

Chair
Cabinet Policy Committee

POLICE ACT REVIEW - PAPER 3: A MODERN POLICE WORKFORCE STRUCTURE

Purpose

1. This paper seeks approval to modernise Police's employment environment. It is the third of six papers through which Ministers are invited to make policy decisions on the shape of new policing legislation.

Summary

2. The Police Act Review has identified the need to revamp the environment for managing Police's human resources. The current Police Act and Regulations rely on outdated employment approaches, and contain barriers to effective policing. New legislation should support the Police Commissioner's ability to employ a workforce with the range of skills, powers and protections needed to meet current and future policing demands. Notably, a new Policing Act should:
 - confirm a Police workforce model which provides a unified basis for setting employment terms and conditions, featuring a new single *Code of Conduct* and solemn undertaking for all Police employees
 - formally recognise the office of constable, and update the constabulary oath, while widening the Commissioner's ability to assign targeted policing powers to specific categories of Police employees
 - facilitate talent flows, including temporary secondments to and from Police, and better allow for leadership development at senior levels within Police
 - make provision for a future registration system for policing professionals, building on Police's existing certification programme.
3. The proposed new Police workforce model will preserve the best of the past - such as the office of constable - but will also support innovation. Importantly, the suggested approach will enable a greater mix of appropriately empowered staff to flexibly contribute to individual and community safety; covering the full range of policing duties, from minor incidents to major emergencies. The proposals have been extensively consulted and discussed with Police staff, their representative bodies, and also several leading commentators on policing. The thrust of the recommended reforms are broadly supported.
4. I invite Cabinet to agree to these proposals, as well as agree that appropriate enabling provisions be included in the planned Policing Bill.

Background

5. With more than 11,000 staff, New Zealand Police is one of the largest state sector employers. Yet for over a century, the way of enabling the wide and varied work of Police has been largely through the use of a single type of employee: the constable. The traditional policing model looks to train all constables to the same standard in as many aspects of policing as possible. This has offered a solid base of employees with core policing skills, with the ability to graft specialist competencies onto these staff, as and when required.

The case for change

6. The constable remains a highly valued and trusted resource, and will continue to be the centrepiece of Police's future capability. But as policing becomes increasingly complex and multi-faceted, spanning a range of activities from the local to regional to national to international level, pressure builds on the generalist constable as the main unit of currency. Faced with the challenges of the modern operational policing environment, it is futile to try and train every constable in every area of contemporary police work. Particular skills are needed to tackle cyber-crime, complex fraud offences and threats of terrorism, just as child protection and neighbourhood policing roles require increasingly specialised skills in areas like multi-agency problem solving.
7. Police has sought to meet such challenges with a greater mix of employees, using specialist staff to support generalist constables. This signals a shift from the constable as the predominant actor, to a more sophisticated team approach to policing which applies the requisite skills and powers to the task at hand.
8. A barrier to Police fully embracing this shift is the 1958 Police Act, which provides for only two broad categories of Police employee ("sworn members of Police" and "non-sworn members of Police"), with little flexibility to assign policing powers other than to constables. As a result, Police's current workforce profile continues to be dominated by generalist sworn officers, who make up three quarters of total Police personnel. This legislative divide between sworn and non-sworn staff not only inhibits Police's organisational cohesiveness, it limits flexible opportunities for career development, and restricts employment options to deal with tasks where greater specialisation and skills are required.
9. The following examples draw attention to the limitations of the current model, and some of the practical consequences which flow from this:
 - Specialists who are seen to need constabulary powers are only recruited from serving sworn officers, with no provision enabling civilian recruitment and targeted training
 - Police has no capacity to employ people in roles requiring powers of search or arrest other than constables (highlighted by swearing in of temporary or casual constables as jailers or prisoner escorts in some parts of the country)
 - Sworn members can only select from designated sworn positions when considering career development options; while non-sworn positions are only available if sworn staff formally exit (through resignation or retirement) and rejoin as non-sworn members
 - There is confusion around the actual level of Police resourcing, as public perceptions are built almost solely around the number of constables.
10. In my view, the case for change is clear. The challenge is to enable a Police workforce which preserves the best of the past - like the office of constable - and supports innovation. Critically, the way forward should allow a greater mix of appropriately empowered staff to flexibly contribute to safety and security.
11. Following extensive consultation and discussion with Police staff, their representative bodies, and also several leading commentators on policing, the fundamental elements of a new Police workforce model have been agreed. Key proposals are described more fully in the remainder of this paper.

Buildings blocks for a cohesive workforce structure

12. My starting point for proposing how new legislation can support a more modern Police working environment is to ensure the primary building blocks are sound. For this change to occur, above all Police employees need to be unified under a common employment framework. Central to this progression are two ideas.

Confidently joining the mainstream

13. First, at the heart of a contemporary Police workforce is the need to see Police as less of an agency which stands apart from other state sector organisations. Under the current Act, sworn staff default away from mainstream employment provisions in the State Sector Act 1988 and Employment Relations Act 2000. This has the effect of treating sworn police differently to the vast majority of New Zealand employees, as well as their non-sworn co-workers. Areas where these differences are most striking include approaches to wage bargaining, union representation and disciplinary processes for sworn staff.
14. While there are valid reasons to treat Police differently from other agencies when it comes to aspects of its governance and accountability arrangements (in order to preserve independence on operational matters), in most other areas the same general rules which apply to other public bodies can equally apply to Police. Maintaining a fully standalone environment makes less sense in an increasingly inter-connected world, and 'Police exceptionalism' is more likely to harm rather than protect the interests of the organisation and its staff.
15. Rather than continuing to have Police staff with constabulary powers operating under a unique set of rules, I propose to apply general employment legislation to Police's workforce. Special provisions should only apply when there are compelling reasons for treating Police employees differently from other workers (e.g., limiting rights to take industrial action and to lock out Police employees, in order to ensure continuity of policing coverage, balanced by access to a special conciliation and arbitration process to settle wage claims). If agreed to, the effect of this decision will be Police employees generally have the same employment rights and responsibilities as all other workers in the state sector.

'One Police'

16. Also central to a new workforce model is the idea of 'one New Zealand Police'. Initial steps in this direction were taken via 1989 amendments to the Police Act. A significant move was to transfer civilian Police staff from central public service employment to employment by the Police Commissioner as "non-sworn members of Police". While creating two complementary categories of Police employees was an advance at the time, it has grown increasingly clear that having two types of "members of Police" divides more than it unites. For example, the structural division creates barriers to the internal transfer of staff and skills in Police, and has historically led to confusion over Police resourcing.
17. To better recognise Police employees for what they are, rather than what they are not, I propose the new Act refers to "Police employees" when it intends to cover all staff under the employment of the Commissioner. The effect of this change will be to remove the labels "sworn" and "non-sworn" from Police's legislation, and not divide Police employees into two membership categories. Police employees will be able to pursue career changes within Police more easily, and it will be clearer all Police employees give valued service together.

Supporting features of the new Police workforce model

18. To support a more cohesive Police workforce, my proposal is to provide a legislative underpinning for two new features for all Police employees: first, a single *Code of Conduct* covering all Police employees; second a solemn undertaking which all new staff will take on commencing employment with Police linked to the *Code of Conduct*.

Single Code of Conduct

19. As Ministers have been advised in an earlier paper on a new Police *Code of Conduct* [SDC (07) 63 refers], while non-sworn Police staff have been covered by a *Code of Conduct* since the 1990s, there is no equivalent *Code* for sworn staff. This anomaly is being overcome in advance of the enactment of the new Policing Act, however the new legislation offers an opportunity to reinforce the importance of a single *Code of Conduct* covering the entire Police workforce, and which supports standards of behaviour for Police employees.
20. I have considered whether the *Code* should be set out in regulations made under the new Act, but believe the potential drawbacks outweigh the benefits. Other current references in legislation to *Codes* for state sector employees do not take this additional step, nor do they contain deeming provisions which allow for direct parliamentary oversight of the relevant behavioural standards.
21. In my view, this is as it should be. Providing a statutory underpinning gives a positive statement in legislation that all Police employees must abide by a *Code of Conduct*, but appropriately leaves it to the Commissioner of Police to finalise the document through good faith negotiations with groups representing Police employees, and after consultation with the State Services Commissioner. It follows that, if my recommendation is accepted, while some of the machinery allowing Police's *Code of Conduct* environment to operate smoothly is likely to be included in regulations made under the new Act, the *Code* itself will not be.

Solemn undertaking

22. Building on the unity offered by shared values of service in policing, I propose to introduce a solemn undertaking which all new employees will take on joining Police. Although it would break new ground for New Zealand Police, this idea of all staff making a public commitment when joining a police service has overseas precedents (e.g., under the Australian Federal Police Act 1979). There are also analogies to be drawn domestically. The proposed new solemn undertaking for Police employees would perform a broadly equivalent function to requiring all new employees working for Statistics New Zealand and the Department of Inland Revenue to take a formal oath of secrecy or fidelity.¹
23. The new undertaking would not interfere with the time-honoured constabulary oath, which will stay reserved for holders of the office of constable. Rather, a solemn undertaking, paired with the *Code of Conduct*, will underline the significant responsibilities all Police staff take on, and emphasise employees' duty to act faithfully and impartially at all times. In a symbolic way, such a promise should help join all Police employees together with a sense of shared ideals and spirit of public service.

¹ Under section 21 of the Statistics Act 1975 and section 81 of the Tax Administration Act 1994.

Improving the allocation of policing powers

The office of constable

24. Another key support for a modern Police workforce structure is a contemporary system for allowing Police employees to make use of appropriate powers to tackle crime and disorder, and to work at enhancing personal and public safety. To achieve the required flexibility to meet current and future policing demands, there is general consensus change will be needed. As a starting point, though, the traditional office of constable should remain at the centre of policing.
25. I propose to preserve the strength and versatility of the constable's role by continuing to give this historical office a statutory foundation. The longevity of the constabulary system reflects the value of having people with broad powers and protections, and equivalently wide operational discretion, who take on a personal responsibility to promote safety and security. Statutory recognition of the office of constable will reinforce its central place in New Zealand's policing.
26. Given operational policing can involve direct or indirect use of legitimate force, it is important there is absolute clarity around how the state grants access to such coercive powers, and the legal protections which come with their exercise. Taking the constable's oath of office has long been the established pathway to constabulary powers and protections, and this should be confirmed by the new Policing Act. At the same time, though, there is scope for some improvement:
 - in the interests of certainty, taking the oath should be reserved for those who have completed Police's recruit training, or who are otherwise qualified to hold the office of constable based on their operational policing experience
 - holding the office of constable should no longer be legally deemed to create an employment contract between the Commissioner and the constable (in reality, as now, those eligible to take the constabulary oath will already have entered into an employment agreement and thus become Police employees)
 - to reinforce the expectation that a person might take on and be released from the office of constable at different points in a Police career, it would be helpful to clarify that a Police employee ceases to be a constable if he or she agrees with the Commissioner to set aside this status (as well as during any period of suspension, or if the person resigns, retires, or is dismissed)
 - finally, the language of the constable's oath itself can be updated in a number of respects, in line with the approach already agreed in the context of the Oaths Modernisation Review [CAB Min (04) 42/3A refers].²
27. Drafting a new Policing Act also offers the opportunity to think through whether there remains a need for a backstop ability to appoint honorary constables to provide policing coverage to deal with extraordinary events or emergencies. Under section 5(1A) of the 1958 Act, the Commissioner can cover short-term staffing pressures by appointing constables on a "temporary" or "casual" basis. An overlapping power under section 192 of the Summary Proceedings Act 1957 allows the Commissioner to direct a constable to approach a District or High Court judge to swear in "special constables", if police numbers in any

² The proposal is for the constable's oath to take the following form: "I, [name], swear that I will faithfully and diligently serve Her (or His) Majesty [specify the name of the reigning sovereign], Queen (or King) of New Zealand, her (or his) heirs and successors, without favour or affection, malice or ill will. While a constable I will, to the best of my power, keep the peace and prevent offences against the peace, and will, to the best of my skill and knowledge, perform all the duties of the office of constable according to law".

place "are not sufficient ... for the preservation of the public peace and for the protection of the inhabitants and the security of the property in that place".

28. Although it accurately conveys the time-limited and ad hoc nature of their appointment, I am concerned that hiring "temporary" or "casual constables" devalues the office of constable by creating the impression of employees with lower standards. In my view, a better approach in future would be to give the Commissioner the necessary ability to assign a targeted set of policing powers to specific categories of Police employees (an idea I expand on below), instead of using the generally-empowered office of constable as a means to this end.
29. I also believe the New Zealand policing system is mature enough to dispense with the colonial-era model of "special constables". Commissioners of Police have long had the ability to appoint extra constables, if required at short notice to help provide policing coverage in a particular location. As Police's pool of staff has grown, short-term pressures are better able to be internally managed, meaning the duplicate Summary Proceedings Act power has not been used for more than 25 years. Moreover, having judges authorise appointment of extra constables is inconsistent with the Police Commissioner's role as the person who literally commissions police. To underscore the Commissioner's role in charge of New Zealand's constabulary, and remove duplication, I suggest deleting the "special constables" section of the Summary Proceedings Act.

Allocating limited policing powers to specific categories of Police employees

30. As indicated above, I believe the Commissioner of Police needs to be provided with a wider authority to deploy a more effective workforce, as well as a more cohesive one. My proposal is to establish categories of positions in legislation which can receive specific policing powers under warrant from the Commissioner. This will facilitate deployment of Police employees into roles where some, but not all, of a constable's powers and protections are required.
31. To overcome the lack of other options in the 1958 Act, for several years Police managers have pragmatically assigned constabulary powers to less-than-fully-trained employees, particularly to perform protective services roles such as jailers and prisoner escorts, or to work as scene guards. The creative use of such staff reflects a healthy instinct to make the most effective use of Police resources, reducing 'backroom' burdens on fully-trained officers, and increasing their availability for frontline duties or more complex cases. These advances should be preserved without straining the office of constable by continuing to require Police to swear in "temporary" or "casual constables".
32. After receiving advice from the Solicitor-General, I propose the Policing Act enable the creation of specific statutory policing roles. Other law enforcement roles are enabled by statute, with powers including search and arrest detailed in the relevant legislation.³ There are also several overseas examples where a targeted set of policing powers - including search and arrest powers - have been made available, via legislation, to specific categories of Police employees (e.g., investigative officers, detention officers and escort officers).
33. This vision for a more flexible, better integrated, Police workforce should be supported by greater assurance about the skills and qualifications of staff who

³ Examples include customs officers enabled by the Customs and Excise Act 1996 and fisheries officers enabled by the Fisheries Act 1996.

are empowered to perform policing functions. My proposal is for the new Act to make it a condition that recipients are suitably qualified to exercise assigned powers, duties or functions. Initial discussions with the current Commissioner suggest evidence of such suitability will most likely come from certification - indicating a person has received training and maintains relevant policing skills.

Encouraging the recruitment and development of a skilled workforce

34. New policing legislation should also give greater support to the recruitment and development of a skilled workforce. Two areas where I see the new statute acting as a catalyst are: clarifying the basis for lateral entry and secondments, and demonstrating a commitment to the development of leaders within Police.

Facilitating lateral entry and secondments

35. Accelerated development and secondment schemes have been implemented at times to bring experienced overseas-trained staff into New Zealand Police. Formal exchange schemes also operate with Scotland's Strathclyde Police, the Singapore Police Service and South Australia Police. On occasions, officers from these overseas forces are sworn in for the duration of their local service. Recently, New Zealand Police staff have been sought out for overseas postings, in part to meet foreign policy commitments to peace-keeping and capacity building missions, but also for investigation support and liaison roles. This trend is expected to continue and possibly develop even further in future.
36. The value of being able to attract skills in from outside, plus the benefits of using outward secondments as a development opportunity, is not questioned. Under present legislation, however, there is potential for confusion about the basis upon which such movements occur, and how any relevant powers and protections are made available to the transferred staff. To introduce greater clarity, I propose the new Policing Act contain express provisions to deal with the status of the staff seconded (particularly in terms of their duties, powers and protections), and whether they work under the direction and control of the Commissioner. A priority will be to provide clarity around international service.

Developing Police leaders and senior managers

37. Strong leadership and effective management are essential to good policing, and encouraging moves are being made to identify, develop and bring through talented individuals in New Zealand Police. To the greatest extent possible, this process should be assisted, not hindered, by legislation.
38. Under section 76 of the 1958 Act, a set number of senior Police managers may be appointed for finite terms of up to five years, with a right to seek reappointment. Appointees are excluded from the coverage of any collective employment agreement. These provisions reflect the Senior Executive Service (SES) arrangements for the public service which was originally a feature of the State Sector Act. However, as a management lever, the SES approach was perceived as ineffective, and was repealed via a 2004 amendment in favour of provisions relating to the development of senior leadership and management capability. Despite this, the SES legacy remains within the current Police Act.
39. The fixed-term appointment provisions are no longer relevant to a modern police service, especially in the context of the wider statutory framework of

the Employment Relations Act. And while no one debates the need for strong performance accountability mechanisms, state sector legislation and best practise has moved on considerably from the use of limited tenure as a means of forcing accountability, or as a proxy for professional development and performance management. In particular, rotating senior staff through different leadership roles can occur without the relatively crude reliance on limited-term appointments. On this basis, I propose to line up the new Policing Act with the state sector norm by not carrying over finite tenure provisions for senior staff.

Providing for the future establishment of a Policing Registration Board

40. Underpinning the proposed new Police workforce model is further development of Police's existing certification system. My proposal is to augment the current system with a forward looking model of certification for key policing skills, which at a later point could be supported by a professional registration board.
41. This would not be a radical new approach, but more a case of carefully building on what is done now. Police has been progressively implementing a certification system for key skill-based activities over a number of years. For example, all officers who use firearms are required to maintain their proficiency by re-qualifying at regular intervals. Similarly, certification practices exist for tasks as diverse as deploying OC ('pepper') spray, through to using properly qualified staff to examine handwriting specimens.
42. While Police's pattern of internal professionalisation mirrors features expected of any professional organisation, it has two critical differences. First, there is no formal basis for linking certification of members' skills to employment. Second, no formal body is established to monitor, verify and adjudicate on the currency of members' certification (similar to how registration works for other professions). As recognised overseas, legislation can play a role in addressing these gaps. I believe an equivalent step should be taken in New Zealand, better enabling the Commissioner to ensure Police employees keep their skills and knowledge appropriately up-to-date.
43. The establishment of a Policing Registration Board, at some point in the future, will provide encouragement for the Commissioner to continue current efforts to professionalise and enrich Police's workforce. I accept several details still need to be worked through to adapt Police's existing certification, training and professional development model to a full registration model. This will take some time. For now, the Policing Act can set the work in motion by making provision for the future establishment of a formal Policing Registration Board. This will allow the Commissioner to activate the system of professional registration once the necessary supporting certification processes are in place. My proposal is to underpin a more sophisticated certification and registration programme by sign-posting establishment of a Policing Registration Board in the new Act, but allowing the mechanical details to be dealt with in regulations.

Comment

44. It is well understood the 1958 Act provides an outmoded human resources platform for Police, and the impetus to modernise Police's arrangements draws from several government and external reviews of Police over past decades. That said, the proposals in this paper are far reaching and some of them are ground breaking. The 1989 amendment to the Police Act gave New Zealand Police one of the only joined-up civilian and sworn police workforces in the

world. The proposals in this paper build further on this advanced position and support a Police workforce model fit for the 21st century.

45. An important context for the proposals is that they are high-level. This paper seeks approval for the basic building blocks of a contemporary workforce model for Police. A second, more detailed, paper [*Paper 4*] addresses specific employment relations issues (e.g., wage bargaining, union coverage, etc.). While the papers form a natural pair, the general direction of Police's human resources environment must be settled before issues of detail can be decided.

Communication and publicity

46. Information on public announcements about all six Police Act Review papers was included in *Paper 1: Overview and principles*.

Financial implications

47. Potential costs and savings from the proposed new employment environment are hard to quantify. Short-term costs are likely to be incurred when upskilling Police human resources personnel in some areas, for example administering a *Code of Conduct* environment instead of a tribunal-based disciplinary system. Over time, however, such retraining and infrastructure costs seem likely to be offset by savings achieved from lower transaction costs in other areas (e.g., costs avoided from not having to exit and re-hire Police employees who, using current language, change designation from sworn to non-sworn, or vice versa).

Legislative implications

48. The Police Act Review will 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 analysis

49. A regulatory impact analysis is not required, as the paper deals with internal Police human resources arrangements, which are not anticipated to impact on business, consumers or the general public.

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

50. The high-level workforce proposals in this paper have no specific Privacy Act 1993 or Treaty of Waitangi implications. The proposals appear to be consistent with the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993. A final view will be possible when the proposed new legislation has been drafted.

Consultation

51. The State Services Commission, Treasury, Ministry of Justice, Department of Labour, Crown Law Office and Law Commission were consulted on this paper. The Department of the Prime Minister and Cabinet and Police Complaints Authority were informed, and given an opportunity to comment. A draft of the paper was also shared with the New Zealand Police Association, Police Managers' Guild Inc., and Public Service Association.

Recommendations

52. The Minister of Police recommends the Committee:

Case for change

- 1 **note** Police's current workforce model no longer provides the required flexibility for the effective and efficient delivery of modern policing services

General approach

- 2 **agree** Police's future human resources framework should be guided by general employment legislation, unless there are compelling reasons for departing from the state sector norm
- 3 **agree** to establish a unified Police workforce model which no longer divides Police employees into different membership categories based on whether they hold the office of constable

Supporting features

- 4 **agree** to support a cohesive 'one New Zealand Police' workforce model through legislation by:
 - i enabling the Commissioner of Police to set standards of behaviour for Police employees through a unified *Code of Conduct*;
 - ii introducing a new solemn undertaking for all new Police employees to be paired with the *Code of Conduct*

Improving the allocation of policing powers

- 5 **agree** to provide ongoing statutory recognition for the office of constable
- 6 **agree** the taking of the constabulary oath should remain the legal pathway to general policing powers and protections
- 7 **agree** to refine the operation of the constabulary system in several ways:
 - i update the language of the constabulary oath, using as a start point the approach recommended in the wider Oaths Modernisation Review [CAB Min (04) 42/3A]
 - ii reserve the ability to take the constabulary oath to those who have completed Police recruit training, or who are otherwise qualified to hold the office of constable based on previous policing experience
 - iii confirm the expectation a person might take on and be released from the office of constable at different points in a Police career, primarily by de-linking the role of constable from deemed employment status, but also clarifying that a Police employee ceases to be a constable if he or she agrees with the Commissioner to set aside the office of constable
 - iv repeal section 192 of the Summary Proceedings Act 1957, to better recognise the Commissioner's role as the appointer of constables in New Zealand, and dispense with the outdated notion of "special constables"

- 8 **agree** to enhance the ability of the Commissioner of Police to assign a targeted set of policing powers and protections to identified categories of Police employees, including search and arrest powers in appropriate cases
- 9 **agree** to enable the creation of specific statutory policing roles to help give effect to the decision under paragraph 8
- 10 **note** early priorities as statutory policing roles may include protective services officers (covering scene guards, jailers and prisoner escorts) and investigative officers (covering roles such as burglary crime scene attenders and e-crime specialists)
- 11 **agree** to match the assignment of targeted policing powers and protections to Police employees with assurances the employees are suitably qualified, for example completing relevant training and maintaining skill proficiency

Encouraging the recruitment and training of a skilled workforce


- 12 **agree** to clarify the status of any seconded Police staff, including whether they work under the direction and control of the Commissioner of Police
- 13 **agree** to line up the Police and state sector environments for developing senior managers by not carrying over an equivalent to section 76 of the Police Act 1958 (which provides for limited-term appointment of senior staff)
- 14 **note** a consequence of the decision under paragraph 13 is that in future there will be increasing opportunities for senior Police staff to rotate through different leadership roles

Future establishment of a Policing Registration Board

- 15 **agree** to support development of a Policing Registration Board, as a way of enabling the Commissioner of Police to activate a professional registration system at a future date, once necessary supporting processes are in place
- 16 **note** the intention for the future Policing Registration Board to build on Police's existing certification scheme, and explore synergies with relevant overseas initiatives to develop similar professional police registration bodies

Drafting instructions

- 17 **agree** to incorporate provisions required to give effect to these workforce arrangements in the planned Policing Bill



Hon Annette King
Minister of Police

Dated: ^{5th} September 2007