities is not a task Police can achieve alone. The wider network of organisations involved in crime reduction and community safety make a very important contribution to a more secure New Zealand. The importance of Police and partner agencies working together, domestically and internationally, could be better supported by legislation. But once again, this is not a feature of the 1958 Police Act.
- 1.24 The absence of legislative encouragement to reflect a networked style of policing was highlighted in Police Act Review *Issues Papers* consulted on last year.<sup>8</sup> As a case in point, the current Police Act says nothing about Police's off-shore work, which begs questions about the validity of Police staff serving in roles as diverse as emergency response to international disasters, transnational criminal investigations, and regional police capability building efforts. New policing legislation could offer more explicit guidance on the type of relationships and areas of engagement Police might focus on. Examples of what this might mean are signalled in Chapters 3 and 5.

<sup>7</sup> Dame Margaret Bazley, *Report of the Commission of Inquiry into Police Conduct* (2007), p 2.

<sup>8</sup> See Police Act Review, *Issues Paper 4: Community engagement* (2006) and *Issues Paper 6: Relationships* (2006).

### Few supports to enable the use of modern policing tactics

- 1.25 Another shortcoming in Police's existing legislation is the lack of support given to modern policing tactics, such as covert practices associated with Police's undercover programme. Unlike the situation under equivalent policing legislation overseas, work by New Zealand's undercover officers has no statutory backing in the 1958 Police Act. As a result, not only is this aspect of policing largely invisible in law, but the legal protections available for Police's undercover personnel are far from comprehensive.
- 1.26 The wider interests of certainty and transparency would be best served by formalising such practices as part of a comprehensive Policing Act. The legal authority of police working in areas like the undercover programme needs to be put beyond doubt, and those taking risks to prevent harm to the community from gangs and other organised crime groups deserve to know what legal immunities they can rely on. Proposals to introduce more explicit legislative supports in this area are outlined in Chapter 3.
- 1.27 Further, the current Act and Regulations contain in-built barriers which prevent Police from fully embracing new technology, because the language they use is fixed in an era when the most advanced policing techniques involved dusting for fingerprints or taking plaster casts of footprints. Because the existing legislation does not use technology-neutral language, Police is held back from making full use of modern approaches in areas like verifying the identities of people who are being detained in custody. The prescriptive wording of the current Act and Regulations also lock Police into less efficient ways of doing basic things, like not being able to take advantage of on-line publishing options when authoritative communications need to come from the top down in Police. Chapter 3 outlines a number of proposals to do away with these constraints, while Chapter 6 looks ahead and discusses how some particular aspects of the Policing Act might sensibly anticipate the future.

### Sometimes inadequate protections

- 1.28 A final area of concern with the current legislation is its incomplete approach to protecting Police staff, and indeed the wider interests of Police as an organisation. One example is the way the current Police Act and Regulations limit access to appropriate protections for 'back office' specialists who are not sworn in as constables, yet whose technical skills are needed at the sharp end of policing - for instance, when members of Police's e-crime lab conduct searches.
- 1.29 At a different level, the penalties for offences designed to deter the impersonation of police officers, non-approved use of Police insignia and trading off the name "Police" have lost touch with the gravity of these offences; especially at a time of heightened concern about security. There is a strong case to strengthen these offences as a way of giving the public added assurance about the status of those who present themselves as police, through use of Police uniforms and related articles. Similarly, protections around the word "Police" could be enhanced to give extra confidence the people or organisations using it are, in fact, officially connected with New Zealand Police. Proposals in these areas are set out in Chapter 3.

## MOVING FORWARD

- 1.30 Overall, most New Zealanders generally see New Zealand Police and its staff in a positive light, and Police benefits from comparatively high levels of public trust and confidence.<sup>9</sup> Maintaining the goodwill and support of the public is critical to Police delivering on its vision of “Safer Communities Together: Te Whaka Rurutanga”. So too is having the right legislative building blocks to allow Police to reduce crime and road trauma, and help citizens feel safe and secure.
- 1.31 The case for change is clear. While some advances can be made without law reform, there is consensus about the need for fresh legislation to better position Police for the future. The next step is to agree on the basic shape of that legislation. *Policing Directions for New Zealand in the 21st Century* presents a vision of what Police’s new legislative arrangements could look like.
- 1.32 The proposed Policing Act would remove obstacles holding Police back from making an even more effective contribution to New Zealanders’ safety and security. The following chapters set out the detail around the intentions for the Act, starting with the importance of grounding the new legislation with a clear set of guiding principles.

<sup>9</sup> Pat Mayhew and James Reilly, *The New Zealand Crime and Safety Survey: 2006 - Key findings* (2007), p 15; UMR Research, *What the New Zealand public want and expect from their police in the 21st century* (2007), p 11.





## *CHAPTER 2*

# ***KEY PRINCIPLES TO GUIDE POLICING***



## INTRODUCTION

- 2.1 The platform for professional policing in New Zealand was laid more than 160 years ago, when Lieutenant-Governor Hobson landed with five police from New South Wales, and was quickly supplemented by local forces. The constables of the new colony initially worked alongside Māori forms of authority, but had roots in nineteenth century English, Irish and Australian constabularies. From then on, the agency we know today as ‘the Police’ has developed in a uniquely New Zealand way.
- 2.2 While much has changed since these early days, there are echoes from the past. Fundamental concepts also endure, such as the accountability of police to the law, independence from political control over operational matters, and commitment to act with total integrity. Preserving these strengths is vital to maintaining the legitimacy of police in the eyes of the public, and further increasing trust and confidence in policing. These fundamental concepts could be reflected in legislation.

### Key points

- 2.3 This Chapter outlines the proposal to take a principles-based approach to new policing legislation. Principles identified as important in a New Zealand context, which could usefully be included in the Policing Act, include:
- acting impartially, so policing occurs free from improper influence or direction
  - upholding appropriate standards of conduct, personal integrity and professionalism
  - providing a national service, yet linking strongly with local people and communities.
- 2.4 The Act could also reflect another ideal: that policing is a shared undertaking. Giving this ideal a place in legislation would emphasise all citizens can help uphold the law, keep the peace, prevent crime and crashes, and bring offenders to justice.

## CONFIRMING THE ROLE OF POLICE IN SOCIETY

- 2.5 As described in Chapter 1, police today face significant challenges. The rapidly changing landscape has an important bearing on the way policing is done. In advancing legislation to meet these challenges, it is important to confirm the role New Zealand Police should play, both for this generation and the next.
- 2.6 The starting point is the core duties of police constables, each of whom pledges:<sup>10</sup>
- That I will well and truly serve our Sovereign Lady the Queen in the Police, without favour or affection, malice or ill-will, until I am legally discharged; that I will see and cause Her Majesty's peace to be kept and preserved; that I will prevent to the best of my power all offences against the peace; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law.
- 2.7 As the constable's oath makes clear, at the heart of policing in New Zealand is a drive to maintain order and support a peaceful society. Providing general assistance to those in need is another traditional police role. Because they are on duty 24 hours a day 365 days a year, police perform a ‘backstop’ function as the service of last resort – responding to incidents, coping with emergencies and managing crisis situations. The breadth of the role also sees police working with people of all ages, beliefs and

<sup>10</sup> Section 37(1) of the Police Act 1958. A modernised version of this oath will be carried across into new policing legislation.

backgrounds, helping to build strong, cohesive communities. Knowing police can be called to offer assistance when needed is a source of reassurance to all New Zealanders, as well as overseas visitors.

- 2.8 Just as importantly, policing is about preventing crime and reducing trauma on the roads. It is also about detecting and bringing offenders to justice. Enforcing the law is a key means of protecting individuals and securing public safety. Unsurprisingly then, a focus on crime prevention and traffic safety have been staples of New Zealand policing since the earliest times. Major strides have been made in these areas, and New Zealand Police is working to embed a problem-solving, intelligence-led approach to crime and crash reduction.
- 2.9 Within this wide role for policing, New Zealand Police needs to operate at a number of levels - specific places or certain streets; local communities, towns and cities; across regions; right up to the national level and beyond. The impacts of cross-border crime, like drug trafficking, can reach into neighbourhood streets. Stopping such harm from being visited on local communities can mean taking the fight against crime off-shore. In a globalised age, this side of the policing mission has expanded, with increasing effort going into transnational crime and counter-terrorism initiatives. New Zealand's police are also increasingly needed to work side-by-side with New Zealand Defence Force personnel to restore stability in the Pacific, after violence and unrest in places like Timor Leste and Solomon Islands.
- 2.10 These accepted policing roles could be given recognition in the legislation which sets up and governs New Zealand Police. Without going down the track of amassing a prescriptive list of functions, which might invite legal challenges if a policing activity was not specifically named, a new Policing Act might include a purpose statement that confirms Police's mandate in key domains:
- *crime prevention* - including visible policing in communities, and work to deter offending and reduce risks of victimisation
  - *community support and reassurance* - including a range of activities sought by the public, such as locating missing people, contacting next of kin for the injured or deceased, and generally helping people in need of assistance
  - *law enforcement* - including detecting and bringing offenders to justice
  - *public order and safety* - including crowd control and road safety
  - *national security* - including participation in international policing activities
  - *emergency management* - including planning, coordination, response, recovery and prevention of a wide range of emergencies.

## VALUING THE CONTRIBUTION OF OTHERS

- 2.11 New Zealand Police does not have a monopoly on policing, nor can it be expected on its own to deliver a safe and just society. The success of policing relies in large measure on support from a range of partner organisations, as well as the efforts of individuals, families and communities.
- 2.12 To illustrate this point, local authorities have expanded responsibilities for community safety under the Local Government Act 2002, and have a number of levers they can use to make a positive difference on crime and disorder - for example, by investing in good street lighting or crime prevention CCTV (closed circuit television) cameras. Similarly, employment agencies can play important roles in helping turn offenders' lives around, while health services can help address alcohol and other drug problems

which can lead some people down a destructive path to crime. Likewise, education and social service agencies can intervene early and effectively in young people's lives, to stop them becoming involved in anti-social behaviour and more serious offending. Non-governmental organisations, including voluntary and business groups, can also make a significant contribution to general crime prevention and community safety.

- 2.13 In addition, the role members of the public play should not be overlooked. Everyone may be considered to have a moral and social duty to help prevent breaches of the peace, which underpins the traditional power to make a citizen's arrest.<sup>11</sup> People must recognise their own responsibility to help prevent and reduce crime, not just their right to live in safer and more secure communities. More than that, policing at a community level is most effective when it is done with the active involvement of citizens. Information provided by the public is vital in helping police fight crime at all levels – from comparatively minor offending (e.g., 'tagging') to serious and organised crime.
- 2.14 The fact keeping communities safe is not just a Police job could be reflected in legislation. The Policing Act might include a clear statement that, although New Zealand Police leads efforts to prevent crime and crashes, the wider mission of policing is a shared undertaking.

## PRINCIPLES OF POLICING

- 2.15 For police and the public to fulfill this shared responsibility, policing legislation could contain a clear set of guiding principles. As noted earlier, one of the weaknesses of current legislation is it says nothing about the principles which underpin policing. This denies New Zealand Police a valuable source of guidance about what police are expected to do and how they are expected to do it.
- 2.16 In identifying principles which might be given statutory recognition, it is important to take into account views expressed during last year's preliminary public consultation, and the results of targeted research with New Zealanders.<sup>12</sup> It was especially notable that principles attributed to Sir Robert Peel in 1829, when London Metropolitan Police first began walking the beat, continue to be seen as a benchmark.

### Peel's principles of policing

- To prevent crime and disorder, as an alternative to their repression by military force and by severity of legal punishment.
- To recognise always that the power of police to fulfill their functions and duties is dependent on public approval of their existence, actions and behaviour, and on their ability to secure and maintain public respect.
- To recognise always that to secure and maintain the respect and approval of the public means also the securing of the willing co-operation of the public in securing the observance of laws.
- To recognise always that the extent to which the co-operation of the public can be secured diminishes, proportionately, the necessity of the use of physical force and compulsion for achieving police objectives.

<sup>11</sup> This common law power is given legislative support by various provisions within the Crimes Act 1961, such as sections 35-38 and 42. For a case example, see *Martin v Police* (Unreported, 26 October 1995, AP 82-95, HC Hamilton Registry, Hammond J), involving the citizen's arrest of a suspected drunk driver.

<sup>12</sup> Police Act Review, *Perspectives on policing* (2007), pp 13-15; UMR Research, *What the New Zealand public want and expect from their police in the 21st century* (2007), p 13.

- To seek and to preserve public favour, not by pandering to public opinion, but by constantly demonstrating absolutely impartial service to law, in complete independence of police and without regard to the justice or injustices of the substance of individual laws; by ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing; by ready offering of sacrifice in protecting and preserving life.
- To use physical force only when the exercise of persuasion, advice and warning is found to be insufficient to obtain public co-operation to an extent necessary to secure observance of law or to restore order; and to use only the minimum degree of physical force which is necessary on any particular occasion for achieving a police objective.
- To maintain at all times a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police being only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen, in the interests of community welfare and existence.
- To recognise always the need for strict adherence to police executive functions, and to refrain from even seeming to usurp the powers of the judiciary or avenging individuals of the State, and of authoritatively judging guilt and punishing the guilty.
- To recognise always that the test of police efficiency is the absence of crime and disorder, and not the visible evidence of police action in dealing with them.

Source: Pamela Mayhall, *Police-community relations and the administration of justice* (1985), pp 425-426.

- 2.17 A natural starting point in codifying principles for policing is to draw forward Peel's idea "the police are the public and the public are the police". This concept of 'citizen police' is a very powerful one. It emphasises how a police service like New Zealand's is comprised of ordinary men and women who have taken on the responsibility of protecting their fellow citizens.
- 2.18 This ideal is given its ultimate expression through the common law office of constable - an office tracing back to medieval times, which the Courts have noted puts the holder in a special constitutional position as a servant of the Crown.<sup>13</sup> Popular support for policing in this country is tied up with trust and confidence in those members of the community who act as constables, and the role of constable should continue to form a centrepiece of New Zealand Police. In particular, constables should be the lynchpin of locally-delivered policing, albeit working with other Police staff and partners to respond effectively to community needs. The Policing Act could reinforce this key concept.

### Impartiality and freedom from improper control

- 2.19 New Zealanders need to have confidence that members of Police will do their jobs in the best interests of the whole community, not just certain sectional interests. Independence from the political process is especially important; not just to ensure separation of powers between the legislative and executive branches of government, but also to support public trust in a non-partisan style of policing. Any suggestion of political interference in operational policing can have a corrosive effect on public trust and confidence. In the words of a former Commissioner of London's Metropolitan Police: "operational freedom of the police from political or bureaucratic interference is essential to their acceptability and to the preservation of democracy .... Their manifest impartiality is their most priceless asset".<sup>14</sup>

<sup>13</sup> See *Enever v R* (1906) 3 CLR 969, at 975; *Attorney-General for New South Wales v Perpetual Trustee Co Ltd* [1955] AC 457; and *AUW Rights Centre Inc v Attorney-General* [1994] 1 NZLR 720, at 726-727.

<sup>14</sup> Sir Robert Mark, *In the Office of Constable* (1978), p 202.

- 2.20 Impartiality and freedom from improper direction are core policing values in this country, and the political neutrality of police is a settled part of New Zealand's constitution. There is a long line of authority which confirms police are operationally independent of the government of the day, and government ministers cannot involve themselves in, or direct, how police operations are conducted. This operational independence is closely linked to the independence guaranteed to all constables, whose duty to preserve the peace and prevent offences against the peace does not yield to political considerations.<sup>15</sup>
- 2.21 These foundational principles could be reinforced by including a clear statement about police independence in new legislation. Importantly, this need not imply a lack of accountability. Constabulary independence is properly moderated by checks which exist in a disciplined command organisation like New Zealand Police, scrutiny and oversight provided by standard public sector accountability mechanisms, and constables' ultimate accountability to the law. This essential balance should remain.

### Personal and professional standards

- 2.22 Another deeply held value is the right to expect high standards of ethics, integrity and conduct from police. Those who put themselves forward to serve in Police are often looked to as role models within the community. This is a legitimate expectation of people who hold privileged positions in society, and who in many cases have access to special powers and protections. A responsibility which comes with these special positions, powers and protections is the need to act professionally and with total integrity at all times - be that on or off duty.
- 2.23 The professional standards New Zealanders expect of their police have recently been confirmed by public research and the Commission of Inquiry into Police Conduct.<sup>16</sup> It is proposed to include reference to these standards as one of the guiding principles of policing in the new Act.

### National reach with a local focus

- 2.24 A feature of this country's policing that is often remarked on is its national coverage. This contrasts with having a series of regional or local police forces which operate their own policing systems. Not only does the unified police service model avoid some of the jurisdictional conflicts and duplications seen elsewhere, it creates a basis for consistency in significant areas, such as the collection and sharing of intelligence.
- 2.25 A whole-of-country approach also provides protection against policing decisions being made solely on the basis of local people's wishes. The dangers of such a scenario are readily apparent. For instance, while it might be locally popular to relax enforcement of some offences, but rigorously enforce others, this may have damaging impacts. Above all, localised approaches risk variation between different parts of the country, which can create real uncertainties in the public mind, and can lower overall respect for the law. This is another important reason why New Zealand Police must maintain a national overview, and have the operational independence necessary to make decisions about where and when to deploy resources. The need to preserve the strengths of a unified model suggests elevating this country's national approach as a statutory principle of policing for New Zealand.

<sup>15</sup> *Whithair v Attorney-General (Police)* [1996] 2 NZLR 45; *Practical Shooting Institute (New Zealand) Inc v Commissioner of Police* [1992] 1 NZLR 709, etc. Perhaps the most famous expression of this principle is Lord Denning's decision in *R v Commissioner of the Metropolis, ex p. Blackburn* [1968] 2 QB 118 at 135 (quoted later in Chapter 5).

<sup>16</sup> UMR Research, *What the New Zealand public want and expect from their police in the 21st century* (2007), p 12; Dame Margaret Bazley, *Report of the Commission of Inquiry into Police Conduct* (2007).

- 2.26 In saying this, the benefits of maintaining a cohesive national policing organisation need not detract from a local focus. Despite its national character, the New Zealand way of policing has allowed meaningful connections to be built between police and communities at the local level. The proposed statutory principle could be drafted so as to encourage strong links with local people and communities within a nationally-organised policing framework.
- 2.27 A carefully worded principle may be preferable to heavier-duty legislative provisions which seek to force local connections. Introducing detailed legislative requirements does not seem necessary; and indeed, could end up being counter-productive, if the required steps were seen as all that is worth doing. While in future it would be good to see all New Zealand households receiving relevant information about local policing issues, moves in this direction can readily be made by the Police Commissioner and Police District Commanders, without the need for any specific statutory provision.

### **OTHER POSSIBLE PRINCIPLES**

- 2.28 It is possible to think of other principles which might be lifted up into statute to help guide policing in New Zealand.<sup>17</sup> While the government remains to be convinced that it is necessary or desirable to compile a long list of such principles, it invites thinking on any other important concepts which could usefully be given legislative recognition.

### **Reasonable force**

- 2.29 For instance, one of the things which distinguishes police officers from most other members of the community is the ability to use coercive force on behalf of the state whenever the occasion demands it. Even so, constables walking the beat without carrying firearms is a cherished tradition in New Zealand; one that remains strongly valued even today. Resisting the drift towards fully-armed police is a feature of policing in New Zealand that is rightly admired, and which helps to contribute to our sense of national identity.
- 2.30 Woven into the ideal of a public police which does not automatically carry lethal weapons is the principle police will only use the level of force reasonably necessary in the circumstances. What is to be avoided is unthinking over-reaction, where extreme force is used as the default option to quell any resistance. Again, New Zealand is well-served by a policing style where escalating options are only used after low-level approaches prove unsuccessful. This approach is ingrained through staff safety tactical training and is supported by clear operational guidelines. As a result, there are only rare cases where police responses have not been proportionate, and they are exceptions which prove the general rule. The preference for reasonable force tactics is another defining feature of police work in New Zealand. Some may feel it is worth being identified in statute as a distinct principle of policing.

<sup>17</sup> For an overview, see Police Act Review, *Issues Paper 1: Principles* (2006).

## Respect for human rights and diversity

- 2.31 Yet another core expectation of police is they will treat all people fairly, regardless of their personal backgrounds. All New Zealanders are equal under the law, and in their unique position upholding the law, constables have a sworn duty to protect the rights and liberties of everyone, “without favour or affection, malice or ill-will”. Police also have specific statutory duties to act in ways which are consistent with the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993. The theme binding these overlapping obligations is a commitment to a consensual style of policing. This could be bundled up as a statutory principle about respecting human rights and valuing the diversity of the community.

## Balancing the need for openness

- 2.32 It may also be possible to argue that the need to balance openness and secrecy should be put into law as a principle of policing. ‘Openness’ in this sense would not mean acting in a way which divulges sensitive information, or breaches expectations of privacy or confidentiality. Rather, it would convey the importance of Police not being closed off to the public. While there are needs to be discreet about certain aspects of policing - for example, the details of covert policing tactics used to disrupt organised criminal groups - in a healthy democracy, an acceptable balance should be achieved.
- 2.33 Fundamentally, policing operates by popular consent. Public trust and acceptance of the legitimacy of police actions are pre-requisites for achieving that consent. In turn, an appreciation of ‘where police are coming from’ can be a critical way of winning public confidence. An open Police culture is the pre-condition for such understanding.
- 2.34 In fact, a positive change over recent decades has been Police’s willingness to be less insular, more open to inspection and more receptive to outside ideas for improvement. This trend is to be encouraged. If communities are to engage more in policing, they need to be confident of the ability for their voices to be heard and acted upon. An open New Zealand Police is one where people can have a say about what the priorities for policing should be. Naturally, such a conversation should be two-way. Some people’s priorities may be unrealistic, and finite resources may mean policing strategies need to be focused in specific areas over others. If there is openness about this, and the public can access information which explains why particular courses of action are, or are not, being pursued by police, there is likely to be a clearer understanding of the reasons why police need to prioritise their work in certain ways.
- 2.35 There is also a more formal dimension. Despite its special constitutional position, Police delivers services in the same general context as other government agencies, and needs to be accountable to the community for the use of public resources.
- 2.36 Police’s acceptance of the need for greater transparency, and being answerable to communities it serves, could be supported by a principle in the Policing Act which balances openness and secrecy. As with other possibilities, the government invites views on whether there is public support to take this any further.



## CHAPTER 3

# ***EFFECTIVE POLICING FOR NEW ZEALANDERS***



## INTRODUCTION

- 3.1 Effective policing, which provides safety and security for citizens and their families, is at the heart of confident communities. Conversely, few things erode public confidence more than a sense that breaches of the law cannot be stopped; that vehicle collisions cannot be prevented; that serious crimes can remain unsolved; or that offenders can evade being brought to justice.

### Key points

- 3.2 This Chapter outlines proposals to support Police's effectiveness. These include:
- reinforcing clear command and control of Police
  - improving the allocation of powers to members of Police
  - sharing information to allow tougher action against persistent offenders
  - supporting frontline policing by:
    - enabling faster identification of people being detained by police
    - ensuring searches can be conducted in police-controlled buildings
    - inviting views on a new power to move people away from danger or crime scenes
    - creating a statutory presumption that police use of minimal restraint (including, if appropriate, the option of handcuffing) is a reasonable use of force
    - offering more certainty for police taking incapacitated people into safe custody
  - enabling modern policing tactics to fight serious and organised crime
  - assisting with the recognition of members of Police
  - upping penalties for impersonating police and unauthorised use of Police's name.

## REINFORCING CLEAR COMMAND AND CONTROL

- 3.3 As noted in Chapter 2, one of the strengths of the New Zealand system of policing is the independence safeguarded by the office of constable. Clarity around Police's command structure also builds confidence in police carrying out their duties free from improper influence. Certainty about who is making operational policing decisions can be a useful start, and laws can play an important part in providing such certainty.
- 3.4 Currently, command and control arrangements for Police are set out in regulations. But they sit in an unclear relationship with the independence of the office of constable. This lack of clarity is unhelpful, as it raises doubts about the basic need within any disciplined organisation for senior officers to be able to direct staff to go to certain places and carry out certain duties. A related issue is the current lack of certainty regarding command and control decisions involving non-sworn Police staff, including whether they can legitimately direct the actions of their sworn colleagues. Increasingly this has become a practical issue, as non-sworn staff working in Police Communications Centres often need to give directions to police officers in patrol cars.
- 3.5 Command and control features currently in regulations could be elevated to statute. Added clarity might come from a new provision that identifies all members of Police working within the chain of command, including any overseas officers who join New Zealand Police temporarily as part of

an exchange programme. It would also be possible to describe how the chain of command works sympathetically with, but does not subvert, the independence of the office of constable, or inter-agency protocols such as the Co-ordinated Incident Management System (CIMS). The end result would be a clear statement that all members of Police must obey the lawful commands of their superiors,<sup>18</sup> carry out their policing duties impartially, and not act under ministerial control, direction or instruction.

- 3.6 The Commissioner's ability to give directives or guidance to staff could also be clarified. This is an area where there are problems at present, with a multi-tiered system of instructions that is unnecessarily complicated and confusing.<sup>19</sup> The Policing Act could include provisions to provide a more certain basis for authoritative communications from the top down within Police. The Commissioner's ability to issue such directives or guidance using modern communication technologies, including via electronic media and on-line publication, might also be given legislative support.

## **IMPROVING THE ALLOCATION OF POLICE POWERS**

- 3.7 New Zealanders' expectations of how policing services are delivered are moving with the times. For example, public research in 2006 found a willingness to enable a greater range of Police staff to make use of appropriate powers to help tackle crime and disorder, and work at enhancing community safety.<sup>20</sup> Given these evolving expectations, the government wants to support a modern Police workforce structure which lines up more sensibly with targeted policing powers.
- 3.8 As highlighted in Chapter 1, New Zealand Police in 1958 was primarily composed of general duty constables, trained to undertake the safety preserving, order maintenance and evidence gathering policing tasks of the day. The advent of more technically complex investigative approaches, and increasing demands by the Courts, has resulted in a growing degree of specialisation and uptake of technical systems amongst Police employees. This has profoundly affected Police's reliance on a workforce of generalists, who in the 1950s typically dealt only with paper-based files and physical evidence. Today, Police files can often be prepared entirely on computer, with electronic evidence needing to be produced in Court by highly-qualified experts.
- 3.9 One of the aims of the Police Act Review has been to explore whether current legislation clearly enables Police to employ the sort of workforce required for contemporary policing. Overall, the answer to this question is 'no'. To achieve the required flexibility, for many years Police managers have had to work within the constraints of the existing legislation. This has involved artificial practices, such as appointing people as "temporary" or "casual" constables, then seeking to limit their powers through their employment agreements. This approach is unsatisfactory.
- 3.10 Taking on board the views of Police leaders and groups representing Police staff, change is required to better enable a modern Police workforce. As a starting point, the traditional role of constable should remain at the centre of policing. For those members of Police who require the full range of policing powers and protections, the office of constable is the time-honoured means through which they are extended. It is proposed the office of constable continue to serve as the access path for such general powers and protections.

<sup>18</sup> The implications of this for the doctrine of constabulary independence are explored further in Chapter 5.

<sup>19</sup> See Dame Margaret Bazley, *Report of the Commission of Inquiry into Police Conduct* (2007), para 2.36.

<sup>20</sup> UMR Research, *What the New Zealand public want and expect from their police in the 21st century* (2007), p 16.

- 3.11 The challenge is for new legislation to support a balance between generalist staff with broad 'police craft' skills and specialists in a range of specific policing roles. To meet this challenge, the intention is to build on the Commissioner's existing ability to authorise staff to exercise duties, powers and functions under warrant.<sup>21</sup> This system could be extended to include the power to conduct personal searches.<sup>22</sup> It would enable the Commissioner to employ members of Police with the powers appropriate for their roles. For example, those who work as jailers and prisoner escorts require targeted powers (e.g., to search for concealed weapons) to safely carry out their jobs, and prevent harm to both themselves and detainees. Similarly, Police staff working in protective roles (such as those guarding government buildings and official residences) would seem to need powers to stop, detain and search people who might feasibly pose a threat to the places under guard or people in them.
- 3.12 There could also be potential benefits in allowing the Commissioner to extend a wider range of powers to Police staff involved in specialist areas of investigation.
- 3.13 For instance, money laundering, credit card fraud, identity theft, and other forms of e-crime are becoming increasingly sophisticated. Too few Police staff currently have the necessary skills to deal with the most complex technology-based crime. While the Commissioner already employs some staff with these skills as non-sworn members of Police, it is unclear if they are able to personally exercise the police powers necessary to fully pursue an investigation. This can give rise to bizarre outcomes. An example is where technical evidence needs to be recovered, but the specialist non-sworn employee who provides the information justifying a search warrant is unable to make an arrest or search a person of interest during the execution of that warrant - having to rely instead on assistance from a constable or detective who may know little about the case (and who almost certainly cannot extract or analyse the technical evidence). This situation is both inefficient and frustrating.
- 3.14 As the challenges of e-crime and other offending grow more complex, it becomes critical the Commissioner can attract and retain specialists to work as full members of Police investigative teams. Support might be given to the Commissioner's call for such employees to supervise and direct relevant parts of Police investigations. To be fully effective, these staff need access to appropriate powers. It is hoped forthcoming Law Commission recommendations can assist in this regard.<sup>23</sup> More broadly, however, a new Policing Act could be used to provide a more rational way of allocating appropriate powers to members of Police.
- 3.15 To aid transparency, the government is open to the idea that broad categories of Police employees who might receive warranted powers be set out in legislation. For instance, based on the continuing success of the Crime Scene Attendant (CSA) trial in Auckland, it may make sense in future to give CSAs a limited cache of investigative powers. Other roles which may benefit from the ability to exercise intrusive police powers - for example, the power of search - could also potentially be established in legislation, with clear provisions for functions, powers and protections.

<sup>21</sup> See subsections 6(2) and 6(3) of the Police Act 1958.

<sup>22</sup> The potential to assign this power is somewhat enabled by section 57B of the current Police Act, but was intended to apply to one-off situations, such as enabling a sole charge constable's spouse to search a prisoner of the same gender.

<sup>23</sup> The Commission's project on entry, search and seizure is expected to result in recommendations on the scope and adequacy of current powers to search persons, places and vehicles, and seize relevant items. A final report from this project is expected to be completed in June 2007.

- 3.16 To reinforce public expectations any assignment of targeted police powers will be reasonable in the circumstances, there could be an accompanying requirement for the Commissioner to ensure any staff given warranted powers are suitably qualified and have the appropriate training to discharge their responsibilities. While the Commissioner's competence to make judgments about suitable qualifications and appropriate training would be supported, such a requirement could provide extra assurance standards of professionalism will be maintained by all those Police staff entrusted with coercive powers.

#### **Crime Scene Attendants (CSAs)**

For the past four years, burglary scenes in east Auckland have been attended by a dedicated team of non-sworn Police staff, freeing up sworn officers to concentrate on other frontline policing duties.

As part of their duties, CSAs lift fingerprints and blood samples for DNA profiling, interview victims and witnesses, and take statements. Files with positive lines of enquiry are forwarded to the Burglary Investigation Unit for follow up.

Amongst the current team are a former London Metropolitan Police constable, a retired constable, and people without policing backgrounds but who have particular technical expertise - for example, a Masters Degree in Forensic Science. Using non-sworn staff in this role has worked so well the team's strength has increased from six to 35, providing greater coverage across Auckland.

### **IMPROVED INFORMATION SHARING TO TACKLE PERSISTENT OFFENDERS**

- 3.17 There is an understandable public desire to see effective action against persistent offenders who commit a disproportionate amount of serious crime, and frustration when details emerge of people repeatedly on the receiving end of crime. Stopping repeat offenders in their tracks and reducing the cycle of repeat victimisation must be central planks of any modern policing strategy.
- 3.18 The drive against persistent offenders could benefit from clear legislative backing. It is vital the various agencies work together to eliminate unnecessary delays in passing on crucial information, to deal more effectively with recidivist offenders, and to provide a better service to victims and witnesses.
- 3.19 The Police Act Review has canvassed the need for policing legislation to enable, or speed up, information sharing between agencies. Overall, responses received in the first round of public consultation focused on smoothing this path through amendment to the Privacy Act 1993 - the (not always correct) interpretation of which sometimes has the effect of slowing or preventing information flows.<sup>24</sup> A separate provision in policing legislation was thought unnecessary, and ultimately might not achieve its aims if others continue to see the Privacy Act as a barrier to such information sharing.
- 3.20 Carefully-framed amendments to the Privacy Act could better support the sharing of appropriate information for law enforcement purposes. A vehicle for possible improvements will be the Law Commission's and Justice Ministry's current review of the Privacy Act. Radical changes are not anticipated. Rather, through refinements to the Privacy Act's schedules dealing with information exchange between agencies, constraints to legitimate information sharing could be overcome. An example of the type of adjustment possible is making it clear the Department of Corrections can pre-warn Police about inmates' release dates from prison. Presently, such information is not provided until after release. Especially in family violence cases, early notice a prisoner will return to a community can allow concerted efforts to ensure Protection Orders are not breached. When such pre-release

24 Police Act Review, *Perspectives on policing* (2007), pp 46-47.

information is not made available, real risks to personal and public safety can arise. Where sensible refinements to the Privacy Act could help avoid these sorts of situations, these should be supported.<sup>25</sup>

## **SUPPORTING FRONTLINE POLICING**

- 3.21 Any revamp of policing legislation needs to adequately cover day-to-day police work. To the extent appropriate, the Policing Act should help deliver the powers and protections needed to support effective frontline policing activity.
- 3.22 Subject to any relevant Law Commission recommendations,<sup>26</sup> currently-available powers could be updated, so they provide a clear and enabling framework for identifying people who have been lawfully detained by police, and searching detainees in Police cellblock environments. Options to modernise the current provisions dealing with these two areas of practice - sections 57 and 57A of the 1958 Police Act - were canvassed as part of the review, and reactions to these ideas were generally supportive.<sup>27</sup> These common-sense revisions could be given effect, either through the Bill associated with the Law Commission project on entry, search and seizure, or via the proposed new Policing Act.

### **Enabling faster identification of people being detained by police**

- 3.23 One proposal might be to introduce provisions authorising members of Police to require a person to furnish identifying particulars, where he or she is reasonably suspected of having committed an offence, and there are reasonable grounds for believing the identity given by the person is false or it cannot satisfactorily be verified by other means. Unlike at present, the person need not be “on a charge”, nor would there be a blanket requirement that he or she is physically taken to a police station. This would enable Police to make full use of technological advances to quickly confirm identities in appropriate cases, without forcing suspects to be arrested and charged, or physically taken to arrestee processing facilities within police stations.
- 3.24 This power could be extended to cases where people are issued with a summons to answer charges in Court. This would remove the current perceived incentive to arrest suspects to obtain particulars (e.g., for historical fraud offences). It would also be a more efficient way to confirm identifying details of prisoners charged with other offences, without needing to transport them to and from prison.<sup>28</sup>
- 3.25 It may be most appropriate to take a technology-neutral approach in this part of the new Act. This would open up the possibility police may one day be able to confirm people’s identities using more advanced techniques than the traditional methods of photographs, fingerprints, palmprints and footprints. Arguably, this is a necessary means of ‘future proofing’ this aspect of policing legislation - a theme developed more fully in Chapter 6.
- 3.26 Any clarified police powers should come with appropriate safeguards. To take account of legitimate privacy concerns, it could be specified that, once used to check a person’s identity, biometric data (e.g., fingerprint images) cannot be permanently retained or added to any Police database. However, if a person is summonsed or arrested for an offence after initial checks are carried out, it is reasonable the

25 For this particular situation, an appropriate amendment is currently before parliament for consideration (see Supplementary Order Paper 99, which proposes amendments to clause 109 of the Criminal Justice Reform Bill). Should it not be possible to progress this amendment, the fine-tuning changes could perhaps be made via a consequential amendment in the Policing Act.

26 As noted earlier, a final report from the Law Commission’s project on entry, search and seizure is due to be published in June 2007. More detail on the options for modernising the existing section 57 and 57A powers in the current Police Act will be contained in the Commission’s report.

27 Police Act Review, *Perspectives on policing* (2007), pp 42-46.

28 As provided for currently under regulation 27(v) of the Corrections Regulations 2005.

biometric information be taken as part of Police's normal investigative and detainee handling process. The statutory framework drafted to cover this area of practice would need to strike a careful balance.

#### **Rapid identification**

Police have undertaken a small-scale internal trial of mobile fingerprint scanners. Hand-held devices allow electronic fingerprint images to be taken anywhere and uploaded for comparison with Police's national fingerprint database. To support deployment of such technology in the field, it is important there are no legislative barriers to its use.

For example, under section 114 of the Land Transport Act 1998, enforcement officers are empowered to require the drivers of vehicles to give their name, address, date of birth, and other such particulars; with a matching power to arrest any drivers who are suspected to have given false or misleading information. If officers were also provided with the power to verify drivers' fingerprints, using rapid identification devices, it should be possible to reduce the need to make arrests, in order to take drivers back to the station to confirm their identities.

As further developments like Automatic Number Plate Recognition come on stream, police will have an even greater need to be able to quickly confirm drivers' identities. Awareness that roadside rapid identification may be done should deter drivers from offering false details, especially those seeking to avoid recognition as recidivist offenders. In turn, this should support the integrity of the Traffic Offence Notice system used to police illegal driving.

In the future, fingerprints submitted from the roadside for comparison with Police's secure database might also allow for matches with prints recovered from unsolved crime scenes. Any such matches would guide officers whether to detain a suspect for further questioning, or to escort him or her to a police station to conduct more detailed inquiries. This would provide direct benefits to Police and the wider community in terms of detecting, apprehending and bringing offenders to justice.

### **Clarifying the grounds for searches to be done in police-controlled buildings**

- 3.27 Suitable provisions might also be drafted to enable Police staff to conduct searches in the custodial areas of police stations. This is a logical power which helps ensure the safety of members of Police, detainees, and anyone visiting detainees in Police cells.
- 3.28 One area where the existing framework could be strengthened is providing for an explicit power to conduct searches in parts of police stations which the public can access. The same arguments in favour of routinely searching all detainees for concealed weapons, drugs, and so forth, apply equally to anyone wishing to enter police-controlled buildings. A measured response to legitimate safety and security concerns would be to adapt overseas precedents where such issues have been squarely addressed in policing legislation.<sup>29</sup>
- 3.29 However, legal advice suggests adequate search powers can be exercised by consent - with Courts expected to rule in favour of actions to deny entry to police-controlled buildings if members of the public refuse to comply with reasonable search requests. Based on this assurance, it does not seem necessary at this time to provide a legislative basis for such a search power. Nevertheless, the situation will continue to be monitored in case clearer legal grounds for such searches are required.

<sup>29</sup> For example, there is provision for police to use electronic screening devices for entrants to buildings under section 332 of Queensland's Police Powers and Responsibilities Act 2000.



## Moving people away from danger, or away from crime scenes

- 3.30 Constabulary powers in New Zealand not only derive from the common law, but also from scores of different statutes which confer specific legal authorities. Despite this long list of powers, one of a constable's most basic tasks - requesting a person to move past a crash or crime scene, or leave a public place because disorder might occur - is not covered by statute. While in most cases this gap has little real impact (because most people comply with requests to 'move on'), it seems unsatisfactory such a simple and needed police task remains unsupported in legislation.
- 3.31 One way to address this gap would be to introduce a new power (possibly under the Summary Offences Act 1981) for members of Police to require people to move from an area. This could strengthen the ability of officers to deal more efficiently with loitering that could impact on public safety and order. It could also be useful in cases where people interfere with Police investigations in public places. This includes vehicle crashes, brawls, crime scenes<sup>30</sup> and other incidents where interference could hinder the way an investigation is conducted, or where the interference may impact on the safety of victims or other innocent people in the vicinity.
- 3.32 Such a new power could also enable police to disperse individuals or groups who are behaving in a threatening manner; behaviour which can escalate to intimidation or violence, requiring stronger police intervention. In most cases where such a power would apply, police already have authority to arrest (e.g., for disorderly behaviour, breach of the peace, obstructing a police officer in the course of duty, etc.), but a specific 'move on' power would enable officers to require people to leave a place in certain circumstances.
- 3.33 As with all police powers, there would need to be checks and balances. For example, such a power might only be enforceable after a member of Police has requested a person to disperse, and has warned him or her of the consequences of failure to do so. The maximum length of time anyone asked to 'move on' would be excluded from an area could also be limited to a reasonable period (e.g., four hours). This is how such statutory 'move on' powers operate in a number of international jurisdictions.<sup>31</sup>
- 3.34 The government has not reached a view on whether such a 'move on' power should be introduced in New Zealand. While there is a practical rationale for providing such a power, and no reason to doubt it would be used responsibly by police, it is not immediately obvious such a power is needed, at least on presently-available information. The government thus invites responses on whether a 'move on' power would be a sensible addition to the policing tool kit. Based on views received, consideration could be given to introducing such a power.

## Creating a statutory presumption that use of handcuffs is a reasonable use of force

- 3.35 Another area where it may be desirable to seek greater certainty through legislation relates to the use of handcuffs. Although handcuffs have been carried as standard issue equipment by constables since the earliest days of policing in New Zealand, there is no specific statutory authority for the use of handcuffs by police, meaning their use must be justified as reasonable on a case-by-case basis. This has the virtue of allowing for thresholds to shift over time, as social and legal values change. Arguably, though, this benefit can be preserved, while still establishing a more predictable environment for police to make operational decisions whether to use handcuffs in individual cases. In short, handcuffing

30 It is understood the Law Commission's upcoming report on *Search and Surveillance* will recommend a new power for police officers to secure a crime scene until a warrant is obtained. However, this limited proposal would not fully address the wide range of situations where a 'move on' power would be of assistance to police.

31 As, for example, under section 15B of Tasmania's Police Offences Act 1935.



could be presumed to be a reasonable use of force in general policing, albeit this legal presumption could always be overcome on the evidence in any particular case.

- 3.36 Importantly, this suggested presumption would help to overcome areas of uncertainty created by judicial rulings. For example, in some cases, Courts have ruled against the use of handcuffs on people in the rear seats of Police cars being driven to stations for evidential breath tests. The reason given for such rulings has been there was no objective basis for the attending officers to fear for their personal safety. Given the difficulty of assessing danger to officer safety on a case-by-case basis, weighed against the minimal use of restraining force which is involved with handcuffs (especially in closely-confined settings, such as Police vehicles, where the potential for injury to self or others is an ever-present risk), a rebuttable presumption in favour of handcuffing being a lawful use of force by police would not seem unreasonable. Additional support for this position might also be taken from the results of public research, which indicate members of the public are relatively comfortable with police having a range of coercive options available to them, so long as officers only use a level of force that is reasonable in the circumstances.<sup>32</sup>

### Offering more certainty for police to take incapacitated people into safe custody

- 3.37 Another feature of daily police work which might be supported by new policing legislation is assisting people who are incapable of caring for themselves due to the after-effects of alcohol or other drugs.

#### Helping those who become incapacitated

Constables have traditionally had reserve powers to deal with people found grossly intoxicated in public. Currently, this power is contained in section 37A of the Alcoholism and Drug Addiction Act 1966. Section 37A empowers police to take any person found publicly drunk or debilitated from other drug use to his or her home, a detoxification facility, or as a last resort to a police station for safe custody.

This power needs to be used depressingly often. For example, using task codes from timesheet data from the most recent calendar year, Police staff spent a combined total of almost 16,000 hours in 2006 on 1H (drunk home) and 1K (drunk custody) activities. Using the standard estimate of fully-costed police officer hours, this translates to an estimated expenditure of more than \$1.26 million last year solely on dealing with people who were incapacitated due to alcohol and other drug use.

- 3.38 The current statutory home for this role - the Alcoholism and Drug Addiction Act 1966 - is focused on treatment of people with diagnosable substance use disorders. It is arguably ill-suited to giving police the short-term ability to help ensure the safety of those who have chronically abused alcohol or other drugs. Instead, the ability for police to take incapacitated people into safe custody under the Alcoholism and Drug Addiction Act could be transferred across into policing legislation.
- 3.39 The 12 hour maximum 'sobering up' time associated with the Alcoholism and Drug Addiction Act power has also sometimes caused problems. Accordingly, consideration might be given to a durable authority for still-incapacitated people to be held by police, if a medical practitioner judges it still unsafe to release them after an initial 12 hours.

32 UMR Research, *What the New Zealand public want and expect from their police in the 21st century* (2007), p 11.

## **ENABLING MODERN POLICING TACTICS TO FIGHT SERIOUS AND ORGANISED CRIME**

- 3.40 Police needs to be at the forefront of efforts to tackle threats to the safety and security of New Zealand and its people, and this includes being able to act decisively against gangs and other criminal networks operating at the local, national and international levels. Effectively tackling organised crime requires Police to join forces with partner agencies, both in New Zealand and overseas. The virtues of strong co-operation between Police, the New Zealand Customs Service, New Zealand Immigration Service, and so on, are obvious in areas like preventing drug trafficking and people smuggling. The same is true of the contribution which can be made by overseas law enforcement agencies, such as the Australian Federal Police, and multi-lateral organisations like the International Criminal Police Organization (Interpol).
- 3.41 Ensuring good flows of information with and between partner agencies is especially important. Equally, it is important information sharing is not put at risk because of inadequate legal protections. In both regards, New Zealand's law can be enhanced. Legislative provisions could be advanced which place Police functions such as investigating transnational crime on a firmer footing.
- 3.42 At the international level, Chapter 2 has already signalled proposals to enable off-shore policing. To support efforts to crack down on transnational crime, further steps may be taken to specifically empower Police to co-operate with foreign enforcement agencies, where it is in New Zealand's interests to do so and is consistent with New Zealand's obligations under international law. The proposal would remove any doubt about Police's ability to release to overseas law enforcement partners relevant information which has been lawfully obtained in New Zealand, or for New Zealand Police to receive information in return. While some encouragement for such exchanges can be read into existing laws (e.g., the Mutual Assistance in Criminal Matters Act 1992), a more explicit mandate could be established through the Policing Act.
- 3.43 Consideration could be given to making clearer provision in the new Act for covert policing practices, such as those associated with Police's undercover programme. Apart from scant mention in the 2006 Evidence Act, work by undercover police officers currently has no statutory underpinning. As a result, not only are such aspects of policing largely invisible in law, but the legal protections available for undercover personnel are far from comprehensive.
- 3.44 Infiltrating organised criminal networks can be a vital way for Police to disrupt serious offending, such as the manufacturing and trafficking of illicit drugs. Police staff who do the dangerous work of going undercover to penetrate organised crime groups are entitled to robust legal protections. Those working in covert policing roles should have greater statutory recognition, and the legality of practices such as the use of assumed identities (vital to enable undercover officers to be accepted in criminal circles) should be put beyond doubt. While the use of false identity documents like driver's licences is currently possible by virtue of agreements between Police and the issuing agencies, such agency-to-agency arrangements do not have the backing of legislation.
- 3.45 Drawing from overseas precedents,<sup>33</sup> the use of assumed identities by staff such as undercover and witness protection officers could be formalised. The intention would be to put clear rules in place to allow authorised Police staff to acquire and use assumed identities; ensure evidence of assumed identities, like passports, can be issued and cancelled; and clarify immunities from liability

33 For example, Part IAC of Australia's Crimes Act 1914 (Cwith).

for actions by Police staff during covert operations. This would offer clearer legal authority for an important part of policing, as well as serving the wider interests of certainty and transparency.

- 3.46 Consideration could also be given to bolstering protections for the work of Police's Crime Monitoring Centre (CMC) - the specialist unit which monitors intercepted communications obtained under statutory warrants. Substantive changes are expected to proceed under the umbrella of the Law Commission's project on search and surveillance. It may nonetheless be possible and appropriate to progress a small number of consequential amendments as part of the Policing Act. These include:
- prohibiting unauthorised disclosure of the fact that an intercept operation is planned or active
  - significantly strengthening the present \$500 fine maximum penalty for these offences to reflect the importance of not jeopardising the integrity of covert operations and the safety of those involved<sup>34</sup>
  - allowing for evidentiary certificates by CMC staff to be received in Court proceedings, similar to the way analyses by Institute of Environmental Science and Research (ESR) staff can be received into evidence in drugs cases, avoiding the need for monitoring personnel to personally attend Court to set out facts relating to the execution of an interception warrant.<sup>35</sup>
- 3.47 Finally in this area, ways to put the work of Police's tactical groups on a firmer legal footing could be explored. At present, generic legislation which seeks to minimise hazards creates some doubt about the ability of specially-trained police to deploy various explosive items such as distraction devices in closely-confined areas (e.g., when securing a house an armed offender is refusing to leave). The legislation also raises uncertainties about the continued ability to maintain legitimate holdings of high-explosive material in specially-controlled reserves in certain police stations.
- 3.48 Mindful of other exemptions from laws which apply to handling hazardous material,<sup>36</sup> these difficulties could be resolved by using the Policing Act to make a small number of consequential amendments. This would enable Police's tactical groups to more sure-footedly undertake their important and necessary work.

## IDENTIFICATION OF POLICE

- 3.49 Another way legislation can support effective policing is by providing assurances about the status of people either presenting as police or as connected with Police. This is an area where current legislation could be enhanced.
- 3.50 Several positive steps could be taken. First, New Zealand Police differs from many other police forces in not issuing its members with a warrant card, or legal badge of office. The current system of a plastic identification card, with a photograph and name, serves a similar role, but has no legal status. Instead, section 41 of the current Police Act states "common reputation shall be evidence" a member of Police holds his or her office. While common reputation might have sufficed in 1950s New Zealand, it seems inadequate in an age where identity theft and misrepresentation is more common, and where citizens rightly seek reassurance about who they are dealing with.

34 The current prohibitions are contained in section 312K of the Crimes Act 1961 and section 23 of the Misuse of Drugs Amendment Act 1978. Greater alignment with protections available around the existence or operation of call data warrants, under subsections 10G and 10H of the Telecommunications (Residual Provisions) Act 1987, may be appropriate.

35 This would formalise an existing protocol whereby CMC monitors do not need to be called to give evidence in Court proceedings, in recognition of the chain of control which comes with the centralised CMC model, and the fact that monitors' products are seen as work-in-progress. Provision for such evidentiary certificates is fairly commonplace overseas. For an Australian example, see section 61 of the Telecommunications (Interception and Access) Act 1979 (Cwlth).

36 For example, see the exclusions for the New Zealand Defence Forces contained in section 3(2)-(8) of the Hazardous Substances and New Organisms Act 1996, and regulation 9A of the Hazardous Substances (Classes 1 to 5 Controls) Regulations 2001.

- 3.51 To satisfy the need for appropriate assurances, it is proposed to implement a warrant card system for all members of Police who are entitled to exercise policing powers. Members without such powers will continue to hold official Police identity cards. The warrant card will positively support the reputation of those working for Police, and evidence powers they hold. It will be linked to employment status, so if a member is suspended, stood-down, discharged, resigns or retires, the warrant card will be retrieved from the person.
- 3.52 Consideration might also be given to strengthening protections against impersonating a member of Police, and unauthorised use of Police uniforms and related articles, as well as more directly protecting against use of the word “police” and its derivatives.
- 3.53 Provisions in the 1958 Police Act seek to prevent non-approved use of Police insignia and trading off the name “Police”, although the maximum penalties for the relevant offences appear low in comparison with those available for similar types of offences.<sup>37</sup> An indication, perhaps, of the lack of deterrence offered by the current penalties comes from the number of people who have attempted to impersonate police in recent times. In the past decade, there have been an average of around 50 recorded offences of “personating police” each year. Such offences, especially in the current climate of increased awareness about security risks, have the potential to be very serious. Many citizens faced with a person claiming to be a police officer would feel obliged to comply with any reasonable-sounding requests or instructions. This could have dire consequences. For example, a person pretending to be a police officer could unlawfully access a building to assist in the commission of a crime, or could obtain access to information which might facilitate a serious criminal offence.
- 3.54 Against this backdrop, one might question whether a significantly higher level of fine and/or longer custodial sentence is appropriate to communicate the seriousness of this type of offending. Advice will be taken on the most appropriate penalties to ensure consistency across the statute book.
- 3.55 It is further proposed to more directly protect against misuse of the word “police” and its derivatives. Contexts where this can be damaging include use in advertisements and operating names of businesses which infer some type of official endorsement. To strengthen existing protections, while still allowing for legitimate uses to continue, the Policing Act might introduce a consent system, similar to that used in New South Wales, so the Commissioner can give conditional approval to use the term “police”.<sup>38</sup>

<sup>37</sup> Section 51 of the Act contains an offence of impersonating a member of Police, which is punishable upon summary conviction of a fine not exceeding \$200, a term of up to three months’ imprisonment, or both. Section 51A has a complementary offence of unauthorised use of a police uniform (or any item of uniform or related articles, including the Police crest and badge), which is punishable upon summary conviction of a fine not exceeding \$500, and a further \$50 per day where the misuse is of a continuing nature. By way of comparison, the equivalent offence of pretending to be a corrections officer carries a maximum fine of \$2,000: see section 144 of the Corrections Act 2004.

<sup>38</sup> For instance, under regulation 107 of New South Wales’ Police Regulations 2000, the Police Credit Union is one of the listed bodies which is approved to use “police” in its operating name.

# *CHAPTER 4*

## ***PEOPLE IN POLICING***



## INTRODUCTION

- 4.1 It is people - not laws - who ultimately deliver effective police services. The human element of policing is the biggest single factor enabling New Zealand Police to reduce crime and crashes, and promote community safety. So it is vital to get the 'people in policing' formula right.
- 4.2 In part, this is about capacity. In recognition of this, successive governments have boosted Police staff numbers - in general frontline policing, like the recent investment in extra community constables, as well as in various specialised areas, such as family safety teams, highway patrols and clandestine drug laboratory teams. A significant part of the mix is also about capability. Here, too, governments have helped support Police efforts to lift performance through improved training, access to high-tech equipment, more efficient communications tools, and so on.
- 4.3 Legislation can also play a role in creating a cohesive work culture, where appropriate standards of professionalism are supported. Legislation can impact positively on entry standards, staff development and the ability to match employees with particular roles. Critically, it can also be used to ensure workers are offered legal protections they need, which is especially useful given the large number of operational decisions made each day by Police staff.
- 4.4 Chapter 2 identified various personnel-related constraints imposed by Police's current legislation and offered a case for change. This Chapter outlines proposals to remove these barriers.

### Key points

- 4.5 A key focus is ensuring Police has a modern workforce. New policing legislation should support the Commissioner's ability to employ a workforce with the range of skills, powers and protections needed to meet current and future demands. A modern Police employment environment could develop from legislation which includes the following major elements:
  - the Commissioner's commitment to act as a good employer
  - strengthened approaches to pre-employment vetting
  - a common basis for setting employment terms and conditions
  - reinforcing the unity of Police with a single *Code of Conduct* and solemn undertaking for all staff
  - more options for empowering appropriate people to perform specific policing tasks
  - clear provisions to facilitate temporary secondments to and from Police
  - acknowledging the importance of developing Police's leaders and managers
  - expanding use of certification within Police to move towards a registration system, as part of a transition to a professional model for New Zealand Police.

## **POLICE AS A 'GOOD EMPLOYER'**

- 4.6 A natural starting point when designing a more contemporary employment framework for Police is establishing the Commissioner's commitment to be a good employer. A requirement for heads of organisations to act as good employers is fairly standard in New Zealand departmental statutes, and is a core obligation for all state sector chief executives.<sup>39</sup>
- 4.7 At present, however, under section 7 of the 1958 Police Act, the Commissioner is only obliged to act "as closely as possible" to the 'good employer' benchmark. This caveat has few precedents elsewhere in New Zealand legislation, and arguably sends a negative signal about the value the organisation places on protecting the interests of its staff. A qualified 'good employer' obligation for Police is increasingly out-of-step with the approach rightly expected of other public sector employers, many of whom also have to ask a lot of their staff (e.g., health professionals working in hospital emergency departments; or fire crew putting themselves in harm's way to clean up toxic spills and fight fires). This situation could be remedied by spelling out the expectation the Commissioner will maintain a personnel policy which fully complies with the 'good employer' principle.

### **Putting principle into practice**

- 4.8 One of the hallmarks of any healthy employment environment is that processes for recruitment are fair and open, and do not disadvantage groups in the community based on unlawful discrimination. For Police, a number of legal imperatives already underpin this approach. These include the application of general legislation like the Human Rights Act 1993, and specific provisions under the current 1958 Police Act which give effect to mainstream concepts, such as the requirement to make merit-based appointments and to advertise vacancies sufficiently widely to allow qualified people to apply.
- 4.9 There is no intention of diminishing these imperatives. It remains vital New Zealand Police draws on the broadest range of people, skills and experience available. To command public trust and confidence, and support effective engagement with people from all walks of life, Police needs a diverse workforce which is representative of all communities it serves. Increasingly this is so, with today's Police workforce featuring far more women and people from different backgrounds than when the last Act for Police was passed in the 1950s.
- 4.10 Police's commitment to be a 'good employer' could be backed by statutory requirements for the Commissioner to maintain fair and open recruitment processes. In this way, Police will be supported to recruit a workforce which is increasingly representative of, and sensitive to, New Zealand's multi-cultural society. This outcome is already important to New Zealanders, but will become even more so as demographic shifts continue to diversify the population police of the future will interact with.<sup>40</sup>

## **STRENGTHENED PRE-EMPLOYMENT CHECKS**

- 4.11 While encouraging greater diversity, high standards of entry into New Zealand Police must be maintained. Opportunities for legislation to play a strengthened role in Police recruitment and employment decisions were consulted on in some detail last year, with suggested enhancements to vetting procedures attracting widespread support.<sup>41</sup> The changed roles and responsibilities of the modern Police workforce may require a broader approach to pre-employment checks.

<sup>39</sup> This obligation is spelt out in sections 56 and 58 of the State Sector Act 1988.

<sup>40</sup> UMR Research, *What the New Zealand public want and expect from their police in the 21st century* (2007), pp 8-9, 11 and 18.

<sup>41</sup> See Police Act Review, *Issues Paper 8: Conduct and Integrity* (2006), pp 5-6; and Police Act Review, *Perspectives on policing* (2007), pp 63-64.



4.12 Strengthened checks that could be supported through legislation include:

- allowing for all applicants' previous convictions to be considered before anyone is offered employment as a member of Police<sup>42</sup>
- enabling the routine collection of biometric information, such as fingerprint images, from all provisional appointees to Police positions, to ensure pre-employment declarations accord with information held on Police databases
- allowing the Commissioner to require nominated Police staff to provide a financial or integrity statement, to support appointment decisions in 'high risk' roles such as drug squads and organised crime units, and for promotions to very senior positions.

4.13 The logic behind these enhancements is clear. Not only are background checks an established way to help identify the people best suited to work in particular roles, but vetting offers a means of ensuring a job seeker's fit with an organisation's values. Even more so than for most departments of state, it is a fair expectation that anyone joining New Zealand Police will be trustworthy, with a strong track record of ethical conduct and lawful behaviour. This applies just as much to a frontline constable as it does to a call-taker in a Police Communications Centre. Pre-employment vetting can provide additional levels of assurance around these expected characteristics. It is also a 'first line of defence' to stop ill-suited people gaining employment with Police. On all these counts, there is a case to strengthen Police's current vetting practices.

4.14 In drafting any enabling sections of the Policing Act, the government will ensure any appropriate safeguards are included, and will consult with the Office of the Privacy Commissioner and other relevant groups. In this way, it will be possible to strike a balance between the need to support the Commissioner's ability to set high entry standards for Police, and the interests of current and aspiring Police staff in having certainty about the uses and retention of personal information.

## ***A COHESIVE AND COHERENT EMPLOYMENT RELATIONS FRAMEWORK***

4.15 As policing needs to adjust to a changing world, so too does its workforce. With a growing and diverse array of staff needed to perform policing functions, Police's legislation can better support workforce evolution by creating a more flexible and dynamic employment relations framework.

4.16 Unnecessary barriers imposed by Police's existing legislation were described in Chapter 2. An example of the difficulties the 1958 Act and 1992 Regulations bring is the need to artificially assign the office of constable to a range of staff in protective services roles, such as jailers and prisoner escorts. This is despite the fact they only need a small number of the powers and protections the office of constable affords. After discussions with Police leaders and groups which represent Police staff, the government believes a new approach is needed. Above all, a new framework must find a more rational way to assign appropriate powers, protections, and responsibilities to members of Police.

<sup>42</sup> At present, under section 19 of the Criminal Records (Clean Slate) Act 2004, details of any historical convictions can be considered for applicants for sworn roles, but not for applicants for non-sworn police roles.



- 4.17 The vision for a new Police employment relations framework is one which preserves and builds on the best of the past - such as the office of constable - but also supports innovation. New legislation should enable a greater mix of appropriately skilled and empowered staff to flexibly contribute to public safety; covering the full range of policing duties, from minor incidents to major emergencies.

**The need for a flexible Police workforce model**

"Policing is now highly complex and spans a massive spectrum of activities requiring a similarly extensive range of skills and competencies in those taking up the challenge. The omni-competent officer has been a traditional icon and supposed mainstay of the service. It is debatable whether effective omni-competence has ever actually been achieved but it is now abundantly clear that such an aim is no longer viable, or indeed appropriate, for 21st century policing needs .... The technical skills required to tackle complex fraud or internet crime, the need to deploy increasingly sophisticated counter-terrorist strategies and the particular skills required to deal with child protection issues are ample evidence of the futility of trying to train each officer in every discipline. However, this phenomenon is perhaps evidenced most clearly in the increasing specialisation within community policing, previously the core domain of generalist staff, but now requiring significant specialised skills in negotiation, mediation, resource management and multi-agency working".

Her Majesty's Inspectorate of Constabulary, *Modernising the Police Service* (2004), pp 173-174.

- 4.18 Key features of a framework which can deliver this step change could include:

- all members of Police working under a unified system for setting employment terms and conditions, reinforced by all staff making a solemn undertaking and acting consistently with a single *Code of Conduct*
- providing clearer statutory recognition of the independent office of constable, so it remains the legal pathway to generally-exercised police powers and protections
- dispensing with the concepts of "temporary" constables and "casual" constables, and introducing a new model to provide legislative support for the Commissioner to swear in extra officers to meet any urgent operational needs
- extending the capacity of different Police staff to undertake a wider range of policing roles through use of a more sophisticated warranted officer system
- better facilitating secondments to and from Police, as a means of supporting personal and organisational development
- expanding use of certification within Police to move towards a registration system, as part of a transition to a formal professionalisation model for New Zealand Police.

- 4.19 Many aspects of this Police workforce model have been extensively consulted and discussed with Police staff, their representative service organisations and leading commentators on policing. All agree, the time is right to take a fresh approach. Having listened to this growing call for change, it is expected the proposed framework for Police employment relations will be broadly welcomed. Essential elements of the proposals are described in more detail below.

### **'One Police'**

- 4.20 At the heart of the new framework is the idea of 'one New Zealand Police'. Initial moves in this direction were made by 1989 amendments to the Police Act, which transferred civilian Police staff into the employment of the Commissioner of Police as "non-sworn members of Police". At the time,

creating two complementary categories of Police employees was a big step forward. But since then, it has grown increasingly clear having two categories of “members of Police” divides more than it unites.

- 4.21 For example, under the current system, if a sworn member wants to take up a role designated as non-sworn, he or she must end their sworn employment first, then rejoin. Such artificialities are out of place in a contemporary workplace. Many employees seek occupational flexibility, with opportunities to move through a variety of jobs with a single employer. Indeed, this sort of variety is one of the key selling points of a career with a national organisation such as New Zealand Police – as it offers a chance to transfer between roles. The sworn/non-sworn distinction scripted in 1989 can frustrate such flexibility. Creating a single employment framework could help facilitate more seamless internal career progression for Police staff.

### Solemn undertaking

- 4.22 Building on the unity offered by shared values of service in policing, it is proposed to introduce a solemn undertaking which all new staff would take on joining New Zealand Police. This undertaking would not interfere with the time-honoured constabulary oath, which would stay reserved for those who take up the office of constable. Rather, it would symbolically bind all Police staff together in the shared endeavour of serving the community as a member of Police.
- 4.23 Most importantly, a solemn undertaking would underline the significant responsibilities members of Police take on, and emphasise the accountability of members to act faithfully and impartially at all times. The value of such public promises is well recognised. Equivalent undertakings are a feature of several overseas police forces, where they reinforce the duties of care all police employees must exercise.<sup>43</sup> A practical example is the need for staff who prepare and type up victim statements to display discretion and maintain absolute confidentiality; no less so than the constables or detectives who obtain the statements from the victims in the first place. Ultimately, the new undertaking is anticipated to help join all members of Police together with a shared ideals and a spirit of public service.

### A single Code of Conduct

- 4.24 In developing the wording for the solemn undertaking, references to core values of policing could underscore the need for high standards of ethics, integrity and conduct. A key connection here is to a new *Code of Conduct* for all members of Police.<sup>44</sup> While the *Code* itself can be issued by regulation, there may still be value in putting the *Code* on a statutory basis. The fact all Police staff must abide by a *Code of Conduct* should be clearly and positively stated in Police’s new Act, signalling the importance of the *Code*. A provision in the Act might formally enable the Commissioner to set minimum standards of behaviour for members of Police by issuing a *Code of Conduct*.

<sup>43</sup> Examples include the oath of allegiance taken under section 14 of the Royal Canadian Mounted Police Act 1985, the solemn undertaking made under section 36 of the Australian Federal Police Act 1979, and the declaration given under section 16 of the Garda Síochána Act 2005. Oaths of allegiance are also a feature of other state sector organisations in New Zealand. For instance, under sections 34-35 of the Defence Act 1990, every member appointed to, enlisted or engaged in the Navy, Army, or Air Force takes the following oath to: “ I, ....., solemnly promise and swear that I will be faithful and bear true allegiance to our Sovereign Lady the Queen, her heirs and successors, and that I will faithfully serve in the [relevant service], and that I will loyally observe and obey all orders of Her Majesty, her heirs and successors, and of the officers set over me, until I shall be lawfully discharged. So help me God”.

<sup>44</sup> An updated *New Zealand Police Code of Conduct* is set to be introduced later in 2007.

## STRENGTHENING THE OFFICE OF CONSTABLE

- 4.25 The uniformed constable, walking the beat in local streets, is an enduring image. For more than 160 years, police constables have played a trusted and central role in keeping New Zealand communities safe. Despite the changes during those years, constables today still help prevent crime and traffic collisions, catch criminals, help victims and witnesses, give protection to the vulnerable, and offer reassurance. Simply put, the constable remains at the heart of how policing is done in this country.
- 4.26 The longevity of the constabulary system reflects the effectiveness of having people with broad powers and protections, and an equivalently broad operational discretion, who take on a personal accountability to promote safety and security. The continuing success of this system guarantees the constable an ongoing place in New Zealand Police's workforce. It is proposed to preserve the strength and versatility of the office of constable. One way of doing this is through clear statutory recognition.
- 4.27 Providing a statutory foundation for the office of constable would reinforce its central place in New Zealand's policing system. Amongst other things, this would recognise operational policing often involves direct or indirect use of coercive power. If not done correctly, this can be risky and potentially damage organisational reputation. Police who work in these situations need the protection which comes with the independent discretion bound up in the office of constable.

### The constable's craft

"What the existence of police makes available in society is a unique and powerful capacity to cope with all kinds of emergencies ... rushing to the scene of any crisis whatever, judging its needs in accordance with canons of common sense reasoning, and imposing solutions upon it without regard to resistance or opposition. In all this they act largely as individual practitioners of a craft .... [T]he specific competence of the police is their capacity for decisive action .... The policeman, and the policeman alone, is equipped, entitled and required to deal with every exigency in which force may have to be used to meet it".

Egon Bittner, 'Florence Nightingale in pursuit of Willie Sutton: A Theory of the Police' (1974), pp 34-45.

- 4.28 Those who take the constabulary oath should also retain a core set of policing skills to allow them to be flexibly deployed, if and when required, to respond to critical incidents. While the changing operational and technological environment means no single constable can be expert in all policing disciplines, a constable's knowledge and experience built up through general duties policing will always be needed to provide the backbone of response to calls for service. All constables should be able to confidently take charge of a crime or crash scene, secure evidence, and deal appropriately with offenders, victims and witnesses in a range of settings.
- 4.29 To support these expectations, it is proposed to better value the versatility of constables by requiring those who hold the office to maintain their core skills. The expanded certification programme which could be the basis for this is explained later in this Chapter. Together with a proposal for a professional register, certifying policing skills may provide an objective national standard all Police staff can work to.

## Appointing additional constables in extraordinary circumstances

- 4.30 One of the defining features of policing is the unpredictable nature of events police must respond to. This suggests the need for legislation which provides a degree of flexibility for the Commissioner to empower people to cover unusual events or crises. Indeed, the Commissioner currently has the ability under the 1958 Police Act to cover short-term pressures by appointing constables on a "temporary"

or “casual” basis.<sup>45</sup> In employment law terms, “casual” might be an appropriate word to describe the time-limited and *ad hoc* nature of the job. But in today’s world of high service expectations, it is not appropriate to describe such employees as casual constables in case it conveys the impression of officers who have lower standards.

- 4.31 There is also value in maintaining an ability for the Commissioner to appoint additional constables, if required at short notice to help provide appropriate policing in a particular location (e.g., in response to a pandemic or biosecurity threat). Ideas are invited on a suitable title for such time-limited, location-specific, appointments.<sup>46</sup>

### Staff with police powers

- 4.32 The lack of other options in the current Act to extend specific police powers to staff has resulted in “temporary” or “casual” appointments being made in unexpected areas. For example, to ensure police jailers have search powers, they are appointed as casual constables. Dispensing with the terms “temporary” and “casual” constable does not mean the roles performed by staff currently appointed under those titles are not valuable. The creative use of such staff reflects a healthy instinct to make the most effective use of resources, reducing ‘backroom’ burdens on fully-trained officers, and increasing their availability for frontline duties or work on more complex cases. It continues a trend over recent years for sworn police to be increasingly supported by other Police staff, such as Communications Centre call-takers, scene of crime officers, forensic investigators, legal advisers and prosecutors.
- 4.33 Police managers should be allowed to build on these success stories. Gains have been achieved through the judicious use of suitably-empowered Police staff working in roles like jailers and prisoner escorts. These gains could be preserved by establishing positions in legislation with specific police powers. This would facilitate staff performing roles where some, but not all, police powers and protections are required, without extending full constabulary powers and protections.
- 4.34 In effect, the proposal would cautiously extend the current ability the Commissioner has to authorise by warrant any particular powers, functions and duties to any member of Police, except the power to arrest or search any person.<sup>47</sup> In fact, the search power is already able to be extended to members of the public on a case-by-case basis under the 1958 Police Act,<sup>48</sup> and is afforded to enforcement staff of other government agencies, such as fisheries officers and customs officers.<sup>49</sup>
- 4.35 The vision for the future is a more flexible, better integrated, Police workforce with greater assurance about the skills and qualifications of staff who are empowered to perform certain policing functions. This greater level of assurance would be particularly appropriate where the Commissioner extends coercive powers. The Policing Act could make it a condition recipients are suitably qualified to exercise assigned powers, duties or functions. The preliminary view is evidence of suitability will come from certification - indicating the person has received appropriate training and maintains relevant skills.

<sup>45</sup> See section 5(1A) of the Police Act 1958.

<sup>46</sup> One suggestion is to call such appointees ‘District constables’, given their predominant use in frontline roles where local Police commanders can best assess resource needs. This term has a historical precedent, with district constables once providing a backbone of policing support, particularly in rural New Zealand. The extensive use of part-time district constables in nineteenth century New Zealand is described by Richard Hill in *Policing the Colonial Frontier* (1986). For an example of how district constables were enabled by legislation, see regs 257-260 of the Police Regulations 1913.

<sup>47</sup> See section 6(2) of the Police Act 1958.

<sup>48</sup> See section 57B of the Police Act 1958.

<sup>49</sup> Appointment of fisheries enforcement officers is enabled under warrant from the Chief Executive of the Ministry of Fisheries (see section 198 of the Fisheries Act 1996). Similarly, the Comptroller of the New Zealand Customs Service can authorise any person to perform all the functions and powers of a customs officer on a renewable three-yearly basis (see section 6 of the Customs and Excise Act 1996).

### Staff with additional powers

- 4.36 As well as foreseeing a workforce model which enables roles such as jailers and prisoner escorts to receive limited powers, the Policing Act could recognise some Police staff receive additional powers and protections. Existing examples of Police staff who hold extra powers through separate statutes include commissioned officers, who receive a special power to authorise searches for weapons,<sup>50</sup> and Police commercial vehicle investigators, who sit a separate exam to enable them to exercise powers of an occupational safety and health inspector.<sup>51</sup>
- 4.37 The new Act could be clearer certain members of Police may be able to exercise powers additional to those associated with the office of constable. As with the previous discussion of warranted powers, by linking with the proposed certification and registration scheme, there can be a clear match between the nature of the policing task, the power and protection required, and the skill level and experience of the Police staff member.

### CERTIFICATION AND REGISTRATION

- 4.38 Underpinning the proposed new employment relations framework is further development of Police's existing certification system. The proposal is to augment the current system with a forward looking model of certification for key policing skills, which in turn could be supported by a professional registration board.
- 4.39 Again, this is not a radical new approach, but more a case of carefully building on what is done now. Police has been progressively implementing a certification system for key skill-based activities over a number of years. For example, all officers who use firearms are required to maintain their proficiency by re-qualifying at regular intervals. Similarly, certification practices exist for tasks as diverse as deploying OC ('pepper') spray, through to using qualified staff to interview sexual abuse victims.

#### Professionalisation of policing

Policing has long been considered an occupation of skill, knowledge of the law and concern for people. It is also a craft to learn how these relate together. While other people-focused occupations, such as teaching and nursing, moved to full professions many years ago, policing has sought to internally professionalise. New Zealand Police has done so by increasing the quality of its training courses, teaching standards, and other recent enhancements, for example a workplace assessment programme.

What has developed is a policing profession without the formal structures of other professional groups, where staff across many disciplines within policing are required to undergo specific training and qualification before being able to use those skills in operational settings. In many of these skill areas, testing, certification and regular re-testing and re-certification are required. Police's training and certification of staff in skills and techniques equates broadly to the baseline knowledge and skills structures of other established professional bodies.

Overall, it is increasingly clear in the modern highly trained police environment, members of Police possess a unique body of knowledge, which can be demonstrated and tested. The platform exists, therefore, to evolve to a truly professional model.

- 4.40 While New Zealand Police's pattern of internal professionalisation usefully mirrors features one would expect to see in any professional body, it has two critical differences. First, there is no formal basis for linking certification of members' skills to employment. Second, no formal body is established to monitor, verify, and adjudicate on the currency of members' certification (in a way which would equate

<sup>50</sup> Under section 61 of the Arms Act 1983.

<sup>51</sup> Under section 29 of the Health and Safety in Employment Act 1992.

to registration for other professions). As recognised in a number of other jurisdictions,<sup>52</sup> legislation can play a role in addressing these gaps.

- 4.41 In the proposed enhancement of the current system, once a member of Police has been certified as competent for their specific role, they would enter a register of certified practitioners. Ongoing registration will demonstrate a person is competent at the time of their assessment, and has maintained appropriate knowledge and skill, including any updated training required to take account of new or emerging practice.
- 4.42 Further professionalisation of policing should be supported. A career with New Zealand Police should be seen as an opportunity for ongoing learning and professional development. By underpinning a more sophisticated certification and registration programme in legislation, the Commissioner will be better able to ensure members of Police keep their skills and knowledge appropriately up-to-date.
- 4.43 Several details still need to be worked through to adapt Police's existing certification, training and professional development model to a full registration model. This will take some time. For now, the Policing Act can set the work in motion by making provision for the future establishment of a formal Police Registration Board. This will allow the Commissioner to activate the system of professional registration once all the necessary supporting certification processes are in place.

### **OPENING DOORS TO THE EXCHANGE OF TALENT**

- 4.44 Another means of supporting personal and organisational development is to facilitate secondments to and from Police. Professionals with experience from outside New Zealand Police can make important contributions, for instance in specialised areas like alcohol and other drug policy, family violence prevention and e-crime work. Likewise, a career in policing often brings with it the ability to play a constructive role in other organisations, particularly in partner agencies like the Ministry of Justice, but also across the wider public service and even in particular parts of the private sector. International exchanges with other police forces are especially valuable for building networks, expanding views, and allowing for ideas from overseas to be tried at home.
- 4.45 During the initial public consultation phase of the Police Act Review, it was noted existing legislation offers few encouragements for such exchanges of talent to occur. Given the value of being able to bring in skills from outside, as well as the benefits of using outward secondments as a development opportunity, there was interest in legislation expressly allowing for secondments to and from Police.<sup>53</sup> If this is seen as a sensible step, enabling provisions to this effect could be included in the Policing Act.

### **DEVELOPING POLICE LEADERS AND MANAGERS**

- 4.46 People who join New Zealand Police are remarkable for the length of time they stay with the organisation. This leads to an enviably low turnover of staff, which enriches the knowledge-base and talent pool for leadership and management development. Unlike the situation which applies to the wider state sector,<sup>54</sup> however, there is no express requirement for the Commissioner of Police to

52 For example, in Australia, the Victorian state government has announced its intention to introduce a Police Registration Board, and is currently consulting stakeholders on a draft Police Registration Act.

53 Police Act Review, *Perspectives on policing* (2007), pp 27-28. There is a historical precedent for this: section 43 of the Police Force Act 1947 made provision for temporary exchanges of members between the New Zealand and Australian state police forces.

54 See Part 4 of the State Sector Act 1988.

develop the capability of future leaders and managers within Police. An option for the new Policing Act would be to confirm the Commissioner's responsibility to internally develop the future leaders and managers of the organisation.

- 4.47 Such a requirement in new policing legislation would not be a bureaucratic exercise. Rather, it is a way to reinforce the widely-understood reality that strong leadership and effective management are essential to good policing. Indeed, Police itself has recently stepped up efforts to identify, develop and bring through talented individuals. Even so, it is right to ensure there is a clear requirement to offer leadership and management training opportunities for Police staff. Confirming the expectation the Commissioner will maintain a programme to develop leadership and management capability would provide a useful encouragement in this regard.





## *CHAPTER 5*

# ***PLATFORMS FOR SUCCESS***



## INTRODUCTION

- 5.1 The previous Chapter outlined the need to get Police's personnel framework into a better position to support effective policing. This Chapter identifies other platforms for success. It focuses on clear, strong governance and accountability arrangements, and taking industrial friction out of Police's workplace. It also discusses the importance of effective day-to-day administration of one of New Zealand's largest public sector agencies. In each of these areas, legislation can play a constructive role.

### Key points

- 5.2 The government intends to put legislation in place to help New Zealand Police deliver a consistently high standard of service to the public. This means ensuring there are clear and robust arrangements for the oversight, management and daily running of Police. Specific measures in the Policing Act might include:
- confirming the legal status and functions of New Zealand Police
  - defining the process for settling the appointment, terms of engagement and tenure of the most senior Police personnel, as well as delegation arrangements
  - clarifying the respective roles of the Commissioner of Police and Minister of Police, and the constitutional relationship between the Commissioner and Minister
  - offering more certainty about the Commissioner's position in charge of New Zealand's constabulary
  - strengthening the Commissioner's accountability for Police performance
  - widening the ability for arms-length inquiries into any issues of concern
  - enabling regulations to be issued under the new Act to address matters of detail.
- 5.3 It is also proposed to support Police by continuing its move to a mainstream employment relations environment. New legislation could balance further progress with continued assurances policing will not be impacted by industrial action, and proven mechanisms to resolve disputes if they arise. Updated criteria could also be introduced to improve the backstop arbitration system.

## LEGAL STATUS AND FUNCTIONS

- 5.4 Despite the importance of clear governance and accountability arrangements for policing, New Zealand Police's basic constitutional position has never been specifically addressed in its own legislation. This silence even extends to Police's status as a legal entity. It seems unsatisfactory for an important agency like Police not to have its continuity or legal status formally recognised in legislation. This anomaly could be addressed by including provisions in the new Policing Act to confirm Police's status as an instrument of the Crown, and acknowledge its functions within modern New Zealand society.

## DETAILS RELATING TO THE MOST SENIOR POLICE

- 5.5 Another area that could be covered in the Act is the appointment, terms of engagement and tenure of the Commissioner and Deputy Commissioners of Police. These matters are important because of the constitutional significance of the roles. The Commissioner and his or her Deputies occupy positions which can involve decisions which profoundly affect people's lives. They can also exercise exceptional powers - for example, requesting assistance from the armed forces to deal with an emergency.<sup>55</sup> A further reason for putting the most senior Police roles on a statutory basis is to create an extra safeguard for the office holders' independence.

### Appointments

- 5.6 In the interests of clarity and openness, it is proposed to formalise in statute the power to appoint a Commissioner of Police and one or more Deputy Commissioners (who may be required from time to time to act in the Commissioner's place). The new legislation could also usefully confirm that any serving member of Police who holds the office of constable carries this separate office with them into the new appointment.
- 5.7 Beyond this, the intention is to give legislative backing to convention. This would involve the State Services Commissioner managing the appointment process, and submitting recommended candidates to the Prime Minister and Minister of Police for decision. Successful candidates would continue to be legally appointed by the Governor-General. This approach would balance the need to ensure Commissioners and Deputy Commissioners of Police have the confidence of government, and the need for a sound and impartial process. In particular, involving the State Services Commissioner would add transparency for all would-be applicants.
- 5.8 On this latter point, operational policing experience is unlikely to be seen as a statutory pre-requisite for appointment to the post of Commissioner or Deputy Commissioner of Police. The current requirement to appoint a "fit and proper person" has stood the test of time, and seen successive Commissioners and Deputies drawn from the pool of experienced officers within the ranks of New Zealand Police. More relevant is the need to appoint a person who can discharge the specific responsibilities of the job, and maintain appropriate standards of staff integrity and conduct.<sup>56</sup>

### Terms of engagement

- 5.9 Existing legislation is silent on who sets the pay and conditions of the Commissioner and Deputy Commissioners, and who reviews their performance while they hold office. It is proposed to clarify both these issues in the Policing Act by carrying across current practice into law.
- 5.10 Currently, the independent Remuneration Authority determines the Commissioner's and Deputy Commissioners' remuneration, with other terms and conditions of their employment being agreed on a bilateral basis with the State Services Commissioner (acting with the delegated authority of the Minister of Police). This approach could be confirmed by the new Policing Act, with the Remuneration Authority remaining the pay-setting body for the most senior roles. To ensure transparency, there would be ongoing requirements for public disclosure of senior Police salary bands.

<sup>55</sup> Under section 9(4) of the Defence Act 1990. A Commissioner of Police or Deputy Commissioner of Police may also need to invoke powers under the International Terrorism (Emergency Powers) Act 1987.

<sup>56</sup> These are amongst various criteria that must be considered before public service chief executives are appointed by the State Services Commissioner: refer to section 35(12) of the State Sector Act 1988.

- 5.11 To help strengthen accountability for the performance of Police, performance review arrangements for the Commissioner and Deputy Commissioners might also be spelt out in legislation. The new Act could allow, when invited, Police to come within the ambit of the State Services Commissioner's performance management of public service chief executives. An example of where a similar approach has been adopted in legislation is the State Services Commissioner's ability to review the performance of the head of the Parliamentary Service.<sup>57</sup>

## Tenure

- 5.12 No changes are proposed to the tenure of Commissioners and Deputy Commissioners. Under the proposed Act, they would continue to hold office "during the pleasure" of the Governor-General, without prescribing the grounds upon which their dismissal might be triggered. What might be new, however, is clarifying in statute that individual appointments are for a maximum five year term, and specifically noting the possibility of re-appointment. Where any such re-appointment is made, the Act could also make it clear no formal recruitment round needs to be held.<sup>58</sup>
- 5.13 This form of tenure can be seen as necessary because the strong independent powers of Police must be balanced by strong democratic accountability. If an elected government or the public loses confidence in a Commissioner or Deputy Commissioner of Police, the person's position becomes untenable. Because of their statutory powers, this is true even though, strictly speaking, there may not be 'just cause and excuse' for dismissal in an employment context.

## Acting and delegation arrangements

- 5.14 There are over 300 references to the Commissioner of Police in primary legislation, most imposing general obligations or duties, but with ultimate responsibility sheeting home to the Commissioner. A new Act should enable the Commissioner to delegate powers, duties and functions, as a way to lighten the administrative load falling on his or her shoulders. The Act should also clarify how to handle situations where it is necessary or desirable for someone else to act in the role of Commissioner.
- 5.15 It is intended to address these issues by building on current legislative provisions.<sup>59</sup> In particular, for times when an Acting Commissioner is required, the legislation might avoid the inflexibility of a default approach by allowing the Commissioner to elect who to hand the reins to. This will enable a judgment to be made about who is best suited to act into the role at a given time, thus allowing any operational imperatives to be taken into account. To cover all possible bases, in exceptional times when the Commissioner cannot or should not appoint a temporary replacement (e.g., because of medical incapacity, or where the Commissioner has been stood down from office), the new Act could enable the Governor-General to make an acting appointment on a provisional basis.
- 5.16 It is further intended to confirm in the new Act the Commissioner's ability to delegate certain functions, duties and powers. This might include putting beyond doubt the Commissioner's right to communicate factors which must be taken in account by any member of Police who receives and exercises a delegated authority.

<sup>57</sup> See section 15 of the Parliamentary Service Act 2000.

<sup>58</sup> An analogy is section 37(5) of the State Sector Act, which explicitly allows the Government Statistician to be re-appointed "without first notifying the impending vacancy or examining other applicants".

<sup>59</sup> Refer to sections 4, 13 and 55A of the Police Act 1958.

## ROLE AND FUNCTIONS OF THE COMMISSIONER

- 5.17 Surprisingly for such a significant position, current legislation says little about the Police Commissioner's role and functions. The description of the Commissioner having "general control of the Police"<sup>60</sup> does not actively reinforce expectations of a Commissioner's responsibilities for a modern police service.
- 5.18 Responses received during the initial phases of consultation on the Police Act Review generally supported new legislation including a broad description of the Commissioner's role and functions.<sup>61</sup> This was seen as a way of usefully establishing what the Commissioner's role is, aiding public understanding and confidence, and providing extra clarity and transparency. The proposal is to include a section in the new Act which confirms the Commissioner's responsibilities for:
- carrying out of the functions, duties, and powers of New Zealand Police
  - overseeing the general conduct of Police
  - ensuring the efficient and effective management of Police
  - tendering advice to the Minister of Police and other Ministers of the Crown
  - giving effect to any formal ministerial directions on matters of government policy.
- 5.19 Another role the Commissioner fulfills is head of the constabulary. In New Zealand, the Commissioner is effectively the chief constable, yet this is not acknowledged anywhere in legislation. To remove this uncertainty, and appropriately recognise the practical reality of the Commissioner's position in our constabulary system, the government is considering whether its Policing Act should confirm the Commissioner's status as New Zealand's chief constable.

### The Commissioner's role as commander of the constabulary

- 5.20 Although it might be assumed all constables are part of New Zealand Police, this is not strictly correct. The vast majority of constables are members of Police appointed under the Police Act, but other pieces of legislation also allow for the granting of a constable's powers and protections.<sup>62</sup> These cases involve the extension of policing powers for worthy reasons, but are increasingly out-of-step with modern approaches. Historical reliance on the office of constable as a way of providing empowerments, for example to harbour police, civil defence police, and so on, has given way to more carefully-targeted assignments of powers. As the constabulary system has matured and expanded in New Zealand, there is arguably less need to call on an outside authority to trigger appointment of extra police to cover short-term operational requirements.
- 5.21 In light of other proposals,<sup>63</sup> it may be opportune to remove these anomalies. This development could be given effect via the Policing Act. The proposal is anyone sworn in as a constable, under whatever enactment, should be subject to the Police Commissioner's control and supervision. This would confirm the Commissioner's responsibility for all individuals who hold the office of constable and ensure all constables work to the same professional standards.

<sup>60</sup> Section 3(1) of the Police Act 1958.

<sup>61</sup> Police Act Review, *Perspectives on policing* (2007), p 20.

<sup>62</sup> See section 33 of the Fire Service Act 1975 (which enables volunteer "fire police" to be appointed to support fire services personnel) and section 192 of the Summary Proceedings Act 1957 (which enables "special constables" to be appointed by District or High Court Judges, on application by the senior member of Police in a particular location, if the area's policing needs cannot be met by other means).

<sup>63</sup> Notably, the Commissioner's ability to directly appoint additional constables in extraordinary circumstances under a new Policing Act would make it redundant to retain an indirect ability to appoint special constables under the Summary Proceedings Act. Further, proposals for new fire and rescue service legislation may result in any future volunteer "fire police" receiving appropriate legal powers and protections directly under the new Act, rather than such personnel obtaining the full set of policing powers by being deemed to be constables. See Department of Internal Affairs, *New Fire Legislation* (2007).

- 5.22 To reinforce how this line of accountability runs unbroken from street level policing to the Commissioner, it is intended to clearly identify the requirement for all police to obey their superiors' lawful commands. The size of New Zealand Police, its geographic spread and its broad range of activities underlines the need for disciplined management and a clear sense of who is in charge. There should be no doubt about a senior officer's ability to give binding orders during an operation, or the Commissioner's ability to instruct staff to follow certain courses of action when they are carrying out duties in his or her name. There should also be no doubt about the Commissioner's ultimate authority to direct who takes charge of a particular policing operation, with the ability in extraordinary situations to relieve an officer of command (an existing ability which is accepted in practical terms, but which could be made clearer in legislation).
- 5.23 The fact Police must operate as a command organisation is recognised by the Courts, and is understood not to override the need for frontline officers to make assessments and act according to the situation before them.<sup>64</sup> Independent judgement and careful use of discretion will always be important in good policing, but it would be wrong to think this means individual constables and other Police staff act in isolation from one another. The Policing Act could better reflect these realities of policing.

### **THE RELATIONSHIP BETWEEN THE COMMISSIONER AND MINISTER**

- 5.24 The relationship between the Commissioner and the Police Minister is a complex area of public administration, about which much has been written by academics, constitutional lawyers and other commentators.<sup>65</sup> Despite its importance, the 1958 Police Act contains virtually no guidance on the boundaries of the Commissioner-Minister relationship.
- 5.25 As a starting point, it might be worth confirming the ongoing place of constabulary independence in New Zealand's system of policing. While the meaning of constabulary independence is sometimes disputed, it is well understood police must act independently when enforcing the law. It is also accepted the Police Commissioner has a wide discretion as to how to enforce the law in any given case. It is for the Commissioner to direct how the law is enforced in relation to specific types of offending, or the locations where offences are committed. Decisions on what policing resources are deployed in individual cases, and what general policies apply to particular classes of case, are for the Commissioner alone.

#### **A classic view of constabulary independence**

"[L]ike every constable in the land, the Commissioner should be, and is, independent of the executive .... I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one .... The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone".

Lord Justice Denning, in *R v Commissioner of the Metropolis, ex parte Blackburn* [1968] 2 QB 118 at 135.

<sup>64</sup> See, for example, *Neilsen v Attorney-General* [2001] 3 NZLR 433.

<sup>65</sup> For an overview, see Police Act Review, *Issues Paper 2: Governance and accountability* (2006).

- 5.26 Despite its special constitutional position, Police delivers services in the same general context as other government agencies, and needs to be answerable to the community for the use of public resources. This is expressed through Police's accountability to the Minister with portfolio responsibility for policing, who in turn has an accountability to parliament. With that ministerial responsibility comes the need to exercise a degree of control over the general direction of policing, within accepted conventions.
- 5.27 The Police Minister is generally agreed to have a role in consulting the Commissioner over Police's operational requirements and allocating resources for specific initiatives. It is also broadly accepted the Minister may provide direction to the Commissioner on overall Police resourcing, and matters of administration which do not directly affect the Commissioner's operational responsibilities. The expectation is the Minister could legitimately direct the Commissioner on government policy objectives and priorities which relate to crime prevention, the maintenance of order and public safety, and the delivery of policing services. The ability to provide directions on general areas of law enforcement could not, however, have the effect of requiring the non-enforcement of any specific law. Moreover, the Minister may not direct the Commissioner regarding the enforcement of the law in particular cases or classes of case, nor in relation to decisions about individual Police staff members.
- 5.28 Freedom from political interference in operational decisions is a fundamental value of New Zealand's policing tradition. Consideration could be given to recognising this in legislation by putting the notion of constabulary independence on a statutory footing. However, going further and attempting to capture the relationship between the Commissioner of Police and Minister of Police in statute risks creating a 'legislative strait jacket', which might work against the flexibility needed for such broad roles. For this reason, it may be unhelpful to try and prescribe this relationship. The suggested approach is to continue to allow it to be guided by convention and case law.

## **SUPPORT AND ACCOUNTABILITY FOR PERFORMANCE**

- 5.29 Another way to strengthen Police's governance arrangements is to focus on accountability for performance. In this area, there is scope for Police to benefit from management supports available as of right to other public sector agencies.<sup>66</sup>
- 5.30 While there are reasons why Police should not be treated as a regular government department, it is possible to better reconcile its special constitutional position with the fact it is a large publicly-funded agency, which shares many of the same accountabilities as other state sector organisations. Just as more orthodox performance review arrangements can be applied to the Commissioner of Police, a case exists to adapt standard public sector management and accountability systems to Police. To achieve this, carefully-designed proposals could be incorporated in the Policing Act. The aim would be to remove legislative barriers to the State Services Commissioner giving formal advice and guidance to Police's leaders - a move recommended by the Commission of Inquiry into Police Conduct<sup>67</sup> - but without compromising Police's operational independence

<sup>66</sup> The State Services Commissioner's ability to routinely offer Police advice on machinery of government and conduct and integrity issues is currently impeded by section 96 of the Police Act.

<sup>67</sup> See Dame Margaret Bazley, *Report of the Commission of Inquiry into Police Conduct* (2007), para 8.28 and recommendation R59.

- 5.31 Another issue to consider is Police's statutory reporting requirements. Current legislation imposes few general reporting requirements on Police, other than a need to produce an *Annual Report* and *Statement of Intent*. Additionally, there are a series of one-off statutory obligations to report on the exercise of specific policing powers.<sup>68</sup>
- 5.32 There is no consistency behind legally requiring Police to report on the use of these specific powers versus any number of other policing activities. Moreover, it is broadly accepted some existing reporting requirements are unnecessary. Police's current statutory reporting requirements are also increasingly out of place in an age where Police is subject to regular external scrutiny by parliamentary select committees, the independent Police Complaints Authority, and oversight bodies such as the Controller and Auditor-General, the Ombudsmen, and the Office of the Privacy Commissioner.
- 5.33 Views are invited on the best way to ensure reporting on the use of police powers. One approach would be to add to existing statutory reporting requirements, including matters recommended by the Law Commission in its upcoming report on *Search and Surveillance*. Another option might be to remove one-off reporting requirements, replacing them with a strengthened obligation under a new Act for Police to produce an *Annual Report* containing relevant information about its overall operations. If appropriate, this obligation could be paired with a specific duty to report on the exercise of basic policing powers - for example, the number of arrests made each year. Either way, any future framework should allow for continued transparent reporting of key areas of policing activity.

## ARMS-LENGTH INQUIRIES

- 5.34 Independent inquiries can be a catalyst for improvement in any organisation, and the 1958 Police Act contains a specific power to launch an inquiry.<sup>69</sup> Whilst noting the existence of a parallel Law Commission review into public inquiries,<sup>70</sup> an equivalent power could be carried across into new policing legislation.
- 5.35 Unlike at present, the ability to convene a formal inquiry might not be restricted to the Minister of Police, but could also extend to the Commissioner of Police. This would line up more closely with international approaches.<sup>71</sup> It would also reflect the trend for New Zealand Police Commissioners to act swiftly to set up arms-length inquiries into any issues of concern. Where it has been accepted there should be an independent inquiry into a policing matter, Commissioners have typically appointed a Queen's Counsel to lead the inquiry. If a more sweeping examination is called for, the practice has been to initiate a broader inquiry with formal terms of reference, often involving senior police from overseas as expert peer reviewers.<sup>72</sup> This practice of Commissioners taking responsibility for launching inquiries should be encouraged. Further, it seems appropriate to be less prescriptive about who conducts any inquiry. The important point is such inquiries should be conducted by a person or people with relevant experience.

68 Police's current statutory reporting obligations cover the use of road blocks [under section 65(4) of the Police Act 1958], interception warrants and emergency permits [under section 29 of the Misuse of Drugs Amendment Act 1978 and section 312Q of the Crimes Amendment Act (No 2) 1987], call data warrants [under section 10R of the Telecommunications (Residual Provisions) Act 1987] and bodily samples [under section 76 of the Criminal Investigations (Bodily Samples) Act 1995].

69 Under section 56 of the Act, the Minister may appoint a Committee of Inquiry to investigate and report to the Commissioner on any non-remuneration or employment-related matter connected with Police. Such a Committee of Inquiry is to consist of a District Court Judge and one or more members of Police.

70 See, further, Law Commission, *The Role of Public Inquiries* (2007).

71 For example, refer to section 24.1(1) of the Royal Canadian Mounted Police Act 1985.

72 An example was the 2004/05 expert review panel that reported on the Police Communications Centres.



## CLEAR AND EFFECTIVE REGULATIONS

- 5.36 The ‘nuts and bolts’ of how New Zealand Police operates are critical to the delivery of effective services. They may attract less attention than other aspects of policing, but the arrangements put in place to allow Police to function are still the building blocks of success. Naturally, not all administrative details need the backing of legislation. For example, deployment planning and rostering, which help Police run smoothly, sit comfortably outside legislation. But some administrative details need or benefit from legislative support. One of the ways of providing such support is through regulations.
- 5.37 Governments already have the ability to issue regulations under the 1958 Police Act, giving a broad empowerment to address matters of detail or a technical nature.<sup>73</sup> However, only one current set of regulations has been issued under the 1958 Act (the Police Regulations 1992), mainly concerned with human resource management issues. Although another set of regulations is due to be issued shortly, to support the move to a new *Code of Conduct*, greater use of regulations could be made in the policing environment. It is desirable that a new Act transfer more of the detail into regulations. Indeed, in some situations, it will be appropriate to allow largely administrative matters to be properly dealt with through Commissioner’s *General Instructions*, or moved into internal Police policy documents.
- 5.38 The proposal is to continue to provide for a regulation-making power in the Policing Act. This will confirm the ability to make general regulations for the effective operation of Police, as well as more specific regulations on particular policing topics.<sup>74</sup> This approach will offer extra certainty and transparency, and at a level which means Police’s new Act is not weighed down by unnecessary detail.

## MANAGING POLICE’S EMPLOYMENT ENVIRONMENT WITH CONFIDENCE

- 5.39 Continuing Police’s movement to a mainstream employment relations environment is another means of helping Police advance. The Policing Act offers opportunities to support this evolution.
- 5.40 As outlined in Chapter 4, changes are required if Police is to become a more cohesive organisation. These shifts will be meaningful and symbolic for Police employees, but are not entirely novel. All Police staff became “members of Police” after 1989 amendments to the Police Act. But the job was left incomplete. The Commissioner was left employing two distinct groups of people: sworn and non-sworn members. For a step change to occur, all Police employees need to be unified under a common employment relations framework. This means challenging some long-standing assumptions.

### A structurally divided organisation

Under the 1958 Police Act, employees are appointed as either “sworn members” or “non-sworn members”. There is no intermediate step. While all staff are unified as members of Police, in practice the sworn/non-sworn division streams people according to their designation. For example, positions in Police are designated as being available to sworn, non-sworn or sometimes both types of employee. Sworn staff can only select from positions which are designated as sworn roles, and vice versa.

Under the current Act, sworn staff also default away from mainstream employment-related provisions in the State Sector Act 1988 and Employment Relations Act 2000. The effect of this is to treat sworn members differently to the vast majority of New Zealand workers, as well as their non-sworn co-workers. Some areas where these differences are most pronounced include approaches to wage bargaining, representation and access to employment institutions.

<sup>73</sup> Section 64 of the Police Act 1958.

<sup>74</sup> For example, it may be more appropriate for regulations to address the work of Police dog handlers, rather than in the Act as at present (see sections 44A-E of the Police Act 1958). Similarly, new policing legislation provides the opportunity to consolidate two small statutes which cover situations under which New Zealand Police staff work off-shore: the United Nations (Police) Act 1964 and the Crime and Misconduct (Overseas Operations) Act 2004.

- 5.41 One of the most persistent assumptions is the idea constables must retain standalone employment arrangements, rather than generally having the same employment rights and responsibilities as other state sector workers. There is now ample evidence to show police officers can work under standard employment relations laws without compromising the office of constable.<sup>75</sup> Rather than continuing to have those with constabulary powers operating under their own set of rules, it seems possible to apply general employment legislation to Police's workforce, with special provisions only needed when there are compelling reasons for treating police differently from other workers.
- 5.42 The opportunity to take this next step is recognised by Police's leaders and groups representing Police staff. Operating in a mainstream world would make portions of the current Police Act redundant, and there is broad agreement the standard environment under the Employment Relations Act 2000 could apply to Police, except in situations where Police genuinely stands apart from most other work environments (discussed further below).
- 5.43 If Police's new Act is silent on employment relations issues, the Employment Relations Act will cover all Police staff, and standard employment law and existing employment institutions will automatically be on hand for use by Police employees and managers. This would allow outdated provisions in the 1958 Act to be replaced, for instance limits around what employment conditions can be settled through formal bargaining.<sup>76</sup>

### **Providing assurances about continuity of policing**

- 5.44 While Police's employment framework can be updated to better reflect mainstream public sector practices, it is sensible to retain some features of the existing arrangements which have stood the test of time, and recognise factors which set Police apart from most other workplace environments.
- 5.45 Notably, for almost all of Police's history, it has been a strongly held view police should not withdraw their labour, or limit their policing activity for industrial ends. This tradition, which was later codified,<sup>77</sup> offers assurances policing will continue irrespective of what might end up being difficult negotiations on pay and conditions. This provides comfort to members of the public and the government of the day. It also serves wider interests, by preserving public trust and confidence in the legitimacy of police actions, which is a pre-requisite for police being able to do their jobs with popular consent.
- 5.46 Access by Police staff to industrial options raises complex issues, which in many ways are finely balanced. These issues were opened up for discussion in earlier phases of the Police Act Review, but did not yield clear cut results.<sup>78</sup> A cautious approach is suggested as the most appropriate way forward.

<sup>75</sup> Sir William Morris et al., *The case for change: People in the Metropolitan Police Service* (2004), p 52.

<sup>76</sup> See subsections 67(3) and (4) of the Police Act 1958.

<sup>77</sup> Section 80 of the Police Act 1958.

<sup>78</sup> See Police Act Review, *Issues Paper 3: Employment arrangements* (2006), pp 16-21; Police Act Review, *Perspectives on policing* (2007), pp 30-33.

- 5.47 A contemporary Police industrial relations environment could also support the move to bring all Police staff together under a unified framework - where all members work under the same *Code of Conduct* and disciplinary system. This is important in principle, as well as in practice. For example, given the teamwork patterns of modern policing, where non-sworn staff often perform central roles, it is increasingly tenuous to draw a sworn/non-sworn distinction over which staff should be able to take strike action. In particular, Police's ability to effectively respond to emergency calls for assistance would be severely compromised if non-sworn Communications Centre workers were ever to take industrial action. Strike action by non-sworn staff in vital support roles could potentially cripple Police's ability to provide essential public safety services.

#### No right to strike

The readiness to accept a legislative bar to strike action by police is partly based on observed problems overseas, such as the Boston Police strike in 1919 and the Victorian Police strike in 1923. On a smaller scale, experiences of striking police also reverberate in New Zealand from colonial times, during the few occasions when police went on strike. The internal acrimony and dented public confidence in police which flowed from such strike action continues to motivate police forces to avoid such action, if at all possible.

Governments, too, are wary of strike action by police. Some of the key concerns are summed up in the following memorandum from then Attorney-General Geoffrey Palmer, to Police Commissioner Ken Thompson, dated 24 January 1986:

"The unique status of the Police is fundamental to this whole issue. Society entrusts to the Police the common law and statutory powers of arrest, search, detention and prosecution. It relies upon the Police for assistance in times of emergency. In the enforcement and upholding of the law the Police hold powers and occupy a place no one else has. The refusal by the Police to carry out any or all of those functions involves not only a breach of the law but raises a question of public credibility. If the Police refuse their duties of protection of the community and enforcement of the law two consequences follow. Firstly, society is left unprotected. Secondly, 100 years of nurtured credibility is imperiled".

- 5.48 Balancing these considerations, it is proposed a new Policing Act:
- extend the current limit on police officers taking industrial action to all Police staff, with an equivalent extension of the barrier against any lock out of Police employees
  - make representation of Police staff more contestable, while still ensuring certainty over which parties can competently negotiate a collective employment agreement
  - retain the current independent 'final offer' conciliation and arbitration procedure, if required, to promote negotiated settlements
  - enable all parties to an arbitration to nominate issues for the arbitrator to consider.

### Protecting confidence in Police

- 5.49 A final area of special consideration in Police's employment relations framework is the Commissioner's need to act decisively to shore up public confidence in Police.
- 5.50 In earlier public consultation, majority support was expressed for the Commissioner to have an ability to take employment action against Police staff, despite the fact criminal action may be contemplated or already underway.<sup>79</sup> New policing legislation could support the Commissioner to deal robustly with discipline issues involving his or her staff. Arguably, the public interest would be best served if a Commissioner can act in an employment context where cases of the most serious misconduct come to light, notwithstanding there might be parallel criminal processes or Police Complaints Authority investigations underway.

<sup>79</sup> Police Act Review, *Perspectives on policing* (2007), p 70.

- 5.51 In the new Policing Act, it is proposed to confirm the Commissioner's express power to suspend or dismiss a member of Police if, due to his or her competence, integrity, performance or conduct, the Commissioner forms the view the member is no longer suitable to continue service with Police. This is a backstop protection which exists in several other jurisdictions,<sup>80</sup> and does not work to deny natural justice requirements. Due process still occurs, with the practical effect of being able to clearly separate the alleged wrongdoing from behaviour which is acceptable in a policing environment. An equivalent power should be available to New Zealand's police chief, offering an effective response to very rare cases which involve the most extreme cases of misconduct. The government looks forward to stakeholders working with Police to design the most appropriate provisions for New Zealand conditions, balancing the need to treat staff as fairly as possible with the need to safeguard public trust and confidence in Police.

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<sup>80</sup> In Australia, examples include section 33L of Western Australia's Police Act 1892, section 68 of Victoria's Police Regulation Act 1958 and section 181D of New South Wales' Police Services Act 1990.

## *CHAPTER 6*

# ***ANTICIPATING THE FUTURE***



## INTRODUCTION

- 6.1 A challenge faced by all legislators is how to keep pace with a rapidly changing world. One response is to pass amending legislation to plug emerging gaps. While this allows for incremental improvements, a disadvantage is the difficulty in maintaining a legislative framework which is coherent and internally consistent. The 1958 Police Act has somewhat fallen into this trap, having been patched more than 25 times since it was first enacted.

### Key points

- 6.2 Looking ahead, there are several opportunities to anticipate the future in a new Act. This Chapter gives examples of such opportunities, although other suggestions are invited. Initial proposals for discussion are:
- using technology-neutral language to allow for advances in identification processes
  - reducing unnecessary bureaucracy and pressure on the criminal justice system by cautiously building the platform to use infringement notices for lower-level offences
  - enabling the introduction of integrity testing, as a further support for ethical behaviour
  - providing for the creation of a policing oversight and improvement agency
  - mandating recovery of costs for special policing services in certain circumstances.

## ENABLING USE OF NEW TECHNOLOGY

- 6.3 Police has had a long-standing and well-understood ability to gather biometric data. This has evolved from measuring people's heights and having artists make charcoal sketches of criminals' faces, to taking photographs of prisoners and rolling inked impressions of their fingerprints. Even today, recording a prisoner's height remains a key piece of identifying data gathered by police, along with manually noting any scars, tattoos or birth marks.
- 6.4 The rationale for such identification practices is simple: police need to be sure people are who they claim to be; and just as importantly, sometimes proving they are not who they claim to be. Legal permissions are granted to police to allow biometric data such as fingerprint images to be taken, stored, transmitted and cross-checked. The information is stored in secure databases that link to each arrested person's profile, giving certainty about who police are dealing with. This also protects the interests of those who may have unwittingly become the victims of identity theft.

### Keeping one step ahead of the criminals

Fingerprint comparison is a robust and reliable method of identifying individuals, and remains a lynchpin of forensic crime scene investigation in New Zealand. Recent advances, such as the automated fingerprint information system (AFIS), have reduced the time needed by Police fingerprint staff to achieve results, and enables identifications where previously it would not have been possible. AFIS is networked throughout New Zealand, offering a reliable identification interface between frontline staff and the National Fingerprint Office based at Police National Headquarters.

Advances in imaging technology have also seen the development of digital cameras capable of capturing fingerprints and other images in sufficient detail for comparison purposes. This technology is still emerging but will soon offer the potential to capture fingerprints and other evidence at crime scenes (e.g., tool marks and footwear impressions), with the ability to transmit the images to a remote site for immediate comparison.

The Policing Act could positively support success stories such as AFIS by adopting technology-neutral language to promote the future use of new investigative options.

- 6.5 Given rapid technological advances, many of which will offer faster and more reliable methods of identification than earlier systems, the Policing Act could adopt a technology-neutral approach to legally support Police's use of improved processes. Put another way, the new Act could enable police to obtain biometric data as they have done for over a century, but not specify the particular technology to be used, as this will most certainly change over the coming decades. The detail of what technology is lawfully able to be used at a given time might be listed in regulations. In this way, future Police Commissioners might approve new identification techniques via a transparent process that is open to public and parliamentary scrutiny.
- 6.6 The proposals to 'future proof' current Police identification powers were outlined earlier in this paper,<sup>81</sup> including the possibility identifying particulars might be obtained in non-arrest situations, for example during roadside breath tests. One of the advantages of this proposal is that information submitted for comparison with Police's central database could match against biometric data recovered from unsolved crime scenes. Any matches achieved in this way would guide officers whether to detain a person for further questioning, or escort him or her to a police station to conduct more detailed inquiries. This would directly benefit both Police and the wider community, in terms of detecting, apprehending and bringing offenders to justice, as well as providing an even stiffer deterrent to would-be criminals.
- 6.7 As noted earlier, in any such cases, the rights of the individual could be safeguarded with a requirement that biometric data taken in a roadside context would not be permanently retained or added to Police's national database. In other words, it could not become a 'catch and release' exercise, whereby ever-greater biometric data holdings could be added to Police databases. However, if a person were summonsed or arrested for an offence after initial checks are carried out, then a full set of biometric information would be taken, as part of the normal investigative and detainee handling process. This would be a reasonable outcome in such circumstances.
- 6.8 One thing is certain: the technologies to support these ideas are already available. Over the next decade, such technologies are likely to become cheaper, increasingly accurate, and more commonly used in daily life. Already many laptop computers are fitted with a fingerprint reader as a biometric security measure, while facial recognition software helps confirm the identities of Kiwis travelling through some overseas airports. The benefits of greater use of these technologies are recognised, but the government seeks further input from New Zealanders on how new legislation might appropriately tap into this potential while balancing legitimate privacy interests.

## **REDUCING BUREAUCRACY AND PRESSURE ON THE CRIMINAL JUSTICE SYSTEM**

- 6.9 A lot of fresh thinking is already being applied to make the administration of justice more effective and efficient. For example, the trial of a Criminal Justice Support Unit (CJSU) in South Auckland is showing promise as a way of supporting the work of frontline police. The CJSU streamlines arrest processing and file preparation, allowing constables to return to active patrol in a shorter time frame. The instinct to explore models like the CJSU reflects a wider feeling that a disproportionate amount of frontline officers' time can be spent preparing prosecution files for relatively minor offences, with resulting paperwork flows which burden other justice sector agencies. Sanctions eventually imposed by Courts for these less serious offences sometimes bear little relation to the expense of taking the case through the prosecution process, with delays in the process also meaning sanctions are not immediate for offenders.

<sup>81</sup> See Chapter 3, paragraphs 3.23 to 3.26.

- 6.10 Earlier consultation for the Police Act Review contemplated the idea of streamlining responses to lower-level offending by making greater use of on-the-spot infringement notices.<sup>82</sup> One example given was the ability to issue Liquor Infringement Notices (LINs) for a wider range of offences, such as minors attempting to illegally gain entry to licensed premises with 'fake ID', rather than requiring such cases to be dealt with through the time-consuming and costly summons procedures. Widening the options for infringement notices to be used for summary offences received qualified support in public submissions.<sup>83</sup> This provides encouragement to do further work in this area.
- 6.11 To recapture the anticipated advantages of extending the ability to use infringement notices for less-serious offences, such on-the-spot policing responses:
- deliver swift, simple and effective justice which carries a deterrent effect
  - reduce the amount of time police spend completing paperwork and attending Court, while simultaneously increasing the amount of time police can spend on the streets dealing with more serious crime
  - reduce the burden on the Courts of dealing with low-level offending, while simultaneously freeing up the Courts to deal with more serious offending.
- 6.12 A separate review of the entire infringement system, led by the Ministry of Justice, may generate recommendations on the principles which are relevant to whether infringement notices might be an appropriate option for particular offences. Conceivably, it might even be possible to allow for the careful extension of the infringement notice option via consequential amendments in the Policing Bill. For example, police could be given the option of issuing LINs for 'fake ID' offences through a targeted amendment to section 162A of the Sale of Liquor Act 1989. Similarly, the option of making liquor ban by-law breaches infringement offences under section 147 of the Local Government Act 2002 could be explored, as a further way of alleviating pressure on the Court system. The government is keen to hear if New Zealanders support such moves, or whether people would rather wait and see if other reviews result in proposals for law reform.<sup>84</sup>

## **INTEGRITY TESTING AS AN ADDITIONAL WAY TO SUPPORT ETHICAL BEHAVIOUR**

- 6.13 Another area in which the proposed Policing Bill might sensibly prepare for the future is to lay the groundwork for integrity testing of Police employees. Such testing is not currently part of the mainstream employment environment in New Zealand, but it is used as an anti-corruption strategy by police forces in several Australian states (Victoria, New South Wales and Queensland), the United Kingdom, and in New York. The jurisdictions essentially use integrity testing to simulate misconduct opportunities to gauge staff responses. Schemes range from the use of covert agents in elaborate test environments (e.g., use of cash bait at mock crime scenes) through to the use of 'mystery shoppers' to check for racism, sexism or neglect of crime victims.
- 6.14 Although New Zealand Police is widely considered to be one of the least corrupt police services in the world, this is not a reason to be complacent. Forward-looking legislation for New Zealand Police might therefore include an explicit authority to implement a formal staff integrity testing programme at

<sup>82</sup> Police Act Review, *Issues Paper 5: Powers and protections* (2006), pp 15-16.

<sup>83</sup> Police Act Review, *Perspectives on policing* (2007), pp 47-48.

<sup>84</sup> In relation to 'fake ID' offences, the government is currently reviewing the effectiveness of age-related restrictions on the sale and supply of liquor. For the review's scope, see Hon Mark Burton and Hon Damien O'Connor, *Terms of reference for the review of the sale and supply of liquor to minors* (2007).



some future point in time. The reason for legislating would be to provide additional transparency and certainty, by putting any future programme on a firm statutory footing, similar to overseas.<sup>85</sup>

- 6.15 The decision whether or not to explore this option in New Zealand should be taken after discussion with groups representing Police staff and any other relevant interest groups.<sup>86</sup> It is accepted there would need to be detailed procedural guidelines drafted before any such scheme were introduced, but the time to mitigate any concerns about integrity testing would be during development of such protocols. For present purposes, it seems feasible that integrity testing might be considered a necessary or desirable component of a wider Police anti-corruption programme. As such, when formulating a new Act to set a platform for policing over the coming decades, it seems sensible to make provision for the introduction of integrity testing within the Police workplace. Such an enabling provision would not mean integrity testing has to occur, simply that it could occur if the Commissioner of the day saw a need for it.
- 6.16 While persuaded it makes sense to prepare the way for future Police integrity testing, the government is keen to explore a broad range of opinions on the merits (or otherwise) of passing enabling legislation at this time. As with other ideas put forward in this paper, no final determinations have been made, and public views will be taken into account before any drafting work begins on the proposed Policing Act.

## **A POLICING OVERSIGHT AND IMPROVEMENT AGENCY**

- 6.17 Wider issues in the review of the Police Act are how the network of policing agencies are appropriately monitored, and how best to spur improvements in policing services.
- 6.18 As noted in Chapter 1, policing today is more diverse and networked than in 1950s New Zealand. The modern policing landscape is marked by an increasing array of public and private organisations with police-like functions and powers.<sup>87</sup> Some changes have happened virtually without comment, for instance the way in which private security staff now typically play a central role in policing large shopping centres and sports stadia. At the other end of the spectrum, blue-uniformed fisheries officers and other agencies' enforcement staff can sometimes blur the boundaries with police constables in the public mind.
- 6.19 Even as the provision of safety and security services in New Zealand becomes more co-operative and integrated, there will continue to be a need for independent oversight and guidance on how the country's national police organisation does its job. Recently announced changes will enhance the ability of the Police Complaints Authority (PCA) to discharge its mandate to review policing policies and procedures, and provide an independent process for members of the public to air concerns or complaints about Police actions.<sup>88</sup> However, there is no equivalent oversight body which monitors or offers advice on how to improve the performance of other policing agencies. A question that might be asked is whether, over time, there would be benefit in developing an independent policing oversight and improvement agency, which looks broadly across all organisations performing policing functions (e.g., enforcement officers working for organisations such as the Department of Internal Affairs, New Zealand Customs Service, Ministry of Agriculture and Forestry, etc.).

<sup>85</sup> An example is Part 10A of New South Wales' Police Service Act 1990.

<sup>86</sup> Some of the opposing issues raised by integrity testing were highlighted in earlier Police Act Review consultations, with the concept eliciting a mixed response. See Police Act Review, *Issues Paper 8: Conduct and integrity* (2006), pp 14-15; Police Act Review, *Perspectives on policing* (2007), p 68.

<sup>87</sup> See, further, Police Act Review, *Securing the future: Networked policing in New Zealand* (2006).

<sup>88</sup> Hon Mark Burton, *Media release: Police Complaints Authority Bill to implement recommendations* (2007).

- 6.20 There are certainly precedents for such developments in some overseas jurisdictions, where enhanced inspectorates have been built up around police forces, but have progressively expanded their field of vision to encompass broader policing functions. An example is the Republic of Ireland's new Inspectorate provided for under Part 5 of the Garda Síochána Act 2005. One of the most interesting models is the National Policing Improvement Agency (NPIA) established in the United Kingdom under the Police and Justice Act 2006. The NPIA is set up as a non-departmental public body; roughly equivalent to a Crown entity in New Zealand's public sector. Its role is to identify and disseminate good policing practice, assist police forces to deliver on 'mission critical' priorities, and provide operational policing support when needed. The NPIA's enabling legislation allows the Agency to support police forces either directly or indirectly, by carrying out activities itself (e.g., providing training) or helping forces to carry out activities themselves.

#### **The National Policing Improvement Agency**

Addressing modern policing challenges in a fast changing world, with multiple partner agencies, requires a sophisticated policing infrastructure. To support successful policing in this networked world, efforts must continue to make the best use of information and communications technology, forensic science, good leadership and organisational supports.

The creation of the NPIA is an acknowledgment of the need to meet this challenge. It recognises the means to achieve improved policing are often disparate and overlapping, and lines of accountability and responsibility for policing activity are sometimes blurred.

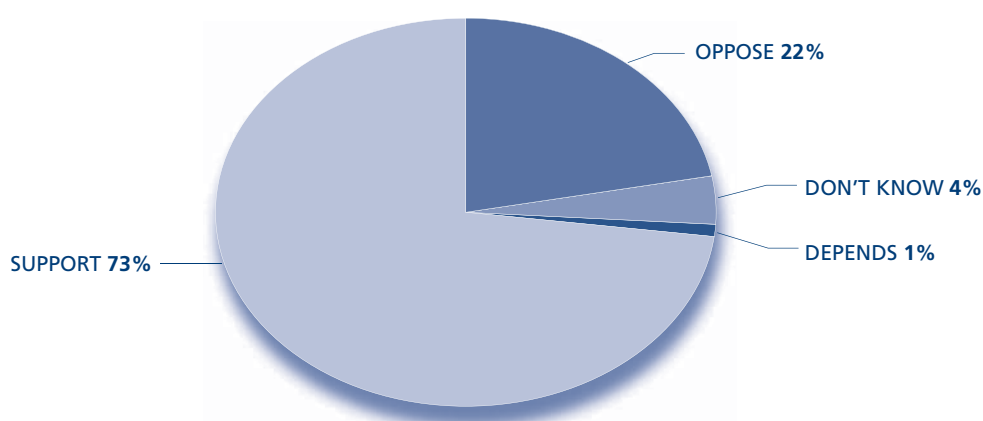
Although it only commenced operations in April 2007, the NPIA forms a central part of the British government's vision to improve policing practices and service delivery. To learn more about the NPIA, visit: <http://www.npia.police.uk>

- 6.21 In New Zealand, a move towards broadly grouped inspection agencies in other areas of the public sector has become increasingly well-established. Examples include:
- the Education Review Office, which reviews, investigates and reports on the provision of school-based education in both public and private school settings
  - the Mental Health Commission, which has a wide-ranging 'watchdog' function, with monitoring and reporting roles on performance issues, the effectiveness of systems, and the extent to which the Ministry of Health and District Health Boards have exercised leadership in implementing the *National Mental Health Strategy*
  - the Health and Disability Commissioner, whose mandate includes promoting and protecting the rights of consumers of health and disability services, helping resolve problems between consumers and providers of such services, and also improving the quality of those services with both public and private health care providers.
- 6.22 Mindful of these precedents, consideration could be given to pairing the PCA with a new oversight and improvement agency, to provide heightened assurance for governments and the public about the high-quality delivery of policing services. Such an agency would not necessarily require statutory underpinning, but it might nevertheless be helpful if it had a legal status equivalent to the PCA, as an independent Crown entity. The Policing Act could enable the establishment of such an agency at an appropriate point in the future, with the new body perhaps brought into existence by Order in Council. These are mechanical issues, however. More substantively, the government welcomes thoughts on whether such an agency could play a useful role in the future development of New Zealand Police, and policing in New Zealand more generally.

## RECOVERING COSTS FOR SPECIAL POLICING SERVICES

- 6.23 One of the scenarios debated as part of the Police Act Review last year was the possibility that, in the future, Police might be able to recover policing costs in special circumstances.<sup>89</sup> Times when such an ability might be triggered include requests to provide a police presence at what are essentially private money-making events, such as music festivals and sporting events. One of the key issues identified was a question of equity: if Police resources were being directed to offer safety and security services at commercial events (albeit to members of the public who have paid to attend such events), they are not available to respond to wider community needs. A constable providing a crowd control presence at a cricket match or rugby game is a constable providing a public service, but is not a constable who is available to attend a burglary call-out or perform other policing functions. This raises issues of fairness, and to what extent it is reasonable for a publicly-funded policing service to subsidise the safety and security interests of profit-generating companies or organisations.<sup>90</sup>
- 6.24 In recognition of these issues, many overseas jurisdictions give policing organisations the ability to charge fees for what are considered ‘over and above’ services.<sup>91</sup> In fact, along with The Netherlands, New Zealand is one of the only western countries where there is no legislative support for such cost recovery.<sup>92</sup>
- 6.25 While commonplace overseas, fee-for-service policing raises balancing considerations. For example, some may be concerned about the perception of ‘policing for sale’. Policing in New Zealand is based on the obligation to uphold the Queen’s peace, and any move to require payment for fulfilling this duty from commercial event organisers could risk distorting that basic obligation. If this were to occur, something precious about the New Zealand way of policing might be seen as lost.
- 6.26 On the other hand, public research suggests there may be a level of comfort with enabling New Zealand Police to take cautious steps towards a cost recovery model in certain defined situations.<sup>93</sup>

QUESTION: DO YOU SUPPORT OR OPPOSE POLICE BEING ABLE TO RECOVER COSTS FROM EVENT ORGANISERS FOR POLICING AT LARGE EVENTS, SUCH AS ROCK CONCERTS? (RESPONDENTS N=750)



<sup>89</sup> See Police Act Review, *Issues Paper 7: Administration* (2006), pp 15-19.

<sup>90</sup> As a Judge in a recent English case noted: “There is a strong argument that where promoters put on a function such as a music festival or sporting event which is attended by large numbers of the public the police should be able to recover the additional cost they are put to for policing the event and the local community affected by it. This seems only just where the event is run for profit.” Justice Scott Baker in *Reading Festival Ltd v West Yorkshire Police Authority* [2006] EWCA Civ 524, para 72.

<sup>91</sup> For example, in New South Wales, section 208 of the Police Service Act 1990 and regulation 106 of the Police Regulations 2000 combine to allow NSW Police to recover costs of attending sporting and entertainment events, as well as to provide supplementary policing services to local councils and also shopping centres. The Victorian model is similar. Section 130 of the Police Regulation Act 1958 enables regulations to be made prescribing services that may be charged for - with the resulting Police (Charges) Regulations 1992 allowing for charges to be imposed for policing services at sporting and entertainment events, providing escort or guard services, and for provision of certain information.

<sup>92</sup> Julie Ayling and Clifford Shearing, *Taking care of business: Public police as commercial security vendors* (2007), p 3.

<sup>93</sup> UMR Research, *What the New Zealand public want and expect from their police in the 21st century* (2007), p 15.

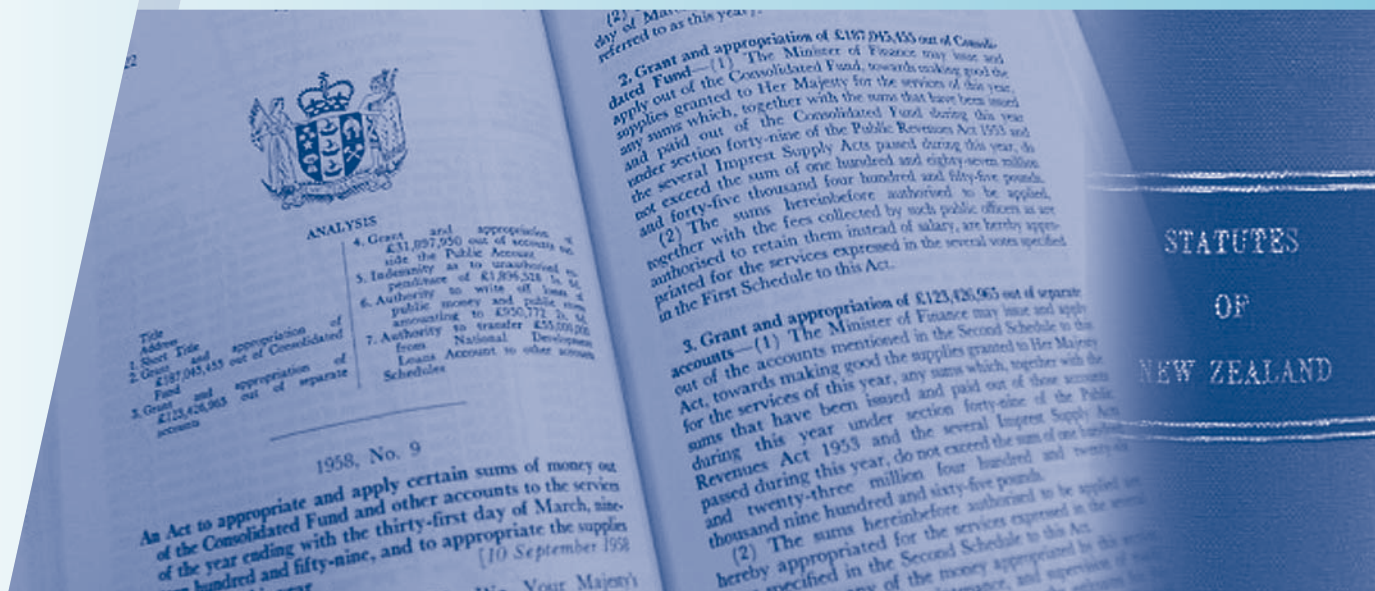
- 6.27 Overall, there seems to be merit in the idea that policing costs could be recovered in a limited number of special circumstances. Despite such arrangements being fairly standard in many other countries, including England, Ireland and Australia (where New Zealand inherited its constabulary system from), the introduction of such an ability in this country would still be breaking new ground. The government therefore believes it is appropriate to provide some additional time for the concept to develop, so interested parties can have further input. Depending on responses received to the suggestion, it might be possible to draft an enabling clause for the new Act. Precedents for how such a trial power could be drafted are available in a number of overseas policing statutes.<sup>94</sup> This would simply allow a cost-recovery system for policing to be activated in the future, most probably through regulations, when it was felt the conditions were right for such a progression to occur.

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<sup>94</sup> For example, section 63 of the South African Police Service Act 1995 contains a power to charge fees for special policing services, but also enables the National Commissioner of the South African Police Service to “authorise that any function, duty or service may be performed free of charge on behalf of any deserving charity, or in any case considered to be of general, culture or educational interest”.

# CHAPTER 7

## NEXT STEPS



## BUILDING ON SUCCESS

- 7.1 A police service which promotes community confidence in the rule of law is one of the most valuable assets any country can have. In this respect, New Zealand has been well-served by its police. New Zealand Police is an internationally-respected policing organisation, with a record of serving “without favour or affection, malice or ill will”. It is a record carefully built up over more than 160 years. Significantly, New Zealand Police’s reputation is largely unstained by the type of corruption scandals or performance failings which have shaken confidence in many overseas police forces.
- 7.2 This legacy is an important backdrop to the proposals in this discussion paper. While there have undoubtedly been ups and downs in Police’s history - with some important prompts for improvement coming from darker chapters, like the recent Commission of Inquiry into Police Conduct - overall, the organisation is in good heart. This offers a solid foundation on which to build.

### Blending approaches to find a New Zealand way

An important hallmark of the proposed Policing Act is the desire to strengthen our uniquely New Zealand approach to policing. This acknowledges New Zealand’s distinct history, and a Kiwi approach of blending the best of what we have available into a New Zealand way of doing things.

In 1840, Lieutenant-Governor Hobson established essentially British ways of policing in the new colony. However, pragmatism was necessary. Hobson and his successors worked alongside Māori authority, and from time to time incorporated elements of *pirihimanatanga* (Māori forms of social control and Māori police). The resulting New Zealand policing system thus combined indigenous strands with adopted and adapted English, Irish and Australian colonial policing models.

These early blends of different approaches to the task of achieving safer communities have resulted in some of the aspects of New Zealand Police we all cherish - in particular, a Police well connected with communities and widely regarded as one of the least corrupt police services in the world.

- 7.3 New Zealand Police has also made some important strides in preventing crime and disorder from happening, and has got better at solving it when it does. Over recent years, Police has developed a strong focus on intelligence-led policing strategies, to better target repeat offenders and better protect people who are repeatedly victimised. Concentration on risk factors like speeding, drink- and drug-affected driving, and failure to wear safety belts, has also led to dramatic reductions in the number of deaths and injuries on New Zealand roads. These results are a tribute to the sustained efforts of Police staff up and down the country - often working in partnership with others.
- 7.4 The challenge which lies ahead for New Zealand Police is to build on these successes; continue doing what works well; and step up efforts to tackle identified problem areas. Many of the building blocks are in place. Police numbers are at their highest level ever, with plans to reach over 11,500 staff by mid 2009. Technological advances like CCTV, DNA typing and Automatic Number Plate Recognition offer Police new tools to prevent and detect crime. Extra investment in community constables, and a renewed focus on minimising bureaucracy and freeing up officers to return to frontline duties, should also help promote the sort of visible, accessible service everyone wants to see.
- 7.5 This discussion paper targets another key building block for the success of policing - clear, enabling laws. *Policing Directions in New Zealand for the 21st Century* sets out a plan for legislation that represents the next stage in New Zealand Police’s evolution. It responds to the compelling case to change present-day legislation, and offers a vision of a modern New Zealand Police with effective powers, clear governance and accountability arrangements, and a contemporary employment relations framework.

## ***MAKING IT HAPPEN - A NEW POLICING ACT***

- 7.6 At the outset of the Police Act Review, it was agreed the best form of new policing legislation would come from a process which examined how Police fits within the broader policing environment. As noted in Chapter 2, the 1950s era concept of ‘the Police’ was largely synonymous with policing, but this is far from true in 2007, with so many other agencies involved in the business of safety, security and investigation. These include government departments (e.g., the New Zealand Immigration Service), private companies (e.g., security guards and private investigators), volunteers (e.g., community patrols, Māori Wardens and Neighbourhood Support groups), and local government efforts (e.g., city council safety officers). In modern-day New Zealand, policing is more accurately described as an activity which takes place in a network.
- 7.7 The profoundly changed environment Police operates in is evident from the references in this paper to a “Policing Act”, as the name of draft legislation intended to replace the 1958 Police Act. The Act which mandates and governs New Zealand Police’s work cannot afford to be inward-looking or Police-centric. In a world where policing is an increasingly networked and co-operative activity, more active and inclusive language is needed than simply calling a new statute a “Police” Act. The more dynamic word “Policing” fits the bill.
- 7.8 This is not to say the new Act will attempt to co-ordinate all the different agencies which might conceivably contribute to policing; that would be overly ambitious. But the legislation’s title could more accurately acknowledge Police is at the centre of a much wider set of activities which affect all citizens.

## ***CHECKING THE WAY FORWARD***

- 7.9 The government and Police’s leadership share a belief in the need for new policing legislation. The specific proposals for new legislation are spelt out in earlier Chapters of this paper. They have been informed by input received during the wide-ranging Police Act Review over the past 12 months, as well as constructive suggestions received from a range of stakeholders, within and outside policing circles.
- 7.10 A strong and effective New Zealand Police has a vital part to play in building safety, security and stability in our communities. The government’s goal with its proposed Act is to support Police to do so. Before introducing a Bill to parliament for further scrutiny and debate, however, it is important to hear from a broad cross-section of New Zealanders whether they agree with these directions for the future of policing. That is the opportunity offered by this discussion paper. All responses are welcome.



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## APPENDIX 1 THE POLICE ACT REVIEW

This discussion paper is part of a wide-ranging review of policing legislation, intended to lead to a rewrite of the Police Act 1958 and Police Regulations 1992. The government agreed to the review in March 2006. An important context for this decision was the fact the key legislation governing New Zealand Police has not been comprehensively updated in half a century. Another factor was the inconsistencies resulting from the current Police Act being amended more than 25 times over the years.

For those unfamiliar with the review's progress, the following overview may be of value.

### Scope

To encourage open debate, the government agreed the Police Act Review should start from first principles. A formal scope statement was prepared and consulted on [reproduced below].

**Police Act**  
*Review*  
Building for a modern  
New Zealand Police

**Matters to be explored in developing  
new Police legislation for New Zealand**

**NZ Police features that are foundational,  
which it is not proposed to re-examine**

- A national service that is centrally funded (vs. allowing for growth of regional or local police)
- Largely unarmed (vs. routinely carrying guns)
- Constabulary independence (vs. possibility of political direction on operational matters)

**Principles**

- Statement of the principles that underpin policing in New Zealand (including a formal role/functional statement?)
- Explicit commitment to police in a way that is appropriate for New Zealand (eg. upholding the Human Rights Act and Bill of Rights Act?)

**Community engagement**

- Allowing for communities to engage with Police on priorities and/or service issues
- Empowering active involvement in policing by interested citizens (eg. volunteers, community patrols, neighbourhood support groups, etc.)

**Relationships and boundary issues**

- Locating Police within the state sector and the criminal justice system
- Defining Police's relationship with third party policing agents, both in the core state sector (eg. fisheries and customs officers), local government (eg. Council city safety patrolers) and the private sector (eg. security guards)
- Clarifying Police's relationship with bodies like the Police Complaints Authority, Serious Fraud Office, and Crown Law Office
- Making clear the ability of the Commissioner to step aside from prosecutorial role in certain cases?

**Issues to potentially be taken forward through other channels, as part of a wider police development agenda**

- Teasing out future role of organisational components of NZ Police, such as the Police Prosecution Service and road policing
- Benefits of potentially consolidating commonly-used law enforcement powers in a single statute

**Governance and accountability**

- Establishment of NZ Police as a legal entity
- Appointment, tenure and terms of engagement of the Commissioner of Police and Deputy Commissioners of Police
- Explanation of the functions of the Commissioner
- Codifying the relationship between the Commissioner and Minister
- Accountability arrangements, including processes for managing the performance of Police and the Commissioner
- Requiring production of specific accountability documents that may spell out minimum service standards and/or reporting requirements?
- Provisions allowing for an independent inquiry into issues of concern

**Conduct and integrity**

- An oath of office for all Police staff (vs. just a constabulary oath)?
- Provision for a Code of Conduct
- Reinforcing ethical use of force and other coercive powers
- Ways to support ethical behaviour by Police staff (eg. possible integrity checks using drug and alcohol testing)
- Vetting processes for Police staff generally, or in certain key roles
- Processes for dealing with poor performance or any misconduct, including clarity around remedial options

**Human resources**

- Identifying the range of duties/functions of different Police staff, as a way of exploring sworn/warranted sworn/non-sworn distinction
- Appointment, transfer and deployment provisions, incl. secondment of staff to and from other agencies, and to and from overseas posts
- Provision for lateral entry (possibly including senior police officers)
- Environment for setting pay and conditions for Police staff
- End-of-employment provisions and superannuation arrangements

**National security and emergencies**

- Defining Police's national security roles and responsibilities
- Clarifying Police's ability to access special powers in large-scale public emergencies (eg. a pandemic outbreak?)

**Police powers and offences**

- Explanation of how an escalating array of powers are assigned to different Police staff (eg. continued recognition of the common law office of constable vs. mandating the exercise of police powers solely through legislation)
- Creating a means by which Police can take advantage of new technological/forensic tools (perhaps with greater independent oversight of use of any new search and seizure powers?)
- Police-specific powers (eg. search of persons in Police custody, require name/address, etc.)
- Spelling out any special protections that apply to Police detainees (eg. "detox" cases?)
- Police-specific offences (eg. personation of a Police official, injuring Police dogs.)

**Administration**

- Confirming Police funding model (including any future ability to recover policing costs in special circumstances, eg. profit-making public events?)
- Confirming the power to make Regulations, and for the Commissioner to issue General Instructions
- Outlining the composition of Police (including ranks and positions in organisation?)
- Clear explanation of chain of command, and how authority is delegated in certain cases
- Protection of Police staff from liability when acting in the course of duty
- Management of Police assets (police station buildings, vehicle fleet, etc.)
- Protecting Police identity/branding (eg. use of Police crest and flag)
- Formal recognition of internal Police gazette (*Ten-One*)?

Formalising the scope of the review gave an opportunity to confirm some features of policing in New Zealand which are foundational, and are not up for re-examination. These cornerstone features were agreed to be:

- Continuing the model of a national police service which is centrally funded (vs. allowing for the emergence of regional or local police forces)
- Maintaining a largely unarmed police service (vs. officers routinely carrying guns)
- Upholding a tradition of constabulary independence (vs. allowing for the possibility of political direction on operational matters).

### Consultation on key topics

After validating the scope of the review, it became possible to commence the first of three phases of public consultation. Beginning in June 2006, a series of eight *Issues Papers* were released. These were designed to 'test the waters' and generate debate on key topics, so as to identify any general areas of

agreement around how they could be presented in later phases of the review. The topics selected for the *Issues Papers* were:

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

<http://www.policeact.govt.nz/consultation>

The *Issues Papers* were widely publicised and made available to a range of individuals, agencies and interest 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. The events brought together key thinkers from New Zealand and overseas to discuss policing principles, governance and accountability, community engagement, and the increasingly networked state of security and safety services.

<http://www.policeact.govt.nz/securing-the-future/proceedings.pdf>

Having opened up discussion, people were invited to provide feedback on the 100+ questions posed in the *Issues Papers*. In total, 226 separate responses were received from 132 different submitters. An analysis of the feedback received during this initial public consultation phase was published in February 2007. Entitled *Perspectives on policing*, the analysis provides an indication of the level of support for ideas put forward in the *Issues Papers*, and highlights common themes which emerged in the responses.

<http://www.policeact.govt.nz/perspectives-on-policing.pdf>

### **Research on public expectations**

To further inform the review, research was commissioned on what sort of police service New Zealanders expect and want, now and in the future. The study was conducted by an independent research company, UMR Research Ltd, in mid 2006. It was primarily qualitative research, with an emphasis on in-depth focus groups; although some Police-related questions were included in national household surveys, which allowed some quantitative findings to be incorporated. The full research findings run to 200+ pages. A more accessible summary report, highlighting the key findings of the research, was also developed. The UMR summary report was published in late March 2007.

<http://www.policeact.govt.nz/what-the-public-want.pdf>

### **Major discussion document**

This discussion paper builds on insights gained from feedback on the *Issues Papers*, the university-based events, public research, and also engagement with key stakeholders. *Policing Directions in New Zealand for the 21st Century* is the platform for the second and most far-reaching phase of public consultation during the Police Act Review. Submissions on the proposals set out in this discussion paper will be possible over a two month period, and a series of public meetings will be held to seek direct feedback.

## Upcoming milestones

Input from the public consultation process will be reflected in options put forward for Cabinet policy approvals later in the year. It is envisaged an exposure draft of a new Policing Bill will be available for consultation and any fine-tuning in December 2007. The government's intention is for the Bill to proceed through its parliamentary phases, and be enacted into law, by mid 2008.

## Where to learn more

Further information about the Police Act Review is available from a dedicated website ([www.policeact.govt.nz](http://www.policeact.govt.nz)). It hosts copies of the *Issues Papers*, *Perspectives on policing* analysis, UMR summary report, and other significant documents relating to the review.

## APPENDIX 2 OVERVIEW OF ISSUES FOR CONSULTATION

This discussion paper puts forward a number of issues for consultation. Views are invited on these issues, as well as comments on any other areas people feel should be covered by a new Policing Act.

The key issues highlighted in this paper are:

### PRINCIPLES

Legislation could establish principles to help guide how policing is done in New Zealand. Guiding principles for policing might include:

- acting impartially, so policing occurs free from improper influence or direction
- upholding appropriate standards of conduct, personal integrity and professionalism
- providing a national service, yet linking strongly with local people and communities
- emphasising that policing is a shared responsibility, with all members of the public being able to play a positive role in upholding the law, keeping the peace, preventing crime and crashes, and bringing offenders to justice.

*Question 1: Should a new Policing Act establish principles to help guide how policing is done in New Zealand? If so, what guiding principles would you like to see included?*

### EFFECTIVE POLICING

There are several ways legislation could support the effectiveness of New Zealand Police. Options which could be explored include:

- reinforcing clear command and control of Police
- improving the allocation of powers to members of Police
- sharing information to improve the chances of preventing re-offending
- supporting frontline policing by:
  - enabling faster identification of people being detained by police
  - ensuring searches can be conducted in police-controlled buildings
  - inviting views on a new power to move people away from danger or crime scenes
  - creating a statutory presumption that police use of minimal restraint (including, if appropriate, the option of handcuffing) is a reasonable use of force
  - offering more certainty for police taking incapacitated people into safe custody
- enabling modern policing tactics to fight serious and organised crime
- assisting with the recognition and status of members of Police
- upping penalties for impersonating police and unauthorised use of Police's name.

*Question 2: Do you endorse the legislative proposals to support effective policing? If not, how do you see legislation enhancing Police's effectiveness?*

### PEOPLE

New policing legislation could support the Police Commissioner's ability to employ a workforce with the range of skills, powers and protections needed to meet current and future demands. In particular, a new Policing Act could:

- confirm the Commissioner's commitment to act as a good employer
- strengthen approaches to pre-employment vetting
- provide a common basis for setting employment terms and conditions
- reinforce the unity of Police with a single *Code of Conduct* and solemn undertaking for all Police staff

- offer more options for empowering appropriate people to perform specific policing tasks
- clearly facilitate temporary secondments to and from Police
- acknowledge the importance of developing Police's leaders and managers
- expand the use of certification within Police to move towards a registration system, as part of a transition to a professional model for New Zealand Police.

*Question 3: Do you support the legislative proposals aimed at modernising Police's employment environment?*

## **PLATFORMS**

Legislation can also lay a platform for the oversight, management and daily running of Police. Specific measures which could be considered for a new Policing Act include:

- confirming the legal status and functions of New Zealand Police
- defining the process for settling the appointment, terms of engagement and tenure of the most senior Police personnel, as well as delegation arrangements
- clarifying the respective roles of the Commissioner of Police and Minister of Police, and the constitutional relationship between the Commissioner and the Minister
- offering more certainty about the Commissioner's position in charge of New Zealand's constabulary
- strengthening the Commissioner's accountability for the performance of Police
- widening the ability for arms-length inquiries to be held into any issues of concern
- enabling regulations to be issued under the new Act to address matters of detail
- balancing progress to a mainstream employment relations environment with assurances policing will not be impacted by industrial action, and clearly empowering the Commissioner to act decisively to shore up public confidence in Police.

*Question 4: Do you endorse the legislative proposals for the governance and administration of Police?*

## **THE FUTURE**

New legislation might also include elements which are only triggered or fully implemented at a future point in time. Opportunities identified for discussion are:

- using technology-neutral language to allow future advances in identification processes
- cautiously expanding options to use infringement notices for lower-level offences
- enabling the introduction of integrity testing, as a further support for ethical behaviour
- providing for the creation of a policing oversight and improvement agency
- mandating the recovery of costs for special policing services in certain circumstances.

*Question 5: In your view, how might a new Policing Act most sensibly anticipate the future?*

## **APPENDIX 3 HOW TO MAKE YOUR VIEWS KNOWN**

If you would like to register your views on proposals contained in this discussion paper, there are several ways you can do so.

### **OPTIONS**

#### **Online response**

Feedback can be given using a consultation form on the Police Act Review website [[www.policeact.govt.nz/consultation](http://www.policeact.govt.nz/consultation)].

#### **Written comments**

Written comments can also be made by email, fax, or post. Emails can be sent to: [policeact@police.govt.nz](mailto:policeact@police.govt.nz). Faxes can be sent to (04) 498 7400. Postal responses can be directed to:

Police Act Review  
Police National Headquarters  
P O Box 3017  
WELLINGTON

#### **Public meetings**

A series of public meetings will be held around the country during June and July 2007 to seek feedback on the paper, and answer any queries people have about the proposals for new policing legislation. Views expressed during these public meetings will be summarised. This will help to inform subsequent work on the new Policing Act.

### **TIMEFRAME**

To allow people's views to be taken into account when preparing advice to Cabinet later in the year, all responses to this discussion paper should be received by **31 July 2007**.

### **STATUS OF RESPONSES**

Consultation on this paper is a public process, covered by the Official Information Act 1982. If there is any material in your response you would like to be treated as confidential, please identify it.

### **QUESTIONS**

Finally, if you have any questions about this discussion paper, or the consultation process, these can be emailed to the Police Act Review Team ([policeact@police.govt.nz](mailto:policeact@police.govt.nz)); or you can speak to a Police Act Review Team member by telephoning (04) 474 9499.



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