

Chair
Cabinet

MODERNISING POLICE LEGISLATION - PUBLIC CONSULTATION DOCUMENT

Purpose

1. This memorandum seeks approval to publicly consult on the attached discussion paper, *Policing Directions in New Zealand for the 21st Century*, as part of the ongoing Police Act Review.

Executive summary

2. As agreed by Cabinet in March 2006, a wide-ranging review of the legislative framework for policing has been taking place over the last year. In February 2007, Ministers were informed about areas of agreement among stakeholders about the need for, and elements of, new policing legislation. The next step in the review is to distribute a full discussion paper for further public consultation. Some of the major legislative proposals outlined in the discussion paper include:
 - statutory principles to guide policing
 - robust arrangements for the governance and day-to-day administration of Police (including clear statements of the roles, responsibilities and lines of accountability of the Commissioner of Police and the Minister of Police)
 - better enabling the Commissioner to flexibly manage the Police workforce, with greater emphasis on unifying the environment for all Police employees
 - streamlining the system for managing staff performance and discipline issues in Police, and supporting expectations that all Police staff will uphold appropriate standards of conduct, personal integrity and professionalism
 - strengthening assurances policing will not be impacted by industrial action
 - facilitating greater use of modern policing approaches, including options for new or more clearly defined powers in certain areas (e.g., allowing for the speedy and positive identification of people being lawfully detained by police)
 - seeking to 'future proof' a new Policing Act, by including elements which might only be triggered or fully implemented at a later time (e.g., the future establishment of a new national policing oversight and improvement agency)
 - increased protections for Police staff and Police's organisational interests.
3. Subject to Cabinet's approval, the attached discussion paper will be published on 31 May 2007. Public meetings will be held around New Zealand during June and July 2007 to seek feedback on the paper, and to answer any queries people have about the proposals for new policing legislation. Written submissions will be due by 31 July 2007. I intend to submit final policy papers to Cabinet during September 2007, and introduce a Policing Bill to Parliament in December 2007. While this timeline will require determined application, I believe it is achievable.

Background to Police Act Review

4. In March 2006, Cabinet agreed to a 'first principles' review and rewrite of the 1958 Police Act and 1992 Police Regulations [CAB Min (06) 7/5 refers]. The review is part of a broader effort to equip New Zealand Police to confidently meet the challenges of 21st century policing.

5. The broad terms of reference for the review were subsequently consulted on, agreed, and made available on a dedicated internet site [www.policeact.govt.nz]. Formalising the scope of the review offered a good opportunity to communicate some features of policing in New Zealand that are foundational, and which are not proposed to be re-examined. These cornerstone features were seen to be:
 - Continuing the model of a national police service which is centrally funded (vs. allowing for the emergence of regionally- or locally-based police forces)
 - Maintaining a largely unarmed police service (vs. routine carrying of guns)
 - Upholding a tradition of constabulary independence (vs. allowing for political direction on operational matters).
6. The project plan for the Police Act Review signaled there would be three phases of public consultation. First, a linked series of eight *Issues Papers* on significant topics in policing were progressively released over a six month period. The *Issues Papers* were designed to 'test the waters' and generate discussion. They attracted approximately 230 responses, from around 130 different submitters. Responses came from large agencies (e.g., the Department of Corrections), Crown entities (e.g., the Office of the Privacy Commissioner), stakeholders (e.g., the New Zealand Police Association), various other interested groups (e.g., community law centres) as well as individual members of the public.
7. In parallel, a platform for debating some of the *Issues Papers* was created by convening four university-based discussion forums and a day-long symposium. These events brought together key thinkers from New Zealand and overseas to discuss principles of policing, governance and accountability, community engagement, and the increasingly networked state of security/safety services.
8. Research on New Zealanders' expectations of policing was also commissioned to inform the review. The mainly qualitative study was conducted by an independent research organisation in mid 2006. Its emphasis was on in-depth focus groups, although a few police-related questions were included in omnibus national household surveys, which allowed for some quantitative findings to be gathered. This research provided an insight into the views of the general public about the sort of police service they want and expect - now and into the future.
9. I updated Cabinet in February 2007 about the progress achieved during the first nine months of the review, and Ministers noted that the next key milestone would be the publication of a full discussion document in June 2007, entitled *Policing Directions in New Zealand for the 21st Century* [SDC Min (07) 1/2]. This document is to form the basis of the second phase of public consultation for the review. A draft copy of this document is attached to this memorandum.

Preparation of discussion document

10. Since my last update, the New Zealand Police project team co-ordinating the review has published an analysis of the submissions received on the *Issues Papers*, as well as a report summarising the commissioned public research. Both resources have informed the preparation of the attached discussion paper, with relevant findings cited extensively throughout the document.
11. An interdepartmental officials group, first convened in April 2006, has also continued to meet monthly to provide specialist advice and a cross-government perspective. Members of the officials group have suggested a number of edits to the discussion paper. These have been worked through to an agreed point where the paper is suitable for public consultation [POL Min (07) 11/15 refers].

12. At Chief Executive level, the Commissioner of Police has discussed the draft discussion paper in general terms with members of a steering group formed last year. The steering group brings together the heads of the Ministry of Justice, State Service Commission, Law Commission and Ministry of Social Development. The Commissioner has used this group as a sounding board on a number of the substantive policy proposals contained in the attached discussion document. Steering group members have offered valuable guidance in several areas.
13. Police officials involved in drafting the discussion paper have also benefited from input by the two main groups which represent Police employees - the New Zealand Police Association and the Police Managers' Guild. Confidential drafts of the paper were shared with senior representatives from these two union groups, and several refinements have been made based on the comments received. Agreement has not been possible on all aspects of the discussion document, but I believe the attached paper is stronger because of the positive engagement by police union groups in the process.
14. To ensure the ideas for new policing legislation have been appropriately tested and debated internally within New Zealand Police, there has been ongoing consultation with District-nominated Police staff. A special 'frontline reps' group has helped ensure the language used in the discussion document makes sense to police, and is as operationally relevant as possible. The Commissioner has also led efforts to ensure that the proposals in the attached discussion paper are broadly in line with the thinking of his senior police commanders. He facilitated a special two-day retreat of the Police Executive in early March 2007, and critical elements of the discussion paper (e.g., relating to Police's future workforce structure) reflect consensus views reached during the March retreat. A separate meeting of the Police Executive in April 2007 gave further steerage.
15. Finally, it is appropriate to record the input provided by colleagues from other parliamentary political parties. Following invitations extended to party leaders, briefings on the review have been held with almost all parties' nominated law and order spokespeople. As noted in my February update, these meetings have been positive; there seems to be recognition that development of new policing legislation should be a cross-party process. The attached discussion paper necessarily adopts a non-partisan approach, and references to "successive governments" and "the government of the day" throughout the document underline the importance of any new Act for Police being accepted as apolitical.

Approval of discussion document

16. I seek Cabinet approval of the attached discussion document, *Policing Directions in New Zealand for the 21st Century*, subject to any minor editorial changes it is appropriate to make before final publication.

Overview of discussion document

17. The purpose of the discussion document is to seek public feedback on proposals to refresh New Zealand's policing legislation. Building on existing strengths, it outlines options to better position Police to deliver world class policing services. In many cases, the suggestions simply confirm and clarify long-understood features of the way Police is organised and operates. There are also ideas on how to do things better and proposals which foresee changes to the status quo.
18. A high-level summary of issues raised in the discussion document is as follows:

PRINCIPLES

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

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

EFFECTIVE POLICING

Legislation can better support the effectiveness of New Zealand Police. Options which could be explored include:

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

PEOPLE

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

- confirm the Commissioner's commitment to act as a good employer
- strengthen approaches to pre-employment vetting
- provide a unified basis for setting employment terms and conditions, and reinforce Police's oneness with a single *Code of Conduct* and solemn undertaking for all staff
- offer more options for empowering people to perform specific policing tasks
- clearly facilitate temporary secondments to and from Police
- acknowledge the importance of developing Police's leaders and managers
- expand use of certification within Police to move towards a registration system, as part of a transition to a professional model for New Zealand Police.

PLATFORMS FOR SUCCESS

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

- confirming the legal status and functions of New Zealand Police

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

THE FUTURE

New legislation might include elements that are only triggered or fully implemented at a future time. For example, a new Policing Act could:

- use technology-neutral language to allow for advances in identification processes
- cautiously expand options to use infringement notices for lower-level offences
- enable integrity testing, as a further support for ethical behaviour by Police staff
- provide for the creation of a national policing oversight and improvement agency
- mandate recovery of costs for special policing services in certain circumstances.

Comment

19. The discussion paper covers a wide range of policing issues, some of which are acknowledged in the paper as matters best advanced through legislation other than a new Policing Act. I have asked officials to present these proposals in an open way to ensure the process receives wide ranging feedback.
20. It is important New Zealanders understand our commitment to 'turn a corner' and lead forward with renewed confidence. I believe this is appropriate to reinforce the need to move forward following Dame Margaret Bazely's recently-reported Commission of Inquiry into Police Conduct.
21. A policy process is being prepared by officials to bring the final proposals for the Bill forward to Cabinet in a suite of papers during September 2007.

Proposed consultation process and timings

22. I propose consultation on the discussion paper involve the following elements:

31 May 2007: Release of discussion paper

- Following Cabinet approval, the document will be published electronically on the Police Act Review website, with a reasonable number also available in printed form. Copies will be sent to key stakeholders advising them of how to make submissions, and by when. Submissions will be due two months after the date of publication (i.e., 31 July 2007). People will be encouraged to use an online response form to make submissions.

June-July 2007: Facilitated meetings and direct engagement with stakeholders

- Police officials will hold a series of public meetings across the country to seek direct feedback on the discussion document. The options of hui, fono and specific meetings with other ethnic groups will be possible, on request. To make issues raised in the 60+ page discussion paper more accessible, a shorter pamphlet-style publication will be produced for the public meetings and broader community dissemination. The intention is to have this booklet translated into a number of languages other than English, including Maori, Samoan and Chinese.
- In parallel with the public events, the Police Act Review project team will meet one-on-one with a number of key stakeholders to further test possible options for new policing legislation. Officials will also be available to meet with individuals, groups or organisations, at their request, to hear responses to the discussion document, and to discuss ideas for new policing legislation.

August 2007: Synthesis and analysis of feedback

- Feedback from the public consultation exercise and stakeholder meetings will be analysed and the results consulted on with relevant departments. This will inform the development of final policy recommendations to Cabinet.

23. The table below sets out an indicative timetable for the remainder of the review:

Activity	Phasing
Cabinet approves release of discussion paper	May 2007
Public consultation on discussion paper	June-July 2007
Analyse submissions received on discussion paper	August 2007
Cabinet papers prepared to obtain final policy approvals	September 2007
Drafting instructions to Parliamentary Counsel Office	October 2007
Consultation on an exposure draft of new Policing Bill	early November 2007
Cabinet consideration/approval of finalised Bill	late November 2007
Introduction of new Bill to the House	December 2007

24. While this indicative timeline will require an urgency of purpose, I believe it is achievable. Every effort is being made to minimise possible downstream delays. For example, an experienced Parliamentary Counsel has been selected to work on the proposed Bill, and has already received pre-briefings from Police officials. Other 'fast start' strategies being employed include the use of wiki technology to create a secure environment in which overseas and domestic policing experts can contribute ideas to the drafting of clauses for the new Bill (e.g., clarifying the Police Commissioner's respective areas of responsibility and independence). Because of the solid groundwork which has been laid over the first year of the Police Act Review, and the work to anticipate and reduce any areas of downtime later in this project, I remain optimistic it will be possible to introduce a new Bill to the House by the end of the calendar year, ready for parliamentary scrutiny and hopefully enactment in the first half of 2008.

Communication and publicity

25. Following Cabinet approval I will announce the release of the discussion paper, and the start of this further public consultation phase of the Police Act Review. Continuing the transparent approach to the review, I also intend to make a copy of this memorandum available on the Police Act Review website following Cabinet's approval. As with earlier phases of the review, my office will be supported in responding to any media inquiries by Police National Headquarters.

26. It will be important to communicate that proposals and ideas presented in the discussion paper are not agreed government policy. There will inevitably be changes based on the public consultation and policy development processes. The aim of the discussion paper is to seek public feedback on a range of ideas for new policing legislation.

Financial implications

27. The costs of conducting the Police Act Review, including publication of *Policing Directions in New Zealand for the 21st Century* and its public consultation, are being met through existing baselines.

Legislative implications

28. The Police Act Review is likely to result in the repeal of the Police Act 1958 and the revocation of the Police Regulations 1992. A replacement Policing Bill was awarded a category 5 priority (instructions to Parliamentary Counsel in 2007) on the government's 2007 Legislation Programme [CAB Min (07) 7/1A refers].

Regulatory impact and compliance cost statement

29. A regulatory impact or compliance cost statement is not required at this time.

Human rights, Privacy Act, Bill of Rights and Treaty of Waitangi implications

30. This memorandum has no human rights or New Zealand Bill of Rights Act 1990 implications.
31. The Police Act Review may ultimately have implications for the Privacy Act 1993, although a more likely scenario is that such issues would be progressed in the context of the proposed Privacy Amendment Bill (which is expected to include a new framework to streamline information sharing within the justice and social sectors). Any such implications will be addressed as ideas are refined. Justice officials and the Office of the Privacy Commissioner will continue to be involved in the development of any relevant policy proposals.
32. At this stage, it is considered unlikely that the Police Act Review will give rise to Treaty of Waitangi implications. Treaty implications do not typically arise from arrangements for delivering police services, which dominates the content of the current Police Act. New Zealand Police's obligations arising from the Treaty of Waitangi are best considered in the context of Police's overall work programme.

Gender implications

33. A gender analysis will be undertaken at the appropriate policy development stage.

Consultation

34. New Zealand Police consulted the following agencies on this memorandum:
- agencies represented on the Police Act Review officials group (the State Services Commission, The Treasury, the Department of Prime Minister and Cabinet, the Crown Law Office, the Ministries of Justice and Social Development, the Department of Corrections, and the Law Commission)

- population-based agencies (Te Puni Kōkiri, the Ministries of Women's Affairs, Pacific Island Affairs and Youth Development, the Office of Ethnic Affairs and the Office for Senior Citizens)
 - agencies which either administer legislation the discussion document signals may be consequentially amended by possible clauses in the new Policing Bill (the Ministry for the Environment, Department of Internal Affairs and Ministry of Health), or which have a broader interest in matters touched on in the document (the Department of Labour and Police Complaints Authority).
35. As noted earlier, drafts of the attached discussion document were also shared with senior representatives from the two main groups which represent Police employees - the New Zealand Police Association and the Police Managers' Guild. A copy of the draft discussion document was also made available to the Public Service Association. Advance draft copies, for information, were also provided to the Human Rights Commission and the Office of the Privacy Commissioner.
36. I also provided the Rt Hon Helen Clark (Prime Minister) and Hon Mark Burton (Minister of Justice) with an opportunity to comment on the draft discussion document.

Departmental comments

37. The Ministry of Justice has asked to have the following departmental comment included in this memorandum: "Justice takes a positive and constructive approach to the Police Act Review, but would like to note that some of the issues proposed potentially go beyond the scope of the Policing Act into other portfolio areas".
38. The Crown Law Office has asked for the following departmental comment to be included in this memorandum: "On the basis that these are proposals for public discussion, Crown Law has no issues to raise and will continue to work with the Police Act Review team during policy development".

Non-departmental comment

39. The following observations are provided on behalf of the Law Commission:

The Law Commission fully supports many of the proposals in the draft discussion document. Specifically, we support material being included in a Policing Bill to address governance and accountability, discipline and employment relations. With a few exceptions, we concur to a very large extent with the substance of the proposals. However, the Commission does have some concern about a number of proposals in the paper that stray into areas which are the responsibility of other agencies, some of which are already under active consideration in the context of other policy work.

Recommendations

40. I recommend that Cabinet:
- 1 **note** that, following Cabinet's agreement in March 2006, a wide-ranging review of New Zealand Police's legislation has taken place over the last year
 - 2 **note** that the next milestone in the Police Act Review is the publication of a discussion document, to support a second main phase of public consultation

- 3 **approve** for public release the attached discussion document, *Policing Directions in New Zealand for the 21st Century*, subject to any minor editorial changes approved by the Minister of Police
- 4 **agree** that the Minister of Police will announce the release of *Policing Directions in New Zealand for the 21st Century* on 31 May 2007
- 5 **note** public meetings and targeted stakeholder consultations will be held during June and July 2007 to seek feedback on the discussion document
- 6 **note** that the Minister of Police intends to submit policy papers to Cabinet for final decisions during September 2007, and introduce a Policing Bill to Parliament in December 2007
- 7 **note** that, following Cabinet approval, the Minister of Police intends to make a copy of this memorandum publicly available through the Police Act Review website, to further raise awareness about the progress of the review

A handwritten signature in black ink that reads "Annette King". The signature is written in a cursive, flowing style.

Hon Annette King
Minister of Police

Dated: 25 May 2007