

New Policing Act

– a significant day in our history

The commencement of the Policing Act 2008 on 1 October will be remembered as a significant day in the history of New Zealand Police.

The new Act ushers in modern legislation, better equipping us to deal with the challenges of contemporary policing, both in New Zealand and offshore. It also introduces a modern employment framework.

There are a number of significant features in our new Act designed to deal with the here and now, but also to provide flexibility for the future. These are covered in more detail in the following pages of this special edition of Ten-One, however I want to highlight several important aspects.

For the first time ever, we acknowledge the importance of our partnerships in policing. This is a symbolic step to underscore the value we place on working with others to make New Zealand a safer place.

New powers are introduced for those at the frontline – such as the ability to take a suspect's particulars before summoning them, and at a location other than a Police station. And new offences are introduced, such as misusing the term 'Police'.

A new category of Police employee, known as an authorised officer, comes into effect. These staff will hold specific powers and enable me and future Commissioners to warrant them to carry out defined roles – such as jailers or escorts – without swearing them in as temporary or casual constables.

New identity and authority cards will be introduced to more firmly establish your identity and specify your authority to exercise policing powers. This extra clarity will benefit both staff and the public.

Among our governance and accountability arrangements, the Act clarifies the independence and impartiality of the office of constable – the foundation of our system of policing.

On the human resources front, our arrangements are modernised, better aligning them with the Employment Relations Act and State Sector Act.



PHOTO: NZ POLICE

I consider myself privileged to be the Commissioner of Police as this new Act has developed, and I now look forward to it coming into effect.

The introduction of the Policing Act is an exciting development for New Zealand Police, one that will help us provide the best policing services possible to the many and varied communities we serve.

I consider myself privileged to be the Commissioner of Police as this new Act has developed, and I now look forward to it coming into effect.

And it's particularly pleasing to see the new legislation come into effect with such widespread support. It is now up to us all to make it work.

I commend the Policing Act 2008 to you as a sensible and well-considered legislative platform upon which all aspects of policing will draw strength – now and for years to come.

Howard Broad
Commissioner

The Policing Act 2008 – at a glance

- THE POLICING ACT 2008 repeals the Police Act 1958, the United Nations (Police) Act 1964, and the Crimes and Misconduct (Overseas Operations) Act 2004. It also revokes the Police Regulations 1992 and the Police (United Nations) Regulations 1964.
- The new Act is similar in size to the 1958 Act, with five parts, 130 sections and six schedules.
- The Act's five parts are:
 - 1 Preliminary provisions
 - 2 Organisation and governance
 - 3 Powers, operations, and offences
 - 4 Provisions relating to employment of Police employees
 - 5 Biometric information, international policing, and other miscellaneous provisions.

- There are over 30 new sections in the Act, covering matters not dealt with in the 1958 Act, e.g. introducing a new evidence of identity and authority card.
- More than 20 sections of the 1958 Act become redundant.

A full copy of the Policing Act is available online via the Statutes of NZ link on the homepage of the Police Intranet. Copies will also be sent to all stations and district legal sections. ▶

Policing at the hub of public safety

FOR THE first time in our history, the 2008 Act outlines the wide ranging functions of Police and the principles upon which the legislation is based.

Section 9 of the Act sets out the key functions of Police as:

- Keeping the peace.
- Maintaining public safety.
- Law enforcement.
- Crime prevention.
- Community support and reassurance (for example, locating

missing people, contacting next of kin, and generally helping people in need of assistance).

- National security (as part of inter-agency responses to threats against the national interest).
- Participation in policing activities outside New Zealand.
- Emergency management.

Importantly, the Act also contains principles of policing, those things which shape and guide how police go

about their work. Section 8 states:

- Principled, effective, and efficient policing services are a cornerstone of a free and democratic society under the rule of law.
- Effective policing relies on a wide measure of public support and confidence.
- Policing services are provided under a national framework but also have a local community focus.
- Policing services are provided in a manner that respects human rights.
- Policing services are provided independently and impartially.
- In providing policing services every Police employee is required to act professionally, ethically, and with integrity. ▶



Community support and reassurance is one of the key functions of Police set out in the new Act.



PHOTO: NZ POLICE

The Policing Act 2008 recognises the role of partner organisations and agencies.

Why a 'Policing' Act?

THE TITLE of the Policing Act 2008 recognises policing is a much broader activity than it was 50 years ago.

Policing today involves a range of partner organisations and agencies in the public and private sectors, and the efforts of individuals, families and communities.

Police work alongside agencies such as Customs and the Fire Service, volunteers such as Māori Wardens and Community Patrols, and private security guards. All these groups have important roles in safety and security and contribute to the wider concept of policing.

This partnership approach is reinforced in section 10 of the Act. ➤

A uniform defined

TO HELP protect the Police brand and prevent misuse of our insignia, the Act strengthens penalties for the offence of impersonating a Police employee and defines what characterises a Police uniform.

Under the new Act, a Police uniform means distinctive clothing or equipment that:

- (a) is issued by the Commissioner to be worn by Police employees while on duty; and
- (b) has a colour scheme, pattern, or style that enables the person wearing it to be readily identifiable as a Police employee.

Inspector Jason Ross, Operations Group, PNHQ, says defining and protecting the Police uniform in

legislation is good for the public and good for Police.

"It helps protect the Police identity and brings even greater clarity, so the public can differentiate us from other agencies with enforcement or coercive powers," says Jason.

For example, some authorised officers – such as Police jailers – will carry out their roles in uniforms which are clearly distinct from the uniforms of constables.

The Uniform Steering Committee is now working to develop the new-look uniform for certain authorised officer roles.

"There's a strong need for these staff to be identified as part of New Zealand

Strengthening the office of constable

THE INDEPENDENCE and impartiality of the constable is the foundation of New Zealand's policing style. It's as important today as it was 50 years ago, or even at the outset of policing in New Zealand's early colonial era.

The office of constable carries over from the 1958 Act to remain a defining feature of the 2008 Act, with the option now of taking the constable's oath in Te Reo Māori.

A new feature in the Act is that the office of constable will only be given after a person is adequately trained and therefore capable of exercising the powers of a constable (see section 22 of the Act). ➤



PHOTO: NZ POLICE

The Act protects Police insignia and strengthens penalties for the offence of impersonating a Police employee.

Police. A different coloured uniform is one of the best ways of doing this," says Jason.

He believes the introduction of a new look for certain support staff will be one of the biggest changes to the Police uniform since the late 1970s when the frontline uniform changed from black to blue.

Further detail about this uniform will be communicated once the Uniform Steering Committee has advanced its work. This includes developing a full prototype which will be considered by a public focus group. ➤

Protecting all things Police

A NEW offence and stronger penalties are in place under the new Act to further protect those things unique to Police.

For example, section 48 of the Act makes it an offence to impersonate a Police employee or represent any vehicle or craft as being in the service of Police.

Section 49 prohibits a person or body corporate from unlawfully using the term Police or New Zealand Police in their operating name as if to imply an endorsement or authorisation of some sort.

Penalties for injuring or killing a Police dog, failing to help Police and unlawfully possessing Police property are also increased. ➤



Penalties for injuring or killing a Police dog have been increased in the 2008 Act.



Section 30 of the Act clarifies the command and control of Police.

Command and control strengthened

THE EFFECTIVENESS of operational and day-to-day policing relies heavily on the chain of command, and the new Act specifically addresses this issue.

Section 30 of the Act clarifies the command and control of Police, in that every Police employee must obey and be guided by:

- (a) General Instructions;
- (b) The Commissioner's circulars; and
- (c) Any applicable local orders.

This section of the Act outlines that every Police employee must obey the lawful commands of a supervisor.

Consistent with the 1958 Act, the new Act specifies that in the absence of a supervisor, the supervisor's authority and responsibility can pass to the Police employee who is next in level of position; and in the case of equality, the longest serving Police employee.

Importantly, the Act also makes it clear that Police employees can't act under the direction, command or control of a Minister of the Crown while serving in New Zealand. ➤

New ID card on the way

A NEW ID and authority card for all police employees will help differentiate staff by clearly showing if the holder does or does not have the powers of a constable or authorised officer (see section 96 of the Act).

The new ID card will include details of whether or not a Police employee is entitled to exercise policing powers, and is intended to make it more difficult to impersonate a Police employee.

The distribution of the new identity card should be completed for all staff by mid 2009. In the meantime the current Police ID cards remain valid for use. ➤

Taking particulars of identity

STAFF CAN now take a person's particulars of identity in summons situations and at any location, reducing the opportunity for people to provide false identities and get away with it.

Where a constable has good cause to suspect, and summons a person, the constable can now take that person's particulars at any place.

This new development will be especially useful for road policing, where staff can now take fingerprints and photographs for Evidential Breath Alcohol (EBA) matters, in the same way as if the person was being arrested.

This development also has an element of future-proofing with continual progress toward the 'Police station in a car' concept.

Hastings Highway Patrol Section Supervisor, Sergeant Ray Kirkby, says the ability to take a person's particulars in this way is a positive step forward.

"Accurately identifying offenders with photographs and through fingerprints will reduce the time wasted when false details have been supplied," he says.

"This can come to light some time after the event which can mean, in the worst case scenario, the person gets away with their offending. A bitter pill to swallow."

Ray says the new legislation relating to particulars of identity should ultimately curb some people giving false details.

See sections 32 and 33. ➤



PHOTO: NZ POLICE

Powers to temporarily close a road have been taken from the Local Government Act 1974 and incorporated into the new Act.

Powers relocated for better effect

TWO OFTEN-USED policing powers that 'lived' in other Acts have now been incorporated into the Policing Act 2008.

The ability for Police to temporarily close roads has been taken from the Local Government Act 1974, and the care and protection of intoxicated people is taken from the Alcoholism and Drug Addiction Act 1966.

Regarding road closures, section 35 of the Policing Act 2008 enables a constable to temporarily close a road to traffic for reasons of public disorder, danger to the public, or if an indictable offence has been committed in the vicinity.

In the interests of a person's care and protection, section 36 now provides constables with the ability to detain and take into custody people who are intoxicated (when it's not reasonably practical to take a person home or to a temporary shelter).

This is to protect the person from physical harm or to prevent them from physically harming other people or property.

The Act also addresses a problem from the Alcoholism and Drug Addiction Act where people are so intoxicated they might need to be detained longer than 12 hours. This can now be done on the recommendation of a health practitioner, and where certain criteria are met. ➤



PHOTO: NZ POLICE

Particulars of identity can now be taken in summons situations and at any location.

See the Legislation Update on pages 9 – 12 of this Ten-One Special Edition for more details.

Act empowers authorised officers

A NEW category of Police employee with limited powers – the authorised officer – comes into existence with the enactment of the Policing Act 2008.

Although Police already warrants some employees to exercise policing powers (for example, in the Crime Monitoring Centre and Police Infringement Bureau), the new job category will have the most impact in ceasing the practice of employing temporary or casual constables.

Existing temporary or casual constables will continue to operate under their current authorisations and terms of employment until they expire.

A key benefit of being able to employ authorised officers is that it will remove the need to make these employees full constables, with all the duties and powers that go with the office. Of course, they must still be trained and capable of carrying out the targeted duties they're authorised to perform.

Schedule 1 of the Act outlines four roles, with a range of powers certain warranted authorised officers can perform. These roles are:

- 1 Police jailer and escort, e.g. an employee managing the custody of prisoners at Court;
- 2 Police guard, e.g. an employee protecting Government House;
- 3 Police specialist crime investigator, e.g. an employee working as an e-crime investigator; and
- 4 Police transport enforcement officer, e.g. an employee working at a roadside drink driver operation.

Former Counties/Manukau District Commander, Assistant Commissioner Steve Shortland, says the transition to authorised officers will consolidate practices already in place in areas such as the Counties/Manukau District Custody Unit.

In February last year, Counties/Manukau opened its new Police Station, incorporating a Custody Unit.

Planning leading up to the opening meant there was a complete change to staffing arrangements.

Previously, frontline constables were rotated through the Custody Unit for six month stints.

"It would be fair to say, this wasn't always seen as a desirable rotation," says Steve.

A new practice was then put in place to employ custody officers with

temporary sworn status. They received significant training relevant to the role, including defensive tactics training.

"The key point to note is that they applied for the role – they weren't assigned there," says Steve. Feedback from sectional sergeants has also been positive as they see a difference in attitude and application from staff members keen to have these roles.

Staff turnover has also been negligible and, to date, two temporary sworn custody officers have pursued their ambition of becoming constables and gone on to the College (see Ten-One No 305, pg 5).

Many of the staff also have second language skills – up to 12 different languages are available currently, an asset in a multi-cultural district such as Counties/Manukau.

"Having frontline constables back working where they want to be has been positive," says Steve.

"Using temporary sworn staff, or authorised officers as they will be designated in the future, means better productivity all around with staff working in roles with appropriate skills, knowledge and powers for that role.

"The 'authorised officer' role as practiced to date in Counties/Manukau has been complementary to our traditional roles as constables. The new Policing Act further enables this practice to continue." ➤



PHOTO: NZ POLICE

From 1 October 2008, a new category of staff known as an authorised officer comes into effect.

Independence clarified for Police top brass

SECTIONS 12 to 17 of the new Act clearly spell out and strengthen the appointment processes for the Commissioner and Deputy Commissioner/s.

The Act also brings clarity to the independence of Police and states the areas in which the Commissioner must act

independently of the Minister of Police – such as enforcing the law, and investigating and prosecuting offences.

These features reinforce the time-honoured understanding of key areas of operational independence which were not clearly stated in the 1958 Act. ➤

HR arrangements line up with modern practice

THE POLICING Act 2008 introduces important changes to Police human resource arrangements, bringing them up-to-date and in line with mainstream New Zealand employment practices.

Under the new Act, and unless expressly stated otherwise, the employment of all Police employees is now subject to the Employment Relations Act (ERA) 2000.

New solemn undertaking reinforces unified workforce

ALL NEW Police employees will give a solemn undertaking to faithfully and honestly perform their duties before commencing work.

In doing so, section 19 of the new Act helps reinforce the expected standards of behaviour of all Police employees. The solemn undertaking will be given in front of a supervisor. A record of this event, and the signing of the Code of Conduct (section 20), will form part of an employee's personal file.

Existing employees are not required to give the solemn undertaking but can do so if they wish. ▶

"I, [name], solemnly undertake to perform my duties as a New Zealand Police employee faithfully and honestly, according to law, and uphold the Police Code of Conduct."

All staff continue in employment with existing status and service, irrespective of the enactment of the new Act. For example, a constable appointed under the 1958 Act continues as a constable under the new Act.

The new Act confirms the important role of the Police Code of Conduct by repealing the 1958 Act's process for disciplinary inquiries. Removal of the old Tribunal system is part of the new approach agreed between Police and service organisations.

The critical public safety function of Police is recognised by preserving the current prohibitions on strikes by constables, and lockouts of constables by Police. The designation of Police as an "essential service" is achieved by including a new schedule in the ERA.

The schedule contains a code of good faith to encourage constructive employment relationships, and is binding on Police, service organisations and all employees. The code of good faith is designed to ensure continuity of emergency services in the event of a disputed negotiation for a Police collective employment agreement.

The new Act more clearly states that the Commissioner must comply with

the principle of being a good employer, as set out in the State Sector Act 1988. The Act also introduces a direct link between an employee's knowledge and ability to perform their role, and the receipt of policing powers as either a constable or authorised officer – see sections 22 (2) and 24 (2).

Sections 55 through to 79 of the Policing Act 2008 traverse a wide range of provisions relating to employment. These sections have been worked through with the close cooperation of the Police Association and Police Managers' Guild.

These provisions cover themes such as advertising vacancies and appointing on merit through to superannuation schemes, industrial action, resignations, retirement, disengagement and removal of Police employees.

A corner-stone of the new HR arrangements is to define all staff as Police employees, differentiated by those who also hold powers as a constable and those who are warranted as authorised officers.

This is an important step toward New Zealand Police having one of the most inclusive policing HR arrangements in the world. ▶



New Zealand Police's increased contribution and role in off-shore policing receives greater visibility in the new Act.

International policing

NEW ZEALAND Police's increased contribution and role in off-shore policing receives greater visibility in the new Act.

Criminal jurisdiction, powers of arrest and detention, and breaches of the Code of Conduct have all been clarified for staff serving on overseas operations.

This has involved repealing the United Nations (Police) Act 1964 and the Crimes and Misconduct (Overseas Operations) Act 2004, and moving those provisions into the new Policing Act. ▶



PHOTO: NZ POLICE

The Policing Act 2008 allows Police to introduce a Crime Investigators Elimination Database.

Staff DNA to improve crime investigations

UNDER THE new Act, prospective Police employees can be required to provide a DNA sample and/or biometric information.

This strengthening of pre-employment vetting arrangements will help to determine if these potential employees have any previous convictions or their DNA is on the crime scene database of unsolved crimes.

In another move, existing employees and associates (e.g. forensic pathologists) can voluntarily provide a DNA profile.

This information, to be stored in an ESR database, will help eliminate those working on crime scenes or handling exhibits from any investigation in which they may have inadvertently contaminated the scene or evidence during the course of their work.

The Act specifies strict rules and criteria around the use, storage and destruction of such DNA and biometric data to preserve the integrity of this initiative.

Sections 80 to 85 of the Act provide greater context and outline the associated safeguards.

Inspector John Walker, National Forensic Services Adviser, PNHQ, says legislation in this area is a

prudent move, one that allows Police to introduce a Crime Investigators Elimination Database (CIED).

"We've worked closely with the Police Association on this initiative for the past two years," John says.

Advances in forensic science, particularly the increased sensitivity of DNA extraction techniques, means DNA profiles can be obtained from smaller DNA samples. But with this comes a greater risk of contamination.

"The database, to be held and managed by ESR, will enable rapid elimination of inadvertent scene investigator contamination during the normal course of duty against DNA profiles obtained from crime scene samples."

Providing samples for inclusion on the CIED is voluntary. Police staff and other selected forensic practitioners (e.g. pathologists) will have two options: to provide an elimination sample for a specific case, or for inclusion on the CIED for comparison against future cases. There is also a right to withdraw consent.

"If an individual withdraws consent or leaves Police, the DNA profile and related information will be removed from the elimination database and destroyed. ESR will supply written confirmation to that effect," says John. ▶

Further information

- THE Policing Act 2008 Intranet site provides further information – including a breakdown of all parts of the Act.
- You can access the site from Intranet>Initiatives>Policing Act 2008.
- The Policing Act is available from the Statutes of NZ link on the home page of the Police Intranet.
- If you have any questions about the Policing Act 2008, you can submit them via Lotus Notes by typing Policing Act in the 'To' field.
- Answers will be provided to submitters and may also be added to the FAQ section of the Intranet site.

Details of some of the key sections in the Act are provided in the following Legislation Update. ▶



PHOTO: NZ POLICE

Policing Act 2008

Introduction

The Policing Act 2008 (the new Act) comes into force on 1 October 2008. It entirely repeals and replaces the Police Act 1958 (the 1958 Act). In addition, it incorporates some policing powers previously located in other enactments. The new Act covers a wide variety of matters. This Legislation Update only deals with provisions that may affect frontline policing such as policing powers, operational provisions and offences.

Some provisions are very similar to their equivalents in the 1958 Act. One significant change is a new power to take identifying particulars for summons. Also of note is the modified provision for care and protection of intoxicated people, and the strengthened and broadened offence provisions protecting things such as Police uniforms, articles and the Police name.

Comment

This provision substantially re-enacts section 57(1) to (2) of the 1958 Act. Note that the person may be either at a Police station or “at any other place being used for Police purposes”. The penalty for failing to comply has been increased.

Policing Powers

32 Identifying particulars of person in custody

- (1) The purpose of this section is to enable the Police to obtain information that may be used now or in the future by the Police for any lawful purpose.
- (2) For the purpose of this section, a constable may take the identifying particulars of a person who is in the lawful custody of the Police if that person is detained for committing an offence and is –
 - (a) at a Police station; or
 - (b) at any other place being used for Police purposes.
- (3) A constable –
 - (a) must take the person’s identifying particulars in a manner that is reasonable in the circumstances; and
 - (b) may only use reasonable force that may be necessary to secure the person’s identifying particulars.
- (4) A person who, after being cautioned, fails to comply with a direction of a constable exercising his or her powers under this section –
 - (a) commits an offence; and
 - (b) is liable to imprisonment for a term not exceeding 6 months, to a fine not exceeding \$5,000, or to both.
- (5) In this section and **section 33**, –

identifying particulars means, in relation to a person, any or all of the following:

 - (a) the person’s biographical details (for example, the person’s name, address, and date of birth);
 - (b) the person’s photograph or visual image;
 - (c) impressions of the person’s fingerprints, palm-prints, or footprints

place includes any land, building, premises, or vehicle.

33 Identifying particulars for summons

- (1) The purpose of this section is to enable the Police to obtain information that may be used now or in the future by the Police for any lawful purpose.
- (2) For the purpose of this section, a constable who has good cause to suspect a person of committing an offence and who intends to bring proceedings against the person in respect of that offence by way of summons, may detain that person at any place –
 - (a) in order to take the person’s identifying particulars; and
 - (b) only for the period necessary to take the person’s identifying particulars.
- (3) A constable –
 - (a) must take the person’s identifying particulars in a manner that is reasonable in the circumstances; and
 - (b) may only use reasonable force that may be necessary to secure the person’s identifying particulars.
- (4) A person who, after being cautioned, fails to comply with a direction of a constable exercising his or her powers under this section –
 - (a) commits an offence; and
 - (b) is liable to imprisonment for a term not exceeding 6 months, to a fine not exceeding \$5,000, or to both.

Comment

This new power applies when a constable has good cause to suspect a person of committing an offence and intends to bring proceedings in respect of that offence by way of summons. The constable may detain that person at any place (for example, on a booze bus) to take the person’s identifying particulars. The power does not extend to taking the person back to the station for this purpose, so will only be of use when the constable has the necessary equipment on hand.

35 Temporary closing of roads

- (1) A constable may temporarily close to traffic any road, or part of a road, leading to or from or in the vicinity of a place, if the constable has reasonable cause to believe that –
 - (a) public disorder exists or is imminent at or near that place; or

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- (b) danger to a member of the public exists or may reasonably be expected at or near that place; or
- (c) an indictable offence not triable summarily under section 6 of the Summary Proceedings Act 1957 has been committed or discovered at or near that place.

(2) In this section, –

road has the meaning given in section 315(1) of the Local Government Act 1974 except that it includes –

- (a) a motorway within the meaning of section 2 of the Transit New Zealand Act 1989; and
- (b) a private road within the meaning of section 315(1) of the Local Government Act 1974; and
- (c) a private way within the meaning of section 315(1) of the Local Government Act 1974

temporarily means for a period that is reasonably necessary in the circumstances

traffic means all or any specified type of traffic (including pedestrian traffic).

Comment

This provision substantially re-enacts section 342A of the Local Government Act 1974 which is to be repealed.

36 Care and protection of intoxicated people

- (1) A constable who finds a person intoxicated in a public place, or intoxicated while trespassing on private property, may detain and take the person into custody if –
 - (a) the constable reasonably believes that the person is –
 - (i) incapable of protecting himself or herself from physical harm; or
 - (ii) likely to cause physical harm to another person; or
 - (iii) likely to cause significant damage to any property; and
 - (b) the constable is satisfied it is not reasonably practicable to provide for the person's care and protection by –
 - (i) taking the person to his or her place of residence; or
 - (ii) taking the person to a temporary shelter.
- (2) A person detained under **subsection (1)** –
 - (a) must be released as soon as the person ceases to be intoxicated;
 - (b) must not be detained longer than 12 hours after the person is first detained, unless a health practitioner recommends that the person be further detained for a period not exceeding 12 hours.
- (3) A health practitioner must not recommend the further detention of a person detained under **subsection (1)** unless the health practitioner satisfies himself or herself that –
 - (a) the person remains intoxicated and is incapable of protecting himself or herself from physical harm; and
 - (b) the person does not have health needs that may require medical attention; and
 - (c) it is not reasonably practicable to provide for the person's continuing care and protection by –
 - (i) taking the person to his or her place of residence; or
 - (ii) taking the person to a temporary shelter.
- (4) In this section, –
 - intoxicated** means observably affected by alcohol, other

drugs, or substances to such a degree that speech, balance, co-ordination, or behaviour is clearly impaired

temporary shelter means a place (other than a place operated by the Police) that is capable of providing for the care and protection of an intoxicated person.

- (5) Section 31 of the Crimes Act 1961 applies in respect of the power to detain and take a person into custody under this section as if the power were a power of arrest.

Comment

This section of the new Act replaces and relocates a similar provision from section 37A of the Alcoholism and Drug Addiction Act 1966. Note the change of focus to “care and protection” of intoxicated people. “Intoxicated” is now defined in subsection (4). The power applies not only where a person is intoxicated in a public place, but also if they are intoxicated while trespassing on private property. In either case, the person may only be detained and taken into police custody if the matters set out in section 36(1)(a) and (b) are satisfied. A person detained in police custody may be detained for longer than 12 hours if a health practitioner recommends further detention for up to 12 more hours.

37 General searches of people in custody

- (1) This section applies to any person who –
 - (a) has been taken into lawful custody; and
 - (b) is –
 - (i) at a Police station; or
 - (ii) in other premises, or in a vehicle, being used for Police purposes; and
 - (c) is to be detained securely (whether pending a decision as to bail under section 21 of the Bail Act 2000, or in any other circumstances).
- (2) A constable or searcher used in accordance with **section 38**, may –
 - (a) conduct a search of a person to whom subsection (1) applies; and
 - (b) take from him or her all money, and all or any property, found on him or her or in his or her possession.
- (3) In acting under **subsection (2)**, a constable or searcher may use or cause to be used any reasonable force necessary to conduct a search or take any money or property.
- (4) Nothing in this section affects the right at common law of a constable to search any person on the person's arrest.

and

38 Searchers

Abbreviated

Comment

Section 37 is similar to its predecessor, section 57A(1) of the 1958 Act. It provides that a person in lawful custody may be searched, property and possessions removed and for reasonable force to be used if necessary. The 1958

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Act power only applied if the person was to be “locked up in Police custody” and did not allow a search if the person was only being held pending the grant of Police bail. The new provision makes it clear that the new search power may be exercised if (among other things) the person is to be detained securely pending a decision as to Police bail under section 21 of the Bail Act 2000. General Instructions will continue to apply. Section 38 of the new Act enables searchers to continue to be used either to ensure the search is conducted in reasonable time or by a person of the same gender.

39 Property taken from people in custody *Abbreviated*

Comment

This section provides for the return of property taken from a person when released from custody, unless otherwise required for proceedings, or its possession is an offence, or the property is being delivered to a prison manager because the person is being transferred to prison.

40 District Court Judge may determine title to certain property *Abbreviated*

Comment

A District Court Judge may determine title to property in the possession of a Police employee, if there is doubt as to its legal ownership. This provision replaces section 58 of the 1958 Act.

Operational Provisions

43 Execution of court processes *Abbreviated*

Comment

This section substantially re-enacts section 38 of the 1958 Act. It deals with various matters concerning court processes. This includes requiring a constable to obey and execute all lawful criminal court processes and empowering a constable to arrest someone who is subject to an executed court warrant even if the constable does not have that process in his or her possession.

44 Protection of Police employees acting under court processes *Abbreviated*

Comment

This section carries forward the protection formerly contained in section 39 of the 1958 Act. A Police employee acting under a court process is not responsible for any irregularity, or any lack of jurisdiction, in its issuing.

45 Police employee may appear in Court by another employee *Abbreviated*

Comment

Police employees appearing in certain proceedings (other than as a witness) in the execution of their duty may appear by another Police employee. This provision substantially re-enacts section 40 of the 1958 Act.

Offences

47 Gaining employment with Police by false representations

- (1) A person commits an offence who, for the purpose of gaining employment with the Police, intentionally submits false or forged documents or makes false representations when applying for employment.
- (2) A person who commits an offence against this section is liable to imprisonment for a term not exceeding 6 months, to a fine not exceeding \$5,000, or to both.

Comment

This offence is very similar to the old section 49 of the 1958 Act with an increased penalty.

48 Personation and representing vehicle, etc, as Police vehicle

- (1) A person commits an offence who, without reasonable excuse, and in circumstances likely to lead a person to believe that the person is a Police employee, –
 - (a) pretends to be a Police employee by his or her words, conduct, or demeanour; or
 - (b) assumes the name, designation, or description of a Police employee.
- (2) A person commits an offence who, without reasonable excuse, uses any of the following things in circumstances likely to lead a person to believe that the user is a Police employee:
 - (a) a Police uniform, or item of that uniform, or a Police article;
 - (b) a uniform, or item of uniform, or article that closely resembles a Police uniform, or item of that uniform, or Police article.
- (3) A person commits an offence, who, without reasonable excuse, represents any vehicle, craft, or other conveyance as being in the service of the Police in circumstances likely to lead a person to believe the vehicle, craft, or conveyance is in the service of the Police.
- (4) A person who commits an offence against this section is liable to imprisonment for a term not exceeding 12 months, to a fine not exceeding \$15,000, or to both.

Comment

This section provides offences similar to the 1958 Act for a person who is not a Police employee and without reasonable excuse pretends to be one; or uses articles

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or uniform in a way that might lead someone to believe that the person is a Police employee. In addition, it is now an offence to, without reasonable excuse, represent any vehicle as being in the service of the Police in circumstances likely to lead a person to believe that vehicle is in the service of the Police.

49 Use of term Police or New Zealand Police in operating name

- (1) A person commits an offence who, without reasonable excuse, carries on an activity under an operating name that includes the word “Police” or the words “New Zealand Police”, in a manner likely to lead a person to believe that the activity is endorsed or authorised by the Police or any part of the Police.
- (2) A person who commits an offence against this section is liable, –
 - (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$5,000.
 - (b) in the case of a body corporate, to a fine not exceeding \$20,000.

Comment

It is an offence to, without reasonable excuse, use the word “Police” or the phrase “New Zealand Police” in relation to an activity in a manner likely to lead a person to believe that activity is endorsed or authorised by the Police.

50 Unlawful possession of Police property

- (1) A person commits an offence who, without lawful authority or reasonable excuse, has in his or her possession any Police property.
- (2) A person who commits an offence against this section is liable to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$2,000, or to both.

Comment

It is an offence to possess Police property without either lawful authority or reasonable excuse. “Police property” is defined in section 4 and includes confidential Police documents. This provision therefore carries across protections under the old sections 52 and 61A of the 1958 Act.

51 Failing to help Police employee

Abbreviated

Comment

This section carries over the ability from section 53 of the 1958 Act to ask for assistance from the public to apprehend or secure a person or convey a person to a Police station or other place. Failure to help when asked is an offence. The penalty for failing to help has been substantially increased.

52 Unlawful dealings with prisoners

- (1) A person commits an offence who, without the permission of a Police employee, –
 - (a) holds any restricted communication with a prisoner in the custody or charge of a Police employee; or
 - (b) delivers any thing, or causes it to be delivered, to that prisoner.
- (2) A person who commits an offence against this section is liable to imprisonment for a term not exceeding 3 months, to a fine not exceeding \$2,000, or to both.
- (3) In this section, **restricted communication** means –
 - (a) any communication that may prejudice the maintenance of the law, the safe custody of the prisoner, the safety of any other person, or the security of any prison;
 - (b) any communication whatsoever that takes place after the Police employee, in whose custody or charge the prisoner is, has forbidden that communication or directed that it cease.

Comment

This provision carries over an offence of unlawful dealings with prisoners from section 54 of the 1958 Act. Note “restricted communication” with a prisoner (as defined above) as opposed to any communication is prohibited.

128 Resisting Police, prison, or traffic officer

Abbreviated

Comment

The section 23 Summary Offences Act offence of resisting Police is extended to include an offence of resisting “authorised officers”. Authorised officers are Police employees authorised by warrant by the Commissioner to exercise specific policing powers. »



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