

Chair
Cabinet Policy Committee

POLICE ACT REVIEW - PAPER 4: EMPLOYMENT RELATIONS ARRANGEMENTS

Purpose

1. This paper seeks approval for detailed provisions needed to support a new Police workforce model. It is the fourth of six papers through which Ministers are invited to make decisions about new policing legislation.

Summary

2. Police's human resources (HR) framework is set to change, following a strategic decision to allow most of Police's HR arrangements be guided by standard employment law. This paper outlines details needed to support Police's new workforce model, with suggested amendments or continuations of the majority of the HR-related sections in the 1958 Police Act. Key areas discussed include:
 - aligning Police's HR arrangements more with the mainstream
 - employment principles
 - the framework for negotiating employment terms and conditions, including limitations on the ability to take industrial action and to lock out Police staff
 - processes for appointments, reviews, grievances and resignations
 - internal disciplinary arrangements
 - union coverage
 - superannuation
 - fitness and medical standards.
3. I invite Cabinet to agree to these proposals, as well as agree that appropriate enabling provisions be included in the planned Policing Bill.

Background

4. For many years, New Zealand Police has operated mostly within its own legislatively-prescribed HR environment. Frequent amendments to the 1958 Police Act have sought to incorporate aspects of contemporary employment law into Police's environment, but this process of gradual amendment over several decades has reached a stage where parts of Police's legislation are now internally inconsistent.
5. Many features of the current Act mirror changes in general employment law, and it is well accepted Police employees can largely work under standard employment law terms. Nevertheless, unique employment provisions still need to apply to Police in certain circumstances. An example is the long-standing barrier to constables having access to industrial options or for the Commissioner of Police to lockout staff. A consequence of this is Police employees need special wage bargaining provisions.
6. Creation of a unified Police workforce model also demands new legislation use inclusive terms for all Police employees. In some cases this simply means a minor updating of language from sections in the current Act. But where new

policing legislation will apply to all Police employees for the first time, the change in language belies a major shift from the status quo. For example, the establishment of the single *Code of Conduct* and new disciplinary framework will, for the first time, allow all Police employees to be treated the same way.

7. This paper provides the detail to support the new Police workforce model. It is informed by extensive consultation and discussion with serving Police staff, their representative organisations, as well as leading commentators on policing.

Employment relations arrangements

8. At the heart of the new Police workforce model is a recognition all Police staff can benefit from the same general employment provisions as other state sector employees. Also, to provide greater internal consistency, it no longer makes sense to differentiate so markedly in employment terms between those with constabulary powers and those without. This shift does not diminish the independence of the traditional office of constable. It simply recognises some departures are required from the approach set out in the 1958 Act, to create a unified model for Police, which largely works within standard employment law.

Aligning with mainstream employment arrangements

9. First, to ensure broad impact across HR provisions in the new Act, I propose extending the procedures under the Employment Relations Act 2000 (ERA) to all Police employees. This will enable alignment between Police's employment relations environment and that of the public sector. To facilitate this change, section 96 of the current Police Act, which specifically diverts Police away from the mainstream,¹ would not be carried over to the proposed new Policing Act.
10. While the effect of this change will be Police employees generally have the same employment rights and responsibilities as other state sector workers, Police's arrangements must preserve some special employment features. This is especially true of features which ensure the continuity of policing services, namely the prohibition against industrial action by constables, which are vital to maintaining confidence in policing. I believe this 'no right to strike' rule should be retained, balanced by recourse to a streamlined final offer arbitration procedure after the processes provided in the ERA have been exhausted.²

Specific arrangements to cater for the limits on industrial action

11. For almost all of Police's history, it has been a strongly held view police should not withdraw their labour, or limit their policing activity for industrial ends. This heritage, which has a legislative basis in sections 80 to 82 of the current Act, offers assurances policing services will continue irrespective of what might end up being difficult negotiations on pay and conditions. This provides comfort to members of the public and the government of the day. It also serves wider interests by helping preserve public trust and confidence in Police.
12. While the underlying principle behind barring industrial action stays the same, there seems scope for sensible refinements to be made in two areas. First, while I am not persuaded the prohibition on strikes by or lockouts of constables

¹ Section 96 reads: "Except as otherwise expressly provided in this Act, nothing in either the Employment Relations Act 2000 or the State Sector Act 1988 applies to any persons employed as members of the Police under this Act".

² The ERA processes provide for facilitation of collective bargaining, which may be broader and provide a greater degree of flexibility than the existing Police Act processes of compulsory conciliation prior to final offer arbitration.

should be extended to all Police employees, I do believe there is a case to expressly recognise the public interest in continuity of services by Police staff who hold warranted policing powers, and those involved in safety-sensitive areas, like some critical roles within the Police Communications Centres, and specialist technical staff who maintain Police's telecommunications network.

13. Given the teamwork patterns of modern policing, where many non-constabulary staff perform key roles in coordination of emergency responses and investigations, it is increasingly tenuous to draw a simple sworn/unsworn distinction over the impact of industrial action. In particular, Police's ability to effectively respond to emergency calls for assistance would be severely compromised if unsworn staff who support Police's communications capability were ever to take 'wild cat' industrial action. Stopping short of legally barring such staff from taking strike action, therefore, my proposal would be to reflect the public safety obligations which must apply to the ability to take industrial action by Police employees who do not hold the office of constable. The analogy I would draw is with the way similar types of public safety obligations in the health sector are given legislative recognition.³
14. Secondly, if future Police wage bargaining rounds fail to result in agreement, it would seem appropriate for compulsory final offer arbitration to be activated for constabulary staff in a way similar to the current process, but without the initial conciliation component. Specific conciliation provisions are no longer required in Police's Act, as these steps would have already been completed under the standard ERA processes. Further reflecting the good faith negotiating environment, there can also be a small refinement to the current statutory arbitration criteria. My proposal is to amend clause 24(g) of Schedule 3 of the 1958 Act to better balance the factors able to be considered by the arbitrator;⁴ specifically by allowing any party to the arbitration to bring to the table any other matters it considers relevant, so long as these additional matters do not impinge on the Commissioner's responsibility to set standards of conduct and integrity for Police employees (which is not, in my view, an issue which should ultimately be able to be decided upon by an outside arbitrator, but is properly a matter for the Commissioner as the employer and head of the police service).

Union coverage

15. The 1958 Act prescribes only a "service organisation" can negotiate a collective employment agreement on behalf of sworn staff. Section 2 of the Act defines "service organisation" to include the New Zealand Police Association, Police Officers' Guild (now known as the Police Managers' Guild) or any other organisation prescribed by Regulations - of which there are presently none. This effectively provides the identified service organisations with exclusive bargaining rights for constabulary employees.
16. This lack of contestability is at odds with the approach to representation found in the wider employment environment, but it is not uncommon in policing. The dynamics of police wage bargaining, and the complexity of a mandatory arbitration process, requires a level of certainty about the negotiating parties. Because arbitration has been a long-standing feature for New Zealand Police,

³ Workers in the public health sector have a code of good faith specified in Schedule 1B of the ERA, which addresses public safety issues during collective bargaining.

⁴ Clause 24(g) states the arbitrating body, when hearing and determining a dispute in relation to a proposed agreement, must have regard to "such other matters as the Commissioner or the arbitrating body, as the case may be, considers relevant, or as may be agreed upon by the Commissioner and the appropriate service organisation".

the current Act requires employee representative groups to be specified in legislation. Historically, the two police service organisations also maintain a co-operative approach with the Public Service Association.

17. I believe it is appropriate to signal that there are no natural monopolies on representation rights for any particular group or groups of Police employees. To continue to allow for two existing staff associations to be pre-defined in the new Act, while other potential representative groups are given legal recognition in regulations, communicates (intentionally or otherwise) differences in status. It would be better to signal there is a genuine level playing field, and I am encouraged the Police Managers' Guild and Police Association have indicated they both see no difficulty with a fully contestable environment being created.

Appointing Police employees

18. Police already has appointment provisions generally consistent with the State Sector Act 1988 - including the need to make merit-based appointments and take sufficient steps to advertise vacancies - and no substantive changes are sought when suitable appointment provisions are drafted in the new Act. To allow the proposed continuations and updates to be more readily appreciated, the Appendix to this paper maps current HR-related sections in the 1958 Act across to the proposed new Policing Act, cross-referencing where appropriate to standard provisions in the State Sector Act and the ERA.

Reviews

19. To ensure a transparent and impartial selection process is followed for Police employees, I propose they be covered by standard review procedures approved by the State Services Commission under section 65 of the State Sector Act. This continues the impetus toward more regular employment arrangements for Police employees, and means Police's specific appointment review rights in section 11 of the 1958 Act need not be taken forward. Two consequences of note also flow from this recommended approach:
 - The first is removal of the current limitation on reviews of appointments to Superintendent rank and above, and unsworn equivalents.
 - The second is embedded in section 11(1), and relates to reviews of refusals by the Commissioner to allow a staff member to voluntarily disengage on medical grounds (as opposed, say, to simply resigning or retiring). My proposal is to instead make such matters subject to the standard personal grievance procedure, as applies to decisions to compulsorily disengage staff.

Resignations

20. Current provisions in the 1958 Act adequately cover the process for notifying a resignation from Police, but the language of the section requires updating to reflect the new unified workforce model. I also draw Ministers attention to a "special circumstances" provision which can be used to limit resignations. This is a logical, albeit unusual, measure to assure continuity of policing services at times of national crisis or emergency. Consistent with a more diverse Police workforce, I propose a special circumstances resignation clause should apply in future to Police employees who are constables, as well as those who work in roles critical to the maintenance of policing services.

Grievances

21. As a consequence of the shift to the standard ERA environment, the specific section in the 1958 Act dealing with personal grievances becomes redundant. Police's distinct arrangements regarding grievances and employment actions are perceived as contributing complexity, rather than providing any benefit or protection. The Commissioner's statutory defence to grievance actions under section 87(2) of the 1958 Act has also never been relied on by Police in any proceedings. Removing Police's specific grievance procedure is thus consistent with adopting regularised employment arrangements for all Police employees.

Transiting to Police's new internal discipline arrangements

22. Currently, Police has a standalone disciplinary system governed by the 1958 Act and 1992 Police Regulations. The two main features of this system are a lengthy list of prescribed offences relating to misconduct or neglect of duty, and a heavy-duty hearing process which closely resembles a criminal trial. The shortcomings in Police's disciplinary system were noted by Dame Margaret Bazley in her recent Commission of Inquiry into Police Conduct,⁵ and Ministers will be aware of the changes already initiated to modernise Police's disciplinary system via a comprehensive new *Code of Conduct* [SDC Min (07) 13/2 refers].
23. The first leg to this change is introducing the *Code* and disciplinary framework by Regulation. To complete the transition to the new *Code* environment, attention must now focus on two provisions in the Police Act itself: section 12 (which provides for inquiries into misconduct) and section 5A (which relates to the Commissioner's power to remove a Police employee for misconduct where necessary to maintain good order and discipline in Police, or avoid bringing Police into disrepute). Removing these sections from primary legislation will leave the path fully open for the new *Code* environment to operate effectively.

'Good employer' principle

24. The 'good employer' provisions in the current Police Act are substantively the same as those which apply to other state sector employers, but for Police the provision is qualified. At present, the Commissioner must operate a personnel policy that complies with the principle of being a good employer by following "as closely as possible" the general employment principles of sections 56 and 58 of the State Sector Act. Police has not relied upon this as a defence to any action, and I have not been convinced the "as closely as possible" formulation needs to be maintained. Accordingly, as a positive statement of Police's movement towards more mainstream employment arrangements, I propose the new Policing Act remove the existing "as closely as possible" qualification.

Superannuation

25. The 1958 Act gives the Commissioner a discretion to make membership of a state services superannuation scheme compulsory for staff who hold the office of constable. In practice, the Commissioner has made membership compulsory for all sworn staff, and has supported voluntary membership by other staff.
26. In line with the government's focus on encouraging savings, and the view of some that police membership of superannuation schemes is a hedge against

⁵ Recommendations 33 to 38 of Dame Margaret's *Report* suggested Police's existing disciplinary system should be overhauled and replaced with a system based on standard employment law procedures and a Code of Conduct.

the potential for corruption, I suggest carrying these arrangements over. Enabling the Commissioner to use discretion on compulsion does not diminish the capacity for bargaining on the issue with employee representatives, or for a change in approach in later years should circumstances make it appropriate.

Standards of fitness

27. The current Act provides for the Commissioner to prescribe standards of medical, psychological or physical fitness for employees, and to exit staff for failing to meet those standards. This recognises policing places occupationally-specific burdens and stresses on employees, with a matching requirement for tools to manage occupationally-relevant impairment, including assisted exits. Importantly, such standards are not just relevant to constabulary staff. For instance, there are fitness standards in place for Police's radio technicians, who are regularly required to tramp to remote hill sites to maintain equipment.
28. I believe retention of these types of provisions is desirable to ensure Police can adequately address circumstances where employees are impaired in their work. Doing so will assist New Zealanders to have confidence that employees entrusted with the often demanding work of policing can safely carry out their duties, without risk to themselves, workmates or the public. I also note the main unions which represent Police employees support the retention of such arrangements, provided they are applied in a way which recognises different roles can require different standards, and national consistency is maintained.
29. In my view, subject to any employment agreement, a simplified legislative provision is desirable. It should enable the Commissioner to prescribe standards of medical, psychological or physical fitness for certain employees, and means of separation (encompassing both medical retirement and disengagement) which are not directly connected to superannuation status.⁶ This regime should apply to all Police employees who occupy roles requiring a certain level of fitness. The Commissioner's decision-making process should follow due process, including any obligations contained in any relevant employment agreement. In the event of dispute, there should be access to the mainstream personal grievance procedure and ERA institutions.

Comment

30. The views of Police staff are important to understand when discussing details of Police employment arrangements. Overall, the proposals in this paper are supported by the two Police unions. There are some specific issues, however, on which differences of opinion have been expressed. Specific commentary by the Police Association is included in the "Consultation" section of this paper.
31. Ministers will be aware a significant focus for the new Policing Act is to support Police by providing the legislative basis to better manage performance and disciplinary issues. Central to this change is the anticipated introduction of a single *Code of Conduct* for all Police staff [SDC Min (07) 13/2]. The proposals in this paper are consistent with the agreed new Police disciplinary framework.

⁶ Current disengagement and medical retirement provisions have a direct link with superannuation arrangements, reflecting their development in the background of discussion on access to superannuation benefits for staff seriously impaired in their work. (Amendments to superannuation schemes in the last decade have culminated in a significant reduction in use of these measures as a staff separation mechanism). The current requirement for superannuation scheme trustees to approve medical practitioners who are to consider employees' fitness can, in my view, be replaced with a requirement for consultation with such trustees. This is consistent with the provisions primarily being about fitness, not superannuation.

Communication and publicity

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

Financial implications

33. 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 HR 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).
34. In general, it is foreseen any financial implications associated with new policing legislation will be managed within existing departmental baselines. Should any unanticipated costs arise in 2008/09 and outyears which cannot be managed within baselines, my intention would be to seek relevant appropriation increases through normal Budget prioritisation processes.

Legislative implications

35. 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

36. A regulatory impact analysis is not required, as the paper deals with internal Police HR 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

37. The proposals outlined in this paper have no specific Privacy Act 1993 or Treaty of Waitangi implications. Proposed continuation of limits on the ability of most Police employees to take industrial action can be seen to conflict with the right not to withdraw labour, protected by the Human Rights Act 1993, New Zealand Bill of Rights Act 1990 and International Labour Organisation conventions. In particular, Ministry of Justice officials advise the proposals to prescribe police employee representative groups in legislation, and to use a "special circumstances" provision to limit resignations, give rise to issues of inconsistency with section 17 of the Bill of Rights Act (right to freedom of association). The objective of the "special circumstances" provision is to ensure continuity of policing services in the face of extraordinary events, and as such the inconsistency appears to be justifiable in terms of section 5 of the Bill of Rights Act. As the objective of the union coverage policy is to ensure certainty regarding Police's unique and complex arbitration environment, this inconsistency may be justifiable in terms of section 5 of the Bill of Rights Act. The proposal to compel sworn membership of a superannuation scheme also gives rise to an issue of inconsistency with section 17 of the Bill of Rights Act. A final view on these proposals' consistency with the Bill of Rights Act will be possible when the new legislation has been drafted.

Consultation

38. The State Services Commission, Treasury, Department of Labour, Ministry of Justice and Crown Law Office were consulted on this paper. The Law Commission and Department of the Prime Minister and Cabinet were informed and given an opportunity to comment. A draft of the paper was also shared with the Police Association, Police Managers' Guild Inc. and Public Service Association. The Police Association has expressed reservations about some of the proposals. The following comment summarises areas of residual concern:

The Police Association believes that, should the prohibition on industrial action by sworn staff continue, it must be balanced by fair criteria for compulsory final-offer arbitration. Further discussion of changes to those criteria proposed in this paper will inform our final position. If the overall bargaining environment is not fairly balanced, sworn officers need recourse to some form of industrial action.

The Police Association accepts that some non-sworn staff perform roles essential to delivery of public safety services. Those staff currently enjoy full rights to take industrial action. Public safety has never been jeopardised as a result of industrial action by those staff. It is reasonable to consider such staff "essential services" in terms of the Employment Relations Act Schedule 1, Part A: that is, to require 14 days notice of the intention to take industrial action. This would put such staff on the same industrial footing as other safety-related services like professional firefighters, ambulance services and prison officers (among others). However, the Police Association does not accept there is any justification for implementing a regime modelled on the ERA's Schedule 1B. There are clear differences between non-sworn Police staff and public health staff to whom the Code of Good Faith contained in Schedule 1B applies:

- Public health staff are involved in delivery of life-giving services. These staff are much more directly linked to matters of life and death affecting patients than are non-sworn Police staff performing roles essential to public safety, even those directly supporting sworn staff in delivering emergency response.
- Schedule 1B mandates contingency planning and binding adjudication to provide contingency cover. Such a provision is unnecessary in the Police environment, because the employer already has recourse to contingency options to cover vital roles, including a large workforce of sworn staff who are prohibited from taking industrial action.
- Schedule 1B represents an attempt to improve the bargaining environment in an industry that has a history of industrial conflict. Police does not have that same history. Rather than improving the industrial environment, legislating to seriously curtail the industrial rights currently enjoyed by non-sworn staff would be likely to have a detrimental effect on Police's industrial relations.

Provisions that restrict resignations should be rationally aligned with, and differentiated according to, restrictions on rights to take industrial action. So, statutory restrictions on resignations of sworn staff are reasonable, but restrictions for non-sworn staff are not, given that the employment contracts of such staff may contain requirements to give adequate notice periods. It is significant in the context of the preceding discussion that no such statutory restriction on resignations applies in the public health sector.

Recommendations

39. The Minister of Police recommends the Committee:

Aligning with mainstream employment arrangements

- 1 **note** the strategic decision to allow Police's future human resources framework to be guided by general employment legislation, unless there are compelling reasons for departing from the state sector norm

- 2 **agree** to extend the application of the Employment Relations Act 2000 to all Police employees, to ensure Police staff generally have the same employment rights and responsibilities as other state sector employees

Specific arrangements to cater for limits on industrial action

- 3 **note**, despite the decision in paragraph 2, some special features of Police's employment arrangements must be preserved to safeguard the continuity of policing services
- 4 **agree** to retain the prohibition against industrial action by constables
- 5 **agree** to reflect the public safety obligations of Police employees who are not constables through:
 - i specification of policing as an "essential service" under Schedule 1A of the Employment Relations Act 2000;
 - ii development of a tailored code of good faith under Schedule 1B of the Employment Relations Act 2000
- 6 **agree** to balance limits on constabulary employees' rights to take industrial action by continuing to provide recourse to final offer arbitration, after relevant Employment Relations Act 2000 processes have been exhausted
- 7 **agree** to better reflect the good faith negotiating environment in which any future arbitrations might occur, by specifically allowing any party to bring to an arbitration any matters it considers relevant, provided such matters do not impinge on the Commissioner of Police's responsibility to set appropriate standards of conduct and integrity for Police employees

Union coverage

- 8 **agree** not to continue to define in statute representative staff associations for Police employees that may take part in wage bargaining negotiations and any resulting arbitrations, in order to emphasise the contestability of representation rights

Appointments

- 9 **agree** to carry forward provisions in the Police Act 1958 relating to appointments, subject to any updates required to achieve greater alignment with equivalent provisions in the State Sector Act 1988

Reviews

- 10 **agree** it is not necessary to carry forward specific provisions in the Police Act 1958 relating to reviews of employment decisions, by providing that:
 - i all Police employees can access standard appointment review procedures approved by the State Services Commission
 - ii staff refused permission by the Commissioner of Police to voluntarily disengage on medical grounds can take a personal grievance action

Resignations

- 11 **agree** to carry forward provisions in the Police Act 1958 relating to the process for notifying a resignation, subject to updates required to reflect Police's new inclusive workforce model

Grievances

- 12 **note**, following the decision in paragraph 2, the specific section in the Police Act 1958 dealing with personal grievances will become redundant
- 13 **agree** not to maintain a Police-specific grievance procedure, and not to carry forward the Commissioner of Police's current statutory defence to grievance actions under section 87(2) of the Police Act 1958

Disciplinary arrangements

- 14 **note**, as a positive step towards a new disciplinary framework for Police, a new *Code of Conduct* for all Police employees will shortly be introduced by Regulation [SDC Min (07) 13/2]
- 15 **agree** to help complete the move to the *Code of Conduct* environment by not carrying forward the following provisions of the Police Act 1958:
- i section 5A (which provides a specific power to dismiss a Police employee for "incompatible behaviour", following a statutory inquiry)
 - ii section 12 (which provides for an inquiry process to be followed before the Commissioner of Police can take disciplinary action against staff)

'Good employer' principle

- 16 **agree** to confirm the Commissioner of Police's obligation to operate a personnel policy which complies with the principle of being a good employer, in line with sections 56 and 58 of the State Sector Act 1988

Superannuation

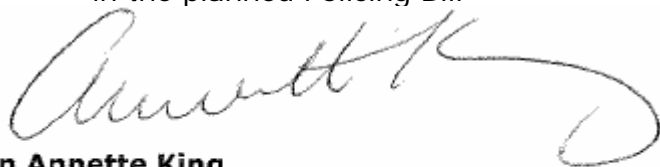
- 17 **agree** to continue the Commissioner of Police's statutory discretion whether to make superannuation compulsory for constabulary staff

Standards of fitness

- 18 **agree** to confirm the Commissioner of Police's ability to prescribe standards of medical, psychological or physical fitness for certain employees, and to be able to exit staff for failing to meet those standards

Implementation

- 19 **note** the summary of proposed continuations and updates set out in the Appendix to this paper, which maps current human resource-related sections in the Police Act 1958 across to the proposed new Policing Act
- 20 **agree** to incorporate provisions required to give effect to these proposals in the planned Policing Bill



Hon Annette King
Minister of Police

Dated: *5/9* September 2007

Current section of Police Act 1958	Proposed action	Comment
s.5 Members of police Appointment and removal of staff Assignment of ranks Employer power not limiting constabulary power Disciplinary penalties	Retain Retain Retain Redundant	Amend to reflect 'one Police' employment framework, but maintain a clear identification of employees who hold the office of constable. As now, employer/employee relationship will be stated not to undermine the basis of the constabulary system. Commissioner's ability to assign ranks to staff will be reinforced. Management of employee disciplinary issues to be incorporated into the new <i>Code of Conduct</i> environment.
s.5A Incompatible behaviour Removal for good order and discipline	Redundant	Dismissal options are part of the new <i>Code of Conduct</i> environment
s.6 Non-sworn members of Police Powers/warrants/limits	Largely redundant	New general appointment power will include provision for appointment of non-constabulary Police employees
s.7 Employment principles Statement of qualified 'good employer' principle	Retain	Amend to reflect, subject to new Act, standard good employer principle
s.8 Appointments on merit Obligation to appoint person best suited to position	Retain	As now, will contain an equivalent to section 60 of the State Sector Act 1988 (SSA)
s.9 Obligation to notify vacancy General requirement to notify suitable applicants	Retain	As now, will contain an equivalent to section 61 of SSA, subject to any regulations under new Act [similar to reg 4 of Police Regulations 1992]
s.10 Obligation to notify appointments General requirement to notify appointments	Retain	As now, will contain an equivalent to section 64 of SSA, subject to any regulations under new Act
s.11 Review of appointments Review of appointment decisions (except under sec. 76) Review of refusals to allow voluntary disengagement	Retain	Amend to reflect general application of SSA, and access to personal grievance procedures under the Employment Relations Act 2000 (ERA)
s.12 Inquiry into misconduct Inquiries into misconduct/neglect	Redundant	Replaced by new <i>Code of Conduct</i> environment
s.13 Acting appointments For absence/special purpose to any rank	Retain	Sensible provision to cover operational requirements, which could benefit from updated language
s.14 Resignation Constraints on resignation	Retain	Retain application to constables, and extend to Police employees critical to assure continuity of policing services
s.15 Power to transfer members in Police Transfers for excess staff or staff in redundant roles	Retain	Amend language to reflect new Police employment framework
s.26A and 67(7) superannuation schemes Empowers Commissioner to establish superannuation schemes and enables compulsory sworn membership	Retain	Continue Commissioner's discretion whether to make superannuation compulsory for constabulary staff
s.28 Retirement of medically unfit Enables compulsory retirement for unfitness -and access to relevant retirement funds	Retain	Remove superannuation emphasis, and update to make subject to ERA personal grievance procedure
s.28A Prescribe standards of fitness Empowers standards of medical/physical health to be prescribed	Retain	Amend to make subject to employment agreement - and retain need to consult with Police union groups and govt. superannuation trustees

Current section of Police Act 1958	Proposed action	Comment
s.28B/C/D/F Disengagement Empowers compulsory/voluntary disengagement regime linked to superannuation.	Retain	ERA personal grievance procedure to apply to refusal by Commissioner to allow voluntary disengagement on medical grounds
s.30 (1A) GI's (employment conditions) Enables conditions of employment to be fixed	Redundant	Redundant with application of ERA
s.32 Suspension Empowers suspension for misconduct/neglect	Redundant	Incorporated into the new <i>Code of Conduct</i> environment
s.37 (1) Oath to be Taken Establishes the office of constable	Retain	Modernised language for the constabulary oath
s.37 (2) Linking the oath to employment	Redundant	No longer required as employee status arises from conventional employment agreement
s.42 Pensions - death and disablement Special pensions (rates War Pensions Act 1954)	Redundant	Out-dated provision, as it does not apply to service after 1972
s.43 Injuries in execution of duty Scope of when injury is part of employment	Redundant	Potential conflict with Injury Prevention, Rehabilitation, and Compensation Act 2001. Preferable for this to be clarified/expanded in employment agreement.
s.44 Termination of office Clarifies termination of office of constable	Retain	Provide legal certainty over situations where the office of constable can be set aside by agreement between the employee and Commissioner, as well as when the office is deemed to be discharged (e.g., dismissal).
s.49 Gaining admission by false representations Penalties for misrepresentation for employment	Retain	Dealt with in <i>Paper 5</i> in wider context of current Police-specific offences
s.67 Conditions of employment sworn members Bargaining and employment agreements, consultation with SSC, union coverage, recourse to conciliation and arbitration and empowering superannuation compulsion	Retain	Amend to apply ERA, retain SSC consultation, union coverage prescribed by Regulation and access to final offer arbitration for constables. All other Police employees categorised as essential service workers (Part A, Schedule 1, of the ERA under a code of good faith).
s.67A Individual employment agreements Enables IEAs for sworn members	Redundant	Consistent with application of ERA
s.68 Effect of agreement Makes agreements binding on its parties	Redundant	Consistent with application of ERA
s.69 Content and currency of agreement Provisions relating to applicability, and expiry.	Redundant	Consistent with application of ERA
s.70 Variation to agreement Provides for variations and for arbitration procedure not to apply (to variations)	Retain	Retain non-application of arbitration procedure to variations and amend to ensure variations consistent with application of ERA
s.75 Conditions of employment of non-sworn members of Police Establishes pay-fixing arrangements	Retain	Amend to be consistent with new employment framework

Current section of Police Act 1958	Proposed action	Comment
s.76 Senior positions excluded from agreement Empowers designation of positions excluded from collective employment agreement, finite appointments and no appointment review right	Redundant	In line with new employment framework, apply ERA to the setting of terms and conditions, and amend to apply appointment review rights
s.77 Conditions of employment senior staff Ability to set employment conditions for senior managers	Redundant	Consistent with application of ERA
s.79 Conditions where person not reappointed Terms for senior person not reappointed	Redundant	Consistent with application of ERA
s.80 Unlawful strikes and lockouts Makes industrial action unlawful by sworn Police staff	Retain	Retain for constables, balanced by final offer arbitration procedure in new Act. All other Police employees categorised as essential service workers (Part A, Schedule 1, of the ERA under a code of good faith).
s.81 Definition of strike Defines the meaning of a strike	Retain	As above for sec. 80
s.82 Definition of a lockout Defines the meaning of a lockout	Retain	As above for sec. 80
s.83 Settlement of disputes Invokes ERA for settlement of disputes	Redundant	Consistent with application of ERA
s.87 Personal grievances Specifies qualified application of ERA	Redundant	Consistent with full application of ERA
s.89/90/91 Sexual harassment Procedures regarding harassment	Redundant	Consistent with application of ERA (provision currently redundant)
s.92 Duress Defines duress	Redundant	Consistent with application of ERA (provision currently redundant)
s.93 Statements privileged Establishes privileged statements and information in respect of grievances	Redundant	Consistent with application of ERA (provision currently redundant)
s.95 Choice of procedures Provides grievance procedure choice where Human Rights Act applies	Redundant	Consistent with application of ERA (provision currently redundant)
s.96 Employment Relations Act and State Sector Act not to apply Limits jurisdiction of ERA and SSA	Largely redundant	Any new provision drafted to reflect general application of ERA and State Sector Act to Police's employment relations environment.
Schedule 3 Procedure for compulsory conciliation and arbitration	Retain	Amend to reflect general application of ERA, with further balance to the ability for parties to bring to an arbitration any matters they consider to be relevant (except for the standards of employee conduct/integrity)