

Submission of Issues for Consultation

PRINCIPLES

Legislation should establish principles to help guide policing in New Zealand. Guiding principles should include the responsibility to provide a national service and the importance of impartiality (to ensure policing is free from improper influence).

Question 1

Should a new Policing Act establish principles to help guide how policing is done in New Zealand? If so, what guiding principles would you like to see included?

A new Policing Act for New Zealand should develop principles that over-arch both policy and operational aspects of policing. The Commonwealth Human Rights Initiative (CHRI) believes that democratic nations need democratic policing, which gives practical meaning to Commonwealth member promises of democracy and good governance and is applicable to any context – rich or poor, large or small, diverse or homogenous.

Critical to the success of democratic policing is the principle that Police should be held accountable: not just by government, but by a wider network of agencies and organisations working on behalf of the interests of the people, within a human rights framework.

Democratic policing is both a process and an outcome. The democratic values reflected in Commonwealth membership lay down a sound foundation for the development of democratic policing. The failure of the Police to properly perform their duties has a significant effect on the ability of people to enjoy the full spectrum of their human rights and can also impact negatively on the ability of governments to deliver on their mandates. Respect for human rights is also central to the actual conduct of Police work. Police are given wide powers, and this power to infringe on citizen's freedoms carries with it a heavy burden of accountability.

The principles of a democratic Police organisation are that it is accountable to law and not a law unto itself, is accountable to democratic government structures and the community, is transparent in its activities, gives top operational priority to securing the safety and rights of individuals and private groups, protects human rights, provides society with professional services and is representative of the community it serves.

The principles put forward in the Police Act Review discussion paper closely correlate with the principles of democratic policing.

Provides society with professional services

As an organisation with considerable power and in which the public places enormous trust, the Police must be governed by a strong code covering both ethics and professional conduct and must also be answerable for delivering high quality services.

Accountability to the law

The rule of law is not meant for just the community, while Police and governments remain immune. Democratic policing requires that the Police act within clearly demarcated boundaries and within international laws and standards. Actions of the Police should always be subject to court scrutiny and those who break the law should face consequences both through internal disciplinary systems and the criminal law.

Accountability to democratic government structures and the community

To ensure that the Police don't become overly controlled by or identified with a singular seat of power, democratic Police should independently answer to all three branches of governance, as well as to the community. These checks and balances should ensure that the Police act with impartiality and are free from improper control and illegitimate political interference.

Is transparent in its activities

Most Police activity should be open to scrutiny and subject to regular reports to outside bodies. People must be able to access information regarding the formulation of policy, manner of functioning and areas of priority. Information about individual behaviour, as much as broader operations, must be in the public domain.

Gives top operational priority to protecting the safety and rights of individuals and private groups

The Police must primarily serve the people and be responsive to the needs of individuals and members of groups, especially those who are vulnerable or marginalised. In diverse and fragmented societies, Police organisations must be responsive and respectful across social divides and always uphold the law without bias.

Protects human rights

This requires Police to protect the right to life and dignity of the individual, as well as the exercise of democratic freedoms – freedom of speech, freedom of association, assembly and movement. They must also ensure freedom from arbitrary arrest, detention and exile, and impartiality in the administration of the law.

Is representative of the community it serves

Police organisations that reflect the population they serve are more likely to enjoy confidence and co-operation of the community and earn the trust of vulnerable and marginalised groups who most need their protection.

A democratic approach to policing benefits the community, Police officers and governments alike. Openness allows the community to understand the challenges faced by Police; while constant dialogue helps set common priorities. Responsibility for safety then becomes a shared objective. Community co-operation is more assured and information is more likely to be shared – as a result, crimes are better prevented and more easily solved.

EFFECTIVE POLICING

Legislation can directly and indirectly support the effectiveness of New Zealand Police. Several options have been identified which could be explored. These include improving existing practices (for example, better enabling speedy identification of people being detained by Police), as well as some ideas that would advance current approaches (for example, clarifying in law that use of minimal restraint such as handcuffing, is a reasonable use of force.)

Question 2

Do you endorse the legislative proposals to support effective policing? If not, what role do you see legislation playing in enhancing Police's effectiveness?

The legislative proposals made around reinforcing clear lines of command and control, improving the allocation powers of Police and improved inter-agency sharing to tackle persistent offenders are in keeping with the principles of democratic policing. However, if these changes are to be made, they should also be done within a human rights framework, reiterating that the fundamental purpose of policing is seen as being the protection and promotion of the human rights of everyone in the community.

CHRI has reservations regarding aspects of the proposed legislative changes that are related to supporting frontline policing. While establishing more clarity for these operational policing issues is favourable and recommended, this clarity should not be come at the expense of human rights protection and promotion. In some instances, providing more powers to the Police in revised legislation would contradict the Bill of Rights.

- Clarifying the grounds for searches to be done in Police-controlled buildings
 - There are currently no guidelines that set out and define 'search and seizure'
 - An issue that arises if this is defined in statute is that it the clause will override the Bill of Rights
 - Enshrining grounds for searches in either guidelines or Police policy manuals would place operational weight behind the powers. This would also ensure that searches would have to comply with the provisions of the Bill of Rights and take place within a human rights framework
- Moving people away from danger or away from crime scenes
 - Terms such as 'move people away from danger' must be defined clearly
 - Legislation that makes the failure of a person to voluntarily move themselves from danger or a crime scene an offence is problematic as in practice it could be used to target minorities and vulnerable groups

- Creating statutory presumption that use of handcuffs is reasonable use of force
 - The current presumption regarding the use of handcuffs is that the use of handcuffs is *not* reasonable use of force; this is laid out in the New Zealand Bill of Rights.
 - Police should presume that the people have a right *not* to be restrained unless there is a reasonable belief that that person poses a risk to their own or others health
 - Moving the burden of proof to the person that has been restrained is inappropriate as it would increase the vulnerability of a detained person and increase scope for the Police to abuse this power
 - A reversal of the current presumption would undermine the emphasis that should be placed on Police to be vigilant regarding burden of proof and good operational policing, particularly where they are dealing with potentially vulnerable members of the community in a conflict situation
 - CHRI recommends that the current presumption that the use of handcuffs is not reasonable force be maintained

- Offering more certainty for Police to take incapacitated people into safe custody
 - There is a need for further clarification required regarding current Police powers and the authority around those powers. There is a need to identify what the Police can and can't do in these situations, but this certainty can be explored through policy or operational guidelines, based on current law, rather than drafting statutory provisions

PEOPLE

New legislation could better support the Police Commissioner's ability to employ staff with the range of skills, powers and protections needed to meet current and future demands. For example, a new Policing Act could strengthen pre-employment vetting, and give legislative backing to a Code of Conduct for all Police staff.

Question 3

Do you support the legislative proposals aimed at modernising the Police's employment environment?

The legislative proposals put forward that are aimed at modernising the New Zealand Police's employment environment are comprehensive and fair, and should also be aimed at creating:

- A commitment on the part of the Commissioner to act as a good employer
- Strengthened approaches to pre-employment vetting
- A common basis for setting employment terms and conditions
- Reinforcing the unity of Police with a single Code of Conduct and solemn undertaking for all staff
- More options for empowering appropriate people to perform specific policing tasks
- Clear provisions to facilitate temporary secondments to and from Police
- Acknowledging the importance of developing Police's leaders and managers
- Expanding 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

Legislation can help with the oversight and management of Police. The new Act could include provisions confirming the functions of Police, strengthening the Commissioner's accountability for the Police's performance, and ensuring industrial action does not affect the delivery of policing services.

Question 4

Do you endorse the legislative proposals for Police's governance and administration?

The issue of strengthening the Commissioner's accountability for Police performance poses some potential issues.

- The Police Commissioner is ultimately answerable to the Minister, as the responsible elected representative in Parliament.
- This answerability is a key component of Police accountability and will not, and must not, change. However, the operational autonomy of the Police must be protected, to reduce the potential for illegitimate political interference into policing
- The Police Commissioner should be held accountable for Police performance to the State Services Commission. This would reduce the scope for political bias in terms of operational issues.

- The Police Commissioner's employment agreement should include reference to the Commissioner's obligation to ensure that the Police meet their performance conditions and guiding principals

THE FUTURE

New legislation can anticipate the needs of the future. For example, the Policing Act might allow for technological advances in identification processes, or a creation of a policing oversight and improvement agency.

Question 5

In your view, how might a new Policing Act most sensibly anticipate the future?

A key feature in democratic policing – in line with the checks and balances that characterise democratic systems of governance – is that the Police are formally held to account in a variety of ways for their performance. Democratic Police organisations must have systems that ensure accountability to the state, internal accountability and accountability to the community that they serve.

The Police must be held accountable through a web of both internal and accountability mechanisms.

Internal accountability must be effective and transparent. This ensures that the Police are given the ability to police themselves and helps build community trust in the Police. Internal accountability and processes must be supported by external accountability and mechanisms.

An effective model includes oversight by:

- Democratically elected representatives;
- An independent judiciary;
- A responsible executive (through direct or indirect policy control over the Police, financial control and horizontal oversight by other government agencies such as Auditors-General, Service Commission and Treasuries); and
- At least one independent statutory civilian body, such as an Ombudsman or a Human Rights Commission or, ideally, a dedicated body that deals with public complaints about the Police.

The existing external statutory civilian body, the Police Complaints Authority, has been rendered less effective than it could have been as a result of poor resourcing. The Police Complaints Authority should be adequately resourced, which would allow it to conduct its own investigations (to in turn allow a true independence and effectiveness that is not currently in place). An alternative model would be to increase the powers and resources of the Ombudsman, and allow the Ombudsman to take over the role of external Police oversight and handling of public complaints against the Police. Either model must be supported through both statute and funding to allow effective and independent operation.

