

Office of the Minister of Police

Chair, Cabinet Social Wellbeing Committee

POLICING (VETTING SERVICE) AMENDMENT BILL: POLICY DECISIONS

Proposal

1. This paper seeks agreement to establish a statutory framework for the Police Vetting Service, by amending the Policing Act 2008 and its associated regulations.

Relationship to Government priorities

2. This paper contributes to the Government's priority of "Improving the well-being of New Zealanders and their families" by supporting safer communities.

Executive Summary

3. The Police Vetting Service is a key contributor to the wellbeing of New Zealanders. Its main purpose is to contribute to public safety (particularly the protection of vulnerable members of society) and national security, by providing Police vets (vetting information) for employers and others to assess the suitability of individuals (vetting subjects) for roles where safety and security considerations apply. A Police vet comprises criminal conviction history and relevant and substantiated non-conviction information, if any.
4. This paper proposes the introduction of a Policing (Vetting Service) Amendment Bill (the Bill) to create a statutory framework for the Police Vetting Service, through an amendment to the Policing Act 2008 (the Act) and associated regulations. Statutory provisions will outline who can access the Police Vetting Service, what information may be considered as part of a Police vet, what information may be released or withheld, and also set out the legal responsibilities of the different parties.
5. It is proposed that the Bill will come into force in two stages:
 - 5.1. **Stage one coming into force on commencement:** the statutory framework and provisions enabling the Police Vetting Service to continue operating principally in its existing form in relation to agencies;
 - 5.2. **Stage two coming into force by Order in Council in 2022 or 2023:** provisions relating to a vetting subject's option to view a Police vet and consent prior to its release, and direct access by individual vetting subjects to the Police Vetting Service, including sharing Police vets with prospective employers.
6. This phased commencement will enable Police to secure funding to develop an online delegated authority system under regulations, amend the Policing

(Cost Recovery) Regulations 2017, and develop new systems and capability to support the enhanced access and associated features.

7. A Bill was on the 2019 Legislation Programme with a priority of category 4 (to be referred to select committee in 2019). I have sought further time on the 2020 Legislation Programme for the Bill to be referred to Select Committee in 2020.
8. Stage two proposals have significant financial implications. They cannot be implemented without additional funding for systems development, including information technology changes, and capacity building. Consideration is being given to identifying appropriate funding sources for these proposals, including through the 2021 or 2022 Budget process and through amendments to the Policing (Cost Recovery) Regulations 2017 to recover costs of the new services from its users.

Background

9. Police carries out vetting as an administrative function under section 9 of the Act (Functions of Police). There are no specific provisions on the Police Vetting Service or Police vetting.¹
10. The Police Vetting Service has undergone significant growth and change since it was established in 2000, with demand for its services increasing each year. There are currently more than 13,000 agencies approved to access the Police Vetting Service and more than 600,000 vetting requests are received each year.
11. A Police-initiated 2016 joint review of the Police Vetting Service by the Independent Police Conduct Authority (IPCA) and the Office of the Privacy Commissioner (OPC) found that a lack of legal and policy direction for the Police Vetting Service created uncertainties and legal risk for both Police and vetting service users.
12. The report recommended that a statutory framework be established for the Police Vetting Service. In response, Police produced a document outlining the proposals for a statutory framework for public consultation.
13. On 2 May 2018, the Cabinet Social Wellbeing Committee (SWC):
 - 13.1. agreed to the release of the document *Legislation for the New Zealand Police Vetting Service* for public consultation for two months from May to July 2018;
 - 13.2. noted that, following an analysis of submissions on the public consultation document, the Minister of Police intends to report to SWC with final recommendations for legislation for the New Zealand Police Vetting Service in October 2018 [SWC-18-MIN-0043 refers].

¹ Section 79B of the Act refers to vetting as an example of a demand service Police provides that may be subject to cost recovery.

14. In July 2018, 76 submissions were received from a cross-section of agencies and individuals. I agreed to an extension of the report-back timeframe to SWC to allow officials time to properly analyse the complex information and issues raised.

What is a Police vet?

15. A Police vet is a response from the Police Vetting Service to a vetting request by an approved agency that has the consent of the vetting subject. Police vets are generally required or obtained for three purposes:
- 15.1. **to contribute to public safety** - enables an employer to assess the suitability of an individual for roles that involve working with children or young persons or with other vulnerable members of society;
 - 15.2. **to contribute to national security** - assists government and other agencies to assess the suitability of persons in positions of trust, in specified fields of endeavour, or for New Zealand immigration requirements;
 - 15.3. **as a statutory or regulatory requirement** - approximately 12 statutes require a Police vet as part of good character assessments for registration for professions, or where a probity test applies.
16. A Police vet comprises any criminal conviction history of the vetting subject, and any non-conviction information held by Police that is relevant and substantiated.
17. Most vetting requests result in a clear Police vet, where Police hold no information on a vetting subject or no information relevant to the role or requirement for which the vet is sought.
18. Approximately 10% of Police vets require the Police Vetting Service to determine whether non-conviction information is relevant for the role or requirement for which the Police vet was sought and whether it should be released to the vetting requester.
19. Requests for information made without the consent of the vetting subject are not considered vetting requests. Such requests are processed outside of the vetting framework in accordance with the relevant statutory framework, such as the Official Information Act 1982 or the Privacy Act 1993.
20. For example, requests for information for national security clearance purposes by the New Zealand Security Intelligence Service (under section 121 of the Intelligence and Security Act 2017) fall outside the proposed legislative framework for the Police Vetting Service.

Establishing a statutory framework for Police vetting

21. The scale and potential impact on people affected by the Police Vetting Service warrants the need for strong legal direction, and clear consistent policy for Police.

22. I propose establishing a statutory framework for the Police Vetting Service in the Act and its associated regulations, through a Policing (Vetting Service) Amendment Bill. Statutory provisions will formalise the Police Vetting Service and guide decisions on who can access the Police Vetting Service, what information may be considered as part of a Police vet and what information may be released or withheld. The proposed legislation will also set out the legal responsibilities of the different parties; that is Police, vetting requesters, and vetting subjects.
23. The proposals do not simply codify the current consent-based approach to the Police Vetting Service. They will introduce, in time and subject to funding, a two-step consenting process. Vetting subjects will consent to a Police vet and its release to the vetting requester, as currently, or have the option to review the proposed Police vet before consenting to its release to the vetting requester.

The Bill will commence in two stages

24. Stage one will bring into force on enactment the statutory framework and provisions relating to approved and screening agencies, the requirement for consent to a Police vet, criteria for release and withholding information, review processes, maintaining the validity of a Police vet, indemnity and deregistration.
25. Stage two will bring into force by Order in Council in 2022 or 2023 proposals for vetting subjects to have an option to view the proposed Police vet and consent prior to its release, for individual vetting subjects to directly access the Police Vetting Service and the sharing of Police vets with prospective employers.

Stage two proposals have significant resource implications

26. Developing the systems, including information technology, to support these proposals will take approximately 12 to 18 months following Royal Assent, and is dependent on obtaining funding. Consideration is being given to identifying appropriate funding sources for these proposals, including through the 2021 or 2022 Budget process and through amendments to the Policing (Cost Recovery) Regulations 2017 to recover the cost of the new services from its users.

The Policing (Vetting Service) Amendment Bill - Stage One

The Bill will set out the purposes and functions of the Police Vetting Service

27. I propose that the purposes of the Police Vetting Service are set out in the Bill, reflecting the current Police Vetting Service purposes of contributing to public safety contributing to national security, and meeting statutory or regulatory requirements.
28. I propose that the functions of the Police Vetting Service are set out in the Bill so that the scope of its role is clearly identifiable. The functions would include:

- 28.1. determining who has access to the Police Vetting Service;
- 28.2. processing vetting requests;
- 28.3. reviewing Police vets;
- 28.4. maintaining the validity of a Police vet.

I propose to broaden access to the Police Vetting Service

29. Currently, only approved agencies are able to access the Police Vetting Service to request a Police vet. I propose that access is extended to screening agencies in stage one and to individuals in stage two.

All vetting requests will have to meet specified criteria

30. The Police Vetting Service will only accept a vetting request from an approved agency. Vetting requests will only be accepted if the role or requirement for which the Police vet is sought fits within one of the purposes of the Police Vetting Service.
31. I propose that all agencies, whether in the public or private sector, in New Zealand or offshore, will have to meet specified statutory criteria before becoming an approved agency.
32. As currently, all agencies will be required to be 'approved' by the Police Vetting Service before a vetting request can be submitted.
33. New Zealand agencies will be required to have a function that involves community safety or national security, or having a legislative or other obligation to obtain a Police vet.
34. Offshore agencies, including Australian agencies subject to a Memorandum of Understanding,² will be required to meet the same criteria to be an 'approved agency' as a New Zealand agency does. Offshore agencies will also have to demonstrate that they are subject to legislation equivalent to New Zealand's, relating to the protection of an individual's right to privacy.³
35. I propose that the Commissioner of Police has the discretion to grant an agency that does not meet the above criteria, 'approved agency' status. The discretion is important to provide flexibility to enable Police vetting in circumstances that are not yet foreseen.

Screening agencies will also be able to be vetting requesters

36. I propose that the Bill extends access to the Police Vetting Service to allow screening agencies to be vetting requesters. A screening agency is an approved agency that makes an assessment of the suitability of a vetting

² Australian agency vetting requests are governed by a 2014 Memorandum of Understanding between the Government of Australia and the Government of New Zealand. The MOU establishes a framework for the exchange of criminal history information between Australia and New Zealand.

³ These criteria reflect existing criteria for offshore agencies.

subject on behalf of one or more agencies that could be approved agencies in their own right.

37. Screening agencies do not pass on the Police vet to the prospective employer. Instead, they consider the Police vet and any other information they may have obtained, assess the vetting subject's suitability for the role and either approve or decline their suitability for the role. For example, CVCheck carries out safety checks of lead maternity carers, owner-operator general practitioners and dentists on behalf of the Ministry of Health.
38. The use of screening agencies avoids disclosing sensitive information from a Police vet to organisations or, in time, individuals who may have a close relationship with the vetting subject. They are particularly useful for the vetting of individuals in small communities.

Consent will still be required for vetting requests

39. I propose establishing a statutory requirement for Police to obtain the vetting subject's consent before a Police vet can be undertaken and released to the vetting requester. These requirements serve to protect the privacy of the vetting subject and are consistent with current practices and the Privacy Act 1993. Requests for Police vets without consent will not be processed.

Vetting of young people

40. At present, the Police Vetting Service accepts vetting requests for individuals aged 10 years and older. I do not consider there is a strong policy justification or operational need for vetting 10 to 13 year olds. Accordingly, I propose that 14 years of age is the minimum age at which an individual can be subject to a Police vet. This is consistent with the definition of a young person in the Oranga Tamariki Act 1989.
41. For vetting subjects aged under 16 years, I propose that consent of a parent or guardian is obtained before a Police vet can be undertaken, and before the Police vet can be released. The requirement for parental consent is similar to that required for the issuing of a child's passport.

The Bill will clarify what information is released in a Police vet

42. The IPCA and OPC joint review and public submissions called for greater clarity about what information can be considered and released in a Police vet, particularly with regard to non-conviction information. I propose that the Bill sets out criteria for determining what information can be released in a Police vet.

Criminal convictions

43. Presently, a vetting subject's criminal conviction history,⁴ if any, is always released in a Police vet, subject to the Criminal Records (Clean Slate) Act 2004 (Clean Slate scheme) and non-publication orders. This same information

⁴ An individual's criminal history comprises criminal and traffic convictions.

is also available directly from the Ministry of Justice with the individual's consent. I do not propose to change this approach.

The release of non-conviction information will be subject to defined tests

44. Police may hold information such as warnings, diversions, charges, warrants to arrest, records of Police incident attendance, and intelligence information that may not have been tested by the Courts. Police may also hold information that has been tested in the Courts but did not result in a conviction, such as acquittals, discharges without conviction and protection orders.
45. Currently, non-conviction information must meet a relevance and substantiation test before it is released as part of a Police vet.
 - 45.1. The information must be relevant to the risk that the vetting subject may pose in the role for which they are being vetted, or in relation to the requirement they are seeking to fulfil.
 - 45.2. Substantiation involves the consideration of matters such as the accuracy, veracity and integrity of the information, which may be determined by way of one or more reliable sources. The level of substantiation required will depend on the role of the vetting subject and the associated level of risk
46. I propose that Police must apply a statutory test to determine whether to release suppressed information, youth justice information or mental health and substance abuse information as part of a Police vet. Comprehensive guidelines will be developed by Police to assist decision-makers.
47. The proposed tests for the release of various types of information in a Police vet are set out in Table One, and outlined in more detail in Appendix 1 to this paper.

Table One: Proposed tests for the release of information in a Police vet

Type of information	Test for release
Criminal conviction history (not subject to Clean Slate or to prohibition on publication)	Always released.
Non-conviction information (not subject to prohibition on publication)	Released if relevant and substantiated.
Suppressed information (prohibition on publication)	Released if relevant and substantiated to a degree that the vetting requester has an objectively established genuine need to know. ⁵
Youth Justice information (prohibition on publication)	Released if relevant and substantiated to a degree that the vetting requester has an objectively established genuine need to know (this would be a higher threshold than for cases involving adults).
Mental health information	Released if relevant and substantiated to a degree that the vetting

⁵ *ASG v Hayne* [2017] 1 NZLR 777.

and substance abuse information	requester has an objectively established genuine need to know. Evidence of a link between the vetting subject's mental health or substance abuse information and either relevant offending behaviour or risk to others would be required.
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Some information may be withheld from the vetting subject

48. Whilst vetting subjects can request to see their information, on occasion it is necessary to withhold information. This is only in exceptional circumstances where releasing the information in a Police vet to the vetting subject would likely place vulnerable people, criminal investigations, privacy or national security at significant risk.
49. I propose that the Bill provides for Police to release in a Police vet relevant information that both Police and the vetting requester are required to keep confidential and would be unavailable to the vetting subject.
50. This approach will involve balancing the competing interests of the vetting subject, such as the presumption of innocence and their right to natural justice (in particular, being aware that their Police vet holds prejudicial information), with the risk to vulnerable people or national security if relevant information is withheld from a Police vet. I consider that these latter considerations would take precedence.

Vetting subjects will be able to request an administrative review of a Police vet

51. I propose that the Bill allows for an administrative review process within Police. Currently, vetting subjects can object to the information contained in a Police vet, but this usually occurs after the Police vet has been released.
52. Objections to the content of a Police vet are made for a range of reasons, including that the vetting subject considers the information is inaccurate, irrelevant, that the disclosure was unauthorised or there has been a significant time lapse since the event referred to in the Police vet. Objections are dealt with by senior vetting staff. Where necessary, complex cases are elevated to a Vetting Review Panel comprising senior staff from within Police.
53. Additionally, vetting subjects can also complain directly to the Privacy Commissioner or the IPCA if they wish to dispute the information in their Police vet. This seldom occurs, as most objections are resolved through the Police internal review processes. I propose to maintain access to these complaint processes, including the OPC as the appropriate regulatory body, to review decisions involving the release of personal information.

Some Police vets need to have their validity maintained

54. In limited circumstances, the Police Vetting Service maintains the validity of a Police vet over an extended period of time, where there is a statutory requirement.⁶

⁶ Section 27, Children's Act 2014. Children's Act Police vets are currently maintained for up to three years in line with re-vetting requirements in legislation.

- 55.** In practice, this means releasing a new Police vet to the vetting requester when new relevant and substantiated information comes to light.
- 56.** I propose that the Bill enables Police to maintain the validity of Police vets, where:
- 56.1. the vetting requester requests maintaining validity or there is a legislative requirement for maintaining validity;
 - 56.2. the vetting subject consents to maintaining validity;
 - 56.3. a point-in-time Police vet is not sufficient to protect the public from harm, uphold national security or to meet statutory or regulatory requirements; and
 - 56.4. the vetting subject is still employed or engaged in the role for which they were initially vetted or seeking employment, or is engaged in a similar role for which they were initially vetted.
- 57.** Maintaining validity will only be applicable for a maximum of five years, or shorter if stipulated by the vetting subject or vetting requester
- 58.** The proposal would not allow ‘monitoring’ of vetting subjects. Rather, information would only be released where the vetting subject has had a subsequent interaction with Police that is relevant to the role they are undertaking.
- 59.** In time and subject to funding, Police may extend this service on a more widespread basis than currently available so that efficiency gains could be realised by a wider group of agencies. Extending this service would require amendment to the Policing (Cost Recovery) Regulations 2017, as the current regulations do not cover this service. It would also require an online delegated authority system to enable vetting subjects to authorise the release of the new Police vet to the vetting requester.

Protection against certain actions

- 60.** I propose that the Bill provides a protection against court proceedings where Police release information in good faith as part of a Police vet, or where Police, in good faith, informs the vetting requester that the vetting subject has withdrawn consent.
- 61.** I consider it appropriate that in these situations, Police has equivalent protections as may apply under section 115 of the Privacy Act 1993 or section 48 of the Official Information Act 1982. These protections aim to promote greater transparency over governmental decision-making, and apply only where information releases are completed in good faith.
- 62.** Providing Police with a good faith indemnity balances the need to disclose information for public safety and national security objectives, with individual privacy rights.

63. There are two areas of risks where Police would require a broad 'good faith' indemnity, both of which relate to the release of non-conviction information where the vetting subject:
- 63.1. consents to the release of the Police vet, and where this information may be prejudicial; or
 - 63.2. does not consent to the release of the Police vet and Police notifies the vetting requester of this fact.
64. Under the current system, a vetting subject could take civil court proceedings against Police for releasing the vetting results, even after consenting to the disclosure of the Police vet. For example, this could arise if the vetting subject is not successful getting the role for which a Police vet was obtained.
65. Equally, a vetting subject may withdraw consent to release the Police vet. I recognise that merely informing vetting requesters that the vetting subject has withdrawn consent could have prejudicial effects. Vetting requesters could, and are likely to, infer from the vetting subject's withdrawn consent that adverse information exists, even when no information is actually released. As Police is obliged to respond to vetting requesters, even if only to communicate the vetting subject has withdrawn consent, a Police indemnity is appropriate.
66. Importantly, a 'good faith' indemnity would not remove the current complaint mechanisms. Under the Police Vetting legislation, vetting subjects will continue to have the right to a Police administrative review. They will also retain the right to make a complaint to the Privacy Commissioner and have those complaints investigated and, where possible, settled in accordance with the Privacy Act 1993.

De-registration by professional organisations due to misconduct

67. I propose that the Bill enables professional organisations to voluntarily disclose to the Police Vetting Service that a member of their organisation, who they have previously vetted, has been de-registered due to misconduct.
68. Where Police holds de-registration information, vetting requesters will be notified of it, if relevant to the role or in relation to the requirement for which a person is being vetted.

The Policing (Vetting Service) Amendment Bill – Stage Two

Stage two proposals are subject to funding

69. Implementation of stage two proposals to allow individuals to view a Police vet prior to release requires the development of an online delegated authority system with related processes, authorised by regulations and the use of verified digital identities by vetting subjects.

70. Developing the systems to support these processes (which would be necessary to ensure that timeliness is not adversely affected) would take approximately 12 to 18 months from the date that funding and resources are made available. Timeliness of Police vetting, and any efficiency gains of these proposals, will only be realised when an online delegated authority system and supporting systems are developed.
71. I propose to insert a regulation-making power into the Act to enable regulations to be made setting out the parameters of an online delegated authority system.

Proposals to provide greater benefits and safeguards for individuals

Vetting subjects will have the option to view a Police vet prior to its release

72. I propose that the Police Vetting Service move to a two-step consent-based service. This will enable a vetting subject to consent to a Police vet being produced and released to the vetting requester, as they do now, or have the option to view their proposed Police vet prior to its release and consent (or otherwise) to its release to a vetting requester.
73. An option to view their Police vet provides vetting subjects with greater control over the release of their information. Vetting subjects could seek a review, consent to the release, proactively disclose the information to the vetting requester themselves, or withdraw their consent to release. If consent is withdrawn, the vetting requester would be advised that consent to release the Police vet has been withdrawn.

Sharing a Police vet will reduce duplication and create other efficiencies

74. At present, a Police vet cannot be shared with other prospective vetting requesters who may want the same information for a similar purpose.
75. Duplication of Police vets increases demand on the Police Vetting Service for Police vets, delays employment decisions as each employer has to wait for the new Police vet to be processed, and increases costs for employers who have to pay for each Police vet they request.
76. I propose that the Bill allows a Police vet to be accessed by more than one agency or individual, in cases where the vetting subject is intending to undertake the same or a very similar role, for different agencies or individuals, and the consent of the vetting subject is obtained.
77. Vetting requesters would not be allowed to share vets directly with other vetting requesters. This would mitigate risks to the validity of the Police vet, such as through out-of-date information being shared, or information being tampered with. Sharing would only occur electronically through an online delegated authority system, which enables vetting subjects to add and remove employers' authority to view their vet online.
78. Police estimates that if individuals were able to authorise the sharing of their Police vet, the duplication of vetting requests would be reduced by

approximately 90,000 requests per year (15% of all vetting requests). It could also contribute to the wider New Zealand economy by enabling employers to employ or engage people in work or in the voluntary sector more quickly, with reduced costs.

Individuals would also be able to directly access the Police Vetting Service

- 79. I propose that, in time and subject to funding, individuals will be able to directly access the Police Vetting Service. Access would only be where the role or requirement for which the Police vet is being sought relates to the purpose of the Police Vetting Service.
- 80. Individuals would be allowed to obtain a Police vet on themselves to share with prospective clients for the purpose of obtaining work. It would also extend the availability of Police vetting to self-employed people, such as private music teachers and self-employed child carers or disability caregivers. These people are currently not able to access the Police Vetting Service, yet they may pose a potential risk to vulnerable people.
- 81. Individuals would not be able to request a Police vet on any other person.

Policing (Cost Recovery) Regulations would have to be amended

- 82. Police vetting operates on a cost recovery basis. The Policing (Cost Recovery) Regulations 2017 will require amending prior to the stage two proposals commencing to provide for recovery of the costs of the new stage two services and maintaining validity on a wider basis than currently occurs.

Financial Implications

- 83. Stage one proposals largely codify current practice and in this respect, have no immediate financial implications.
- 84. The legislation will enable the future implementation of new processes and services in stage two. However, the Bill will not create a commitment to implementing them.
- 85. A business case is required to identify the cost of the stage two proposals, but early indications are estimated that one-off funding of approximately \$2-3 million will be required. This funding is required to develop systems (particularly information technology), processes and services to implement the stage two proposals. Consideration is being given to identifying appropriate funding pools for these proposals, including through the 2021 or 2022 Budget process.
- 86. The day-to-day cost of new services would be met through cost recovery. Further analysis and cost modelling is required before any changes or increase to fees can be quantified. Any increase in the cost of a Police vet will affect all agencies that use the Police Vetting Service, including government agencies. However, Police anticipates that some cost increases may be offset by reductions in the frequency of vetting requests submitted, that would be

realised through the implementation of new provisions, such as maintaining validity of a Police vet.

Legislative Implications

87. A bill is required to implement the proposals in this paper. If agreed, the proposals in this paper will form the basis of instructions to the Parliamentary Counsel Office to prepare a Policing (Vetting Service) Amendment Bill.
88. Regulations will be required to implement some of the proposals in this paper. A paper will be prepared for Cabinet consideration seeking agreement to these regulations, after decisions are made about funding and implementation of proposals relating to individuals' access to the Police Vetting Services.
89. Section 6 of the Act ensures that the proposed Amendment Bill will bind the Crown.

Impact Analysis

Regulatory Impact Statement

90. The impact analysis requirements apply to the proposals in this paper. A Regulatory Impact Assessment has been prepared and is attached.
91. Treasury has directed that the following statement be included in this paper:

*A review panel with representatives from the Treasury Regulatory Quality Team and the Ministry of Business, Innovation and Employment has reviewed the Regulatory Impact Assessment Legislation for the Police Vetting Service produced by the New Zealand Police and dated March 2019. The review team considers that it **meets** the Quality Assurance criteria. We note that the proposal seeks to establish a statutory framework for the Service that will enable the implementation of (amongst other things) individual access to the Service, and a two-step consent process. This legislation would not involve a commitment to these enhancements in the absence of a case being made for additional funding.*

Population Implications

Implications for Māori

92. The Ministry of Social Development (MSD) raised concerns that information Police holds on people that has not been substantiated in court could have an adverse effect upon Māori seeking employment. The concern is based on evidence suggesting that Māori are negatively affected by systemic bias in the Justice system. To help mitigate this concern, MSD would like to see the proposed legislation strike a balance between public safety, national security and safeguarding the rights of people subject to the legislation.
93. Police acknowledges that any exercise of decision-making carries risk of unconscious bias. However, Police only releases non-conviction information in a Police vet that is relevant to the risk that the vetting subject may pose in the role, or in relation to the requirement for which they are being vetted, and

where this information is substantiated. I have proposed that these tests be included in the Bill.

94. The requirement to obtain the consent of the vetting subject before a Police vet can be released, and the option, in time and subject to funding, for a vetting subject to view their Police vet before consenting to its release to a vetting requester, will also safeguard the rights of individuals being vetted.

Disability Perspective

95. Disabled people are an identified vulnerable population group and are high users of government-funded disability support services. Most service providers require Police vetting for employees. Increasingly, disabled people and their families are using personal budgets or individualised funding to employ caregivers or support workers to assist them in their homes and communities. The proposed legislative framework implemented in stage two would enable individuals employing their own staff to directly access the Police Vetting Service. For example, a caregiver could request a Police vet on themselves and authorise it to be shared with a prospective employer.

Human Rights

96. The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Consultation

Public Consultation

97. Public consultation on legislation for the Police Vetting Service was undertaken between 11 May and 13 July 2018. Police received 76 submissions from a cross-section of public and private sector agencies and individuals. The OPC and the IPCA provided a joint submission. The submissions have informed the current proposals. A table summarising public feedback on the proposals is attached at Appendix 2.
98. There was overwhelming public and agency support to establish a statutory framework for Police vetting (92%). Key themes from submitters were:
- 98.1. the need for greater clarity, certainty and consistency in how Police vets are processed and what information can be released;
 - 98.2. the unnecessary duplication of Police vets for similar roles and the associated costs and time delays; and
 - 98.3. there could be efficiencies through individuals obtaining a Police vet on themselves and sharing it with prospective employers.

Agency Consultation

99. The Treasury; State Services Commission; Ministry of Education; Ministry of Justice; Ministry of Social Development; Office for Disability Issues; Oranga

Tamariki – Ministry for Children; Ministry of Health; Ministry of Business, Innovation and Employment; Ministry for Women; Department of Corrections; Department of Internal Affairs; Ministry of Transport; Te Puni Kōkiri; New Zealand Security Intelligence Service; New Zealand Defence Force; the Department of the Prime Minister and Cabinet; the Office of the Privacy Commissioner; Sport New Zealand; New Zealand Transport Agency; the Independent Police Conduct Authority; Civil Aviation Authority of New Zealand; and Maritime New Zealand were consulted on this paper.

- 100.** The OPC and the IPCA do not support Police having an indemnity for Police releasing information in a Police vet in good faith.

OPC and IPCA comments

- 101.** The OPC provided the following comment for inclusion in this paper:

‘The Privacy Commissioner supports the establishment of a statutory framework following the recommendations made by the Independent Police Conduct Authority and Privacy Commissioner in their joint review of the Police Vetting Service.

The Commissioner does not support the proposal that Police should be indemnified from court proceedings for any disclosures of vetting information. Significant harms can result from the disclosure of untested, prejudicial, inaccurate or misleading information. For example, if Police mistakenly identify an individual as a suspected paedophile and inform a prospective employer, this could result in serious ramifications not just for that individual’s employment and reputation, but also for the security and wellbeing of their family. If Police has failed to take adequate steps to be satisfied of the veracity and reliability of prejudicial information, it should be liable for the harm caused to the individual as a result. It should be borne in mind that we are here describing allegations or suspicions that Police might have on file that have never been tested in a Court.

Retaining an ability for individuals to bring claims against Police for wrongful disclosures incentivises Police to maintain rigorous standards. The Commissioner has significant concerns about the incentives that the removal of any Police liability would create.’

- 102.** The IPCA provided the following comment for inclusion in this paper:

‘The IPCA agrees with the OPC that the Bill should not include an indemnity provision for releases made in good faith. It considers that, if a person suffers loss as a result of the wrongful and unreasonable release of personal information, they ought to be able to access such remedies as are available through the Courts. It considers that the parallels drawn by the Police with the immunity in the section 48 of the Official Information Act and section 115 of the Privacy Act 1993 are inapt. The former is concerned with legislation that presumptively requires release. The latter provides an immunity only for releases made pursuant to principle 6, which provides immunity only in

respect of releases to the individual to whom the information relates rather than third parties.'

Response to the OPC and IPCA's comments

- 103.** In light of the OPC and IPCA concerns, I have again considered whether the proposal to provide Police with indemnity from court proceedings is required. I believe that indemnity protection is warranted for disclosure in a Police vet issued in good faith. Regarding veracity and reliability of information, it is important to note that not all information held by Police is released in a Police vet. Information has to meet tests of relevance and substantiation before it can be released. I have proposed that the new vetting legislation will include these tests.
- 104.** It is appropriate that Police has equivalent protections as currently apply under section 115 of the Privacy Act (or section 48 of the Official Information Act), including the proviso that the indemnity would only apply where releases are completed in good faith. I consider that a similar 'good faith' indemnity is required to provide a level of protection and confidence in a process that is an important public safety service.
- 105.** The proposed indemnity would not protect Police from liability where information is not released in good faith. Further, vetting subjects will continue to have access to internal review processes and the right to make a complaint to the Privacy Commissioner and the IPCA. The implementation of stage two proposals will provide further safeguards to protect individuals through an option to view the Police vet and a second stage of consent.

Communications

- 106.** At this stage, no publicity is planned. I intend to issue a media release following the Bill's introduction to the House.

Proactive Release

- 107.** I intend to proactively release this paper following the Bill's introduction to the House, to inform public submissions during the select committee process.

Recommendations

- 108.** The Minister of Police recommends that the Committee:
1. **note** that there is currently no statutory framework to govern Police vetting;
 2. **agree** to establish a statutory framework for the Police Vetting Service by way of an amendment to the Policing Act 2008;

Stage one proposals

Purpose and Functions

3. **agree** to a purpose statement for the Police Vetting Service, based on public safety (particularly the protection of vulnerable members of society), national security, or meeting statutory or regulatory requirements;
4. **agree** to setting out the functions of the Police Vetting Service, including determining who has access to the Service, processing vetting requests, reviewing Police vets, and maintaining the validity of a Police vet;

Access to the Police Vetting Service

5. **agree** to the condition that vetting requests only be accepted if the role or requirement for which the Police vet is being sought relates to the purpose of the Police Vetting Service;
6. **agree** that agencies must meet specified criteria to access the Police Vetting Service;
7. **agree** that the Commissioner of Police has the discretion to grant an agency that does not meet the required criteria, 'approved agency' status;
8. **agree** to provide for screening agencies to be vetting requesters;

Consent to a Police vet

9. **agree** to the requirement to obtain the consent of the vetting subject before a Police vet can be undertaken and can be released to the vetting requester;
10. **agree** that the minimum age at which an individual can be subject to a Police vet is 14 years of age;
11. **agree** to the requirement to obtain the consent of a parent or guardian before a Police vet can be undertaken, and before a Police vet can be released, on an individual under 16 years of age;

Limitations on release of information in a Police vet

12. **agree** that Police must meet specified criteria when determining what information can be released in a Police vet, which will vary depending on the nature of the information;
13. **note** that the proposed legislation does not limit or affect a vetting subject's rights under the Criminal Records (Clean Slate) Act 2004 scheme;
14. **agree** to provide for Police to release relevant information to the vetting requester that both Police and the vetting requester are required to keep confidential and unavailable to the vetting subject, but only in exceptional circumstances and where withholding the information would be likely to put vulnerable people, criminal investigations, privacy or national security at significant risk;

Review processes

15. **agree** to provide for an administrative review of Police vetting processes within Police;
16. **note** that the Office of the Privacy Commissioner would maintain its jurisdiction to investigate complaints about the Police Vetting Service relating to privacy;

Maintaining the validity of Police vet

17. **agree** to provide for Police to maintain the validity of Police vets;

Protection against certain actions

18. **agree** to provide a protection against court proceedings being taken against Police with regard to the information contained and subsequently released in a Police vet, where that information is made available in good faith;

De-registration by professional organisations due to misconduct

19. **agree** to provide for professional organisations to voluntarily disclose to the Police Vetting Service that a member of their organisation, who they have previously vetted, has been de-registered due to misconduct;

Stage two proposals

Option to view Police vet prior to release

20. **agree**, in time and subject to funding, to a vetting subject having the option to view their Police vet prior to consenting to its release;

Ability to share a Police vet

21. **agree**, in time and subject to funding, to provide for a Police vet to be shared with more than one agency or individual, with the consent of the vetting subject, in cases where the vetting subject is intending to undertake the same or a very similar role for different agencies or individuals;

Individuals' access to Police Vetting Service

22. **agree**, in time and subject to funding, enable direct access by individuals to the Police Vetting Service to obtain a Police vet on themselves;

Maintaining validity on a wider basis

23. **agree**, in time and subject to funding, to provide for Police to maintain the validity of Police vets on a more widespread basis than at present;

Legislative implications

24. **agree** that the Policing (Vetting Service) Amendment Bill contains regulation-making powers to enable its implementation;
25. **note** that section 6 of the Policing Act 2008 ensures that the proposed Policing (Vetting Service) Amendment Bill will bind the Crown;

26. **invite** the New Zealand Police to issue drafting instructions to Parliamentary Counsel Office to prepare new legislation that gives effect to the above policy directions;
27. **note** that the Policing (Vetting Service) Amendment Bill has a Category 4 priority in the 2020 Legislation Programme;
28. **authorise** the Minister of Police to make decisions on detail and make changes consistent with the policy intent, on any issues that arise during the drafting process for legislation for the Police Vetting Service;
29. **invite** the Minister of Police to report back to the Cabinet Legislation Committee with a draft Policing (Vetting Service) Amendment Bill;
30. **agree** that the implementation of the new processes and services to support individual access to the Police Vetting Service is subject to additional funding being obtained by Police to develop systems to support the proposals;
31. **note** that the Bill will not create a commitment to implementing the stage two processes and services without additional funding;

Publicity

32. **note** that announcements around the proposals in this paper will be made closer to the introduction of the proposed Policing (Vetting Service) Amendment Bill and I will lead for the Government.

Authorised for lodgement

Hon Stuart Nash
Minister of Police

Appendix 1

Limitations on the release of certain information in a Police vet

Certain information may not always be suitable for release in a Police vet, even if held by Police. This may be information that is highly sensitive to the vetting subject or would breach a Court order (such as a non-publication order or a statutory provision). For example, information that has been suppressed by the Courts, youth justice information, and information about an individual's mental health or substance abuse are by their nature sensitive and are dealt with differently to other information. However, there are circumstances when it may be appropriate to release such information in a Police vet.

Suppressed information

Suppressed information can be released in a Police vet where it is relevant to the role or requirement for which the vetting subject is being vetted, and where there is a strong case for releasing it to protect vulnerable individuals from harm. For example, releasing suppressed information relating to a charge, conviction or acquittal for child sex offending, where the role for which the vetting subject is being vetted involves contact with children.

Disclosure in a Police vet is especially justified where the defendant's name is suppressed, and there is risk to children or vulnerable people. In these circumstances, the agency requesting the Police vet should have access to this information.

Youth justice information

There is currently a strong presumption against the release of youth justice information in a Police vet. This aligns with the general objectives of the youth justice system, such as enabling youth offenders to have a fresh start, the closed nature of the Youth Court, and the provisions of automatic name suppression in the Youth Court.

Mental health and substance abuse information

Mental health information is only released if it is relevant to risk, accurate and reliable (that is, substantiated) and where there is evidence of a link to relevant offending behaviour or likelihood of risk to others. For example, information suggesting that an individual's mental health is a factor in violent or other types of offending behaviour may be released.

Similarly, information about a vetting subject's drug or alcohol abuse that comes to the attention of Police and results in a warning or a caution may be released in a Police vet. Information relevant to the risk that the vetting subject may pose to the role for which they are being vetted would be released where there is evidence of a link to relevant offending behaviour or likelihood of risk to others. For example, in releasing a warning or caution for possession of drugs, consideration would be given to the degree that the possession could elevate the risk to vulnerable people in the care of the vetting subject.

Appendix 2

Summary of Submissions on New Zealand Police Public Consultation Document: Legislation for the New Zealand Police Vetting Service

	Proposal	Submitters' comments
2	Agree to establish a statutory framework for the Police Vetting Service by way of an amendment to the Policing Act 2008.	92% of submitters who responded supported this proposal for greater clarity, certainty, transparency, and consistency.
3	Agree to a purpose statement for the Police Vetting Service, which would be based on contributing to public safety (particularly the protection of vulnerable members of society), contributing to national security, and meeting statutory or regulatory requirements.	All submitters who responded supported public safety as the primary purpose, with some explicitly supporting national security.
4	Agree to setting out the functions of the Police Vetting Service, which would include determining who has access to the Service, processing vetting requests, reviewing Police vets, and maintaining the validity of a Police vet.	83% of submitters who responded supported reflecting the functions of the Police Vetting Service in legislation as this would support and provide the legal framework for the Police Vetting Service.
5	Agree to the condition that vetting requests only be accepted if the role or requirement for which the Police vet is being sought relates to the purpose of the Police Vetting Service.	82% of submitters who responded supported this proposal to prevent frivolous or 'out of interest' requests, reduce unnecessary and inappropriate vetting, and minimise unnecessary delays.
6	Agree that agencies must meet specified criteria to access the Police Vetting Service, which would focus on public safety, national security, and statutory or regulatory requirements; and to require offshore agencies to be subject to similar legal privacy protections as required in New Zealand.	54% of submitters who responded supported some or all of the current criteria for agencies to access the Police Vetting Service. A small group of submitters were in support of broadening the criteria such as allowing <i>any</i> employer to access the Police Vetting Service.
7	Agree that the Commissioner of Police has the discretion to grant an agency that does not meet the required criteria, 'approved agency' status.	71% of submitters who responded supported the discretion. Some submitters recognised that there could be circumstances not provided for in the criteria that would require a Police vet.
8	Agree to provide for screening agencies to be vetting requesters.	71% of submitters who responded supported the use of screening

		agencies to improve privacy, reduce processing time, and minimise duplication.
9	Agree to the requirement to obtain the consent of the vetting subject before a Police vet can be undertaken and can be released.	87% of submitters who responded supported this proposal, noting that this is consistent with the Privacy Act and basic human rights. 61% of submitters who responded did not see it necessary to have a distinction between consent to process the vetting request, and consent to release the Police vet. Out of those submitters, some commented that a distinction would add extra time and cost to the vetting process. However, submitters who supported a two-step consent process felt it necessary for the vetting subject to understand what information they are consenting to being released.
10	Agree that the minimum age at which an individual can be subject to a Police vet is 14 years of age.	67% of submitters who responded supported the age of 10 as the minimum age. One submitter commented that this was a sensible benchmark for vetting eligibility, as the age of 10 is the age of criminal responsibility. However, some submitters, including the IPCA and the OPC, supported 14 years as a more appropriate age as this is the minimum age for some child care roles such as volunteers for out of school care.
11	Agree to the requirement to obtain the consent of a parent or guardian before a Police vet can be undertaken, and before a Police vet can be released, on an individual under 16 years of age.	Most submitters said young people aged 16 and over should be able to consent themselves. However, some submitters suggested that parents or guardians should also be required to co-sign for young people under the age of 18.
12	Agree that Police must meet specified criteria when determining what information can be released in a Police vet, which will vary depending on whether it is criminal conviction or non-conviction information, as well as whether it is suppressed information, youth justice information, or mental health or substance abuse information.	96% of submitters who responded supported a general requirement that information released in a Police vet be relevant and substantiated, with greater clarity about information that can be considered and released in a Police vet, in particular non-conviction information.
14	Agree to provide for Police to release relevant information to the vetting requester that both Police and the vetting	A slim majority of submitters who responded (51%) supported some information released in a Police vet

	requester are required to keep confidential and unavailable to the vetting subject, but only in exceptional circumstances and where withholding the information would be likely to put vulnerable people or national security at significant risk.	being unavailable to the vetting subject, for reasons of public safety, national security, and avoiding prejudice to the maintenance of the law (for example, where disclosure to the vetting subject could be detrimental to an active investigation).
15	Agree to provide for an administrative review of Police vets within Police.	96% of submitters who responded supported the vetting subject being able to challenge a Police vet.
17	Agree to provide for Police to maintain the validity of Police vets.	90% of submitters who responded supported this proposal. Some submitters commented on the need for consent for maintaining validity, with prior notification before new information is disclosed.
19	Agree to provide for professional organisations to voluntarily disclose to the Police Vetting Service that a member of their organisation, who they have previously vetted, has been de-registered due to misconduct.	78% of submitters who responded supported the creation of a legal obligation for professional organisations to pass on de-registration information to the Police Vetting Service.
20	Agree to a vetting subject having the option to view their Police vet prior to consenting to its release.	Similarly to Recommendation 9, submitters who supported a two-step consent process commented that vetting subjects should understand what information they are consenting to being released.
21	Agree that the Bill will enable direct access by individuals to the Police Vetting Service to obtain a Police vet on themselves.	Out of the 81% of submitters who supported individuals having direct access to the Police Vetting Service, a large group supported individuals being able to request a Police vet on themselves for reasons such as reducing duplication of Police vets, facilitating multi-employer contract work, and speeding up the hiring of relief or casual staff.
22	Agree to provide for a Police vet to be shared with more than one agency or individual, with the consent of the vetting subject, in cases where the vetting subject is intending to undertake the same or a very similar role for different agencies or individuals.	Only two submitters said there were no circumstances to allow a Police vet to be shared. The key comment from submitters was that sharing Police vets would be appropriate where vetting subjects were doing the same role in the same type of organisation.
23	Agree to provide for Police to maintain the validity of Police vets on a more widespread basis.	As per Recommendation 17.