

# Coversheet: Legislation for the Police Vetting Service

Advising agencies	<i>New Zealand Police</i>
Decision sought	<i>Approval of policy for a statutory framework for the Police Vetting Service</i>
Proposing Ministers	<i>Minister of Police</i>

## Summary: Problem and proposed approach

<p><b>Problem Definition</b></p> <p><b>What problem or opportunity does this proposal seek to address? Why is Government intervention required?</b></p>
<p><i>Summarise in one or two sentences</i></p>
<p>A Police initiated review of the Police Vetting Service by the Independent Police Conduct Authority (IPCA) and the Office of the Privacy Commissioner (OPC) in 2016 recommended a statutory framework be developed to address:</p> <ul style="list-style-type: none"> <li>• the lack of clear legislative or policy direction</li> <li>• uncertainties and legal risks to all parties with the way that Police vets are undertaken.</li> </ul>

<p><b>Proposed Approach</b></p> <p><b>How will Government intervention work to bring about the desired change? How is this the best option?</b></p>
<p><i>Summarise in one or two sentences</i></p>
<p>The Police Vetting Service has evolved in an ad hoc way over the past 19 years. The development of a statutory framework, by amending the Policing Act 2008 (the Act), provides an opportunity for Police to address the issues identified by the above review.</p>

## Section B: Summary Impacts: Benefits and costs

<p><b>Who are the main expected beneficiaries and what is the nature of the expected benefit?</b></p>
<p>A statutory framework for the Police Vetting Service will benefit a broad range of organisations including Police, organisations that require Police vetting, individuals being vetted by Police, and New Zealand society as a whole. A statutory framework will provide clear legal and policy direction for the Police Vetting Service, greater clarity on its purpose and functions, and consistency in the manner in which Police vets are undertaken.</p>

### **Where do the costs fall?**

The costs are unlikely to change significantly when the statutory framework first comes into force, as it will, in essence, capture the Police Vetting Service in its current state with some minor changes that will not attract additional charges. It is planned that the more significant changes to the Service incorporated in the proposed statutory framework, would come into force in two to three years to allow for investment and improvements to technology and capability, as well as the development of regulations.

Since 2017, the Police Vetting Service has operated as a cost recovery service. A set vetting fee of \$8.50 + GST is payable per Police vetting request by organisations that make requests, unless they submit 20 or fewer requests or are a registered charity. This fee covers the cost of providing the vet and all supporting services, such as requests for review and the monitoring and evaluation of the operation of the Service. It is intended that the Police Vetting Service will continue to operate as a cost recovery service. The only anticipated change in fees is if the current review of the vetting fee, in relation to recovery of costs, results in an upward adjustment (which it is expected to as the Police Vetting Service is presently operating at a loss). This adjustment is separate from the statutory framework and is part of an agreement to review the vetting fee regularly to ensure that costs are properly recovered (i.e. an adjustment to the fee will happen, if needed, regardless of whether a statutory framework is put in place).

All administrative costs associated with making a request for a Police vet have traditionally been borne by the organisation requesting Police vets. These costs vary depending on the size and nature of the organisation and the type and number of Police vets sought. It is intended that these costs will continue to be met by vetting requesters. However, it is expected that the proposed statutory framework will bring efficiencies that may, over time, reduce these costs for organisations (and, in the future, for individuals) requesting a Police vet.

The cost to implement system changes and update business processes have yet to be determined. This work is necessary to support the following proposals:

- individual access to the Police Vetting Service (see section 3.4.3)
- a two-step consent process (see section 3.5.2)
- maintaining the validity of Police vets (see section 3.6)
- reducing duplication of Police vetting (see section 3.7).

At this stage, it is not envisaged that there will be any significant change in the cost of running the Police Vetting Service directly related to new processes under the proposed legislation. There would need to be a realignment of the current vetting fee structure to allow for potentially fewer vets which require more work. This will involve a shifting of activity from a focus on producing vets, including many duplicate vets, to producing fewer vets but with additional work to maintain the validity of vets.

### **What are the likely risks and unintended impacts, how significant are they, and how will they be minimised or mitigated?**

There are unlikely to be significant unintended impacts as the proposal has been widely consulted on. The proposed statutory framework confirms much of the changes and improvements made to the Police Vetting Service over the last three years since the Service

was reviewed. It also provides for some additions to the Service (e.g. a formal review process), and enables some more fundamental changes to come into force when the necessary Information Technology solutions are in place (e.g. allowing individuals to request a Police vet on themselves). The proposed changes received broad support from submitters when tested through public consultation that involved a wide spectrum of stakeholders.

The main risk is the need for government investment in the Police Vetting Service to develop the Information Technology systems needed to implement some of the key changes. The Police Vetting Service will assess the needs and costs to develop a business case for the funding, which will be sought via the usual government funding/budget cycle.

The proposed statutory framework will allow the Police Vetting Service to operate essentially as it presently does. This will provide clarity about the purpose and scope of Police vetting. It will address current issues such as who can access the Police Vetting Service, what information can and cannot be released in a vet. The framework will also enable the implementation of significant changes and improvements through provisions coming into force by regulation over the next two to three years.

Prior to implementing any of the key changes after the initial implementation of the statutory framework, work will be done to identify the expected demand for proposals like access by individuals, and the systems required for a two-step consent process so the Police Vetting Service is properly resourced and able to meet the demand.

**Identify any significant incompatibility with the Government’s ‘Expectations for the design of regulatory systems’.**

Police has read and followed the Government’s Expectations for the design of regulatory systems’ prior to the development of the proposed statutory framework to ensure consistency and compatibility.

## Section C: Evidence certainty and quality assurance

**Agency rating of evidence certainty?**

Evidence of the need for a statutory framework for the Police Vetting Service is provided in both the report from the joint review of the Police Vetting Service in 2016, and public consultation undertaken in May 2018.

The joint review was conducted by the IPCA and the OPC, who observed the complete vetting process, reviewed the written policies and operational procedure guidance, analysed data from vetting requests received over a two year period, the application of Clean Slate legislation, and the responses provided by Police to organisations who had requested Police vets. In addition, the IPCA and the OPC interviewed 10 organisations that make Police vetting requests, and undertook a comparison of the New Zealand Police Vetting Service with other comparable jurisdictions. The review also considered delays in the service and complaints that have been made to the IPCA and the Privacy Commissioner over the past decade.

Following this review, Police undertook public consultation on a broad range of aspects pertaining to the operation of the Police Vetting Service. Of submitters who responded, 92% supported a statutory framework (only one submitter did not support the proposal).

*To be completed by quality assurers:*

**Quality Assurance Reviewing Agency:**

The Treasury Regulatory Quality Team and the Ministry of Business, Innovation and Employment.

**Quality Assurance Assessment:**

Meets.

**Reviewer Comments and Recommendations:**

Treasury has directed that the following statement be included in the Cabinet paper:

A review panel with representatives from the Treasury Regulatory Quality Team and the Ministry of Business, Innovation and Employment has reviewed the Regulatory Impact Assessment *Legislation for the Police Vetting Service* produced by the New Zealand Police and dated March 2019. The review team considers that it **meets** the Quality Assurance criteria. We note that the proposal seeks to establish a statutory framework for the Service that will enable the implementation of (amongst other things) individual access to the Service, and a two-step consent process. This legislation would not involve a commitment to these enhancements in the absence of a case being made for additional funding.

# Impact Statement: Legislation for the Police Vetting Service

## Section 1: General information

<b>Purpose</b>
<p>New Zealand Police is solely responsible for the analysis and advice set out in this Regulatory Impact Assessment, except as otherwise explicitly indicated. This analysis and advice has been produced for the purpose of informing:</p> <ul style="list-style-type: none"><li>• policy proposals to be taken to Cabinet for inclusion in primary legislation</li><li>• proposals that will need to be included in regulations made under the Policing Act.</li></ul>
<b>Key Limitations or Constraints on Analysis</b>
<p>The need for legislation is well understood and evidenced following a review of the Police Vetting Service in 2016, public consultation undertaken by Police in 2018, and one-to-one discussions with key stakeholders. However, appropriate options to address the areas that need to be covered by legislation are in many instances limited.</p> <p>The key limitations and constraints of this analysis follow.</p> <ul style="list-style-type: none"><li>• In many instances, the options for consideration are limited to a non-statutory option (often the status quo) or a statutory option.</li><li>• Analysis of the proposal is further constrained by an inability to use a single set of criteria across the scope of the proposals that make up the statutory framework of the Police Vetting Service. Analysis is primarily based on the criteria of meeting the Police Vetting Service purpose, effectiveness, and practicality.</li><li>• Some of the proposals in the statutory framework that are changes to the existing Police Vetting Service rely on the development of regulations made under the new Act before they can be implemented. It is intended that implementation of these changes will occur over the next two to three years. As regulations are developed, it is expected that a further impact assessment will be made at that time based on the specifics of the regulations proposed.</li></ul>
<b>Responsible Manager (signature and date):</b>
<p>Jeremy Wood Director, Policy and Partnerships New Zealand Police February 2020</p>

# Section 2: Problem definition and objectives

## 2.1 What is the context within which action is proposed?

### **Background**

The purpose of the Police Vetting Service is to contribute to public safety and national security. The Police Vetting Service was established in 2000 in response to a need by employers and professional bodies for information held by Police to properly assess the suitability or ‘good character’ of an employee who could be a paid or voluntary worker. Police vets are generally required for roles where the work involves young children, or other vulnerable members of society.

Police carry out vetting as an administrative function under section 9 (general information) of the Policing Act 2008, but there is no specific provision for vetting in the Act.

In the last 19 years, the Police Vetting Service has evolved in an ad hoc manner to meet:

- the changing needs of legislation (such as the Land Transport Act 1998 under which a test of ‘fit and proper person’ applies to taxi drivers, the Education Act 1989 requiring Police vets for teachers, or more recently the Children’s Act 2014 requiring safety checks for core and non-core children’s workers)
- an increased demand by employers where a perceived public safety risk exists to vulnerable people in their care for whom they are responsible.

Every year the number of organisations who can request a Police vet is growing as is the number of Police vets being requested. While the vast majority result in no information of concern, when Police have information about a person, Police assess the relevance of the information to the proposed role of the vetting subject to be fair to all parties. Depending on the complexities of the situation, some Police vets can be resource intensive and costly.

In 2014, Police asked the IPCA to conduct an independent review of its pre-employment and visa application vetting policies and processes. Changes in practices and policies had led to more information being released to protect the vulnerable in the community, and consequently a rise in complaints being made to the IPCA and the OPC about the information Police was releasing.

In 2015, it was agreed that a comprehensive joint review by the IPCA and the OPC would be undertaken, including reviewing policy, procedures, and systems to identify opportunities for improvement. The review process included on-site visits to the Police Vetting Service, a review of Police’s written policies and operational procedures, analysis of vetting data, interviews with a small number of organisations that request Police vets, and a comparison with vetting systems in other similar jurisdictions.

The joint review made 17 recommendations and Police has undertaken a significant programme of work to address these operational improvements. The key recommendation, to develop a statutory framework, and the proposals for that statutory framework are set out in section 3.0 of this document.

With more than 13,000 agencies approved to access the Police Vetting Service and more than 600,000 vetting requests each year, the number of people affected by the Police Vetting

Service (including those it is intended to protect) is significant. The scale of the impact warrants the need for strong legal direction, and consistent and clear policy for the Police Vetting Service.

There are a large number of agencies that have a role or substantial interest in the Police Vetting Service, and the regulatory systems that underpin it. These include:

- the Ministry of Justice, who administer the Criminal Records (Clean Slate) Act 2004.
- the OPC and the IPCA, whose interest is in the protection of privacy of an individual's personal information and the manner in which the Police Vetting Service operates
- the Ministry of Education, the Teaching Council, and tertiary, primary, and early childhood education providers in respect of requirements under the Education Act (as detailed above)
- Oranga Tamariki - Ministry for Children and out-of-school and after-care providers that are covered by the Police vetting requirements of the Children's Act 2014 (as detailed above)
- organisations that provide services or care to children, older people and vulnerable members of society, and/or depend heavily on volunteers, including sports and recreational organisations
- the Department of Internal Affairs and the Ministry of Business, Innovation and Employment with regards to Police vetting for immigration and citizenship
- New Zealand Transport Agency (NZTA) concerning the issue of a passenger endorsement, including the need for maintaining the validity of a Police vet for individuals who hold a passenger endorsement.

## **2.2 What regulatory system, or systems, are already in place?**

There is no existing regulatory system for the Police Vetting Service, however, there are a number of existing regulatory systems that require the use of the Police Vetting Service. Chiefly, these are the:

- Children's Act 2014, sections 25 and 26 requiring safety checks (a component of which is the Police vet) for core and non-core children's workers
- Land Transport (Driver Licensing and Driver Testing Fees) Regulations 1999 requiring a 'fit and proper person' test (measured through a Police vet) to individuals wanting a passenger endorsement to carry passengers in their vehicle (e.g. taxi and coach drivers)
- Education Act 1989, section 355 (1) requiring the Education Council to obtain a Police vet to determine whether a person is of 'good character' and fit to be a teacher. Sections 78 and 319 require Police vetting for non-teaching and unregistered employees and contractors working either at a school or early childhood service.

There are existing regulatory systems that impact on what information can be released in a Police vet and the protection of privacy.

- The Criminal Records (Clean Slate) Act 2004 provides circumstances in which convictions are automatically concealed from the public or employees. There are exceptions to this under this Act and the Children's Act 2004 (section 31) whereby information on specified offences can be included in a Police vet.



- The Privacy Act 1993 sets out principles for the way in which personal information can be collected, accessed, stored and disclosed. Although there are some exemptions where the use or disclosure of the information is necessary for public safety, both the Police Vetting Service and organisations that receive Police vets must abide by the principles covering access to personal information, its accuracy and correction.

The current patchwork of legislation does not address the issues highlighted in the IPCA and OPC review of the Police Vetting Service. Namely, the lack of clear legislative or policy direction and the uncertainties and legal risks to all parties with how Police vets are undertaken. More specifically, this centres on what information can be considered and released as part of the vetting process and how Police determine what is 'relevant'.

### **2.3 The policy problem and opportunity?**

#### ***The Policy Problem***

There is a lack of clear legislative or policy direction associated with Police vets, and uncertainty and legal risks for all parties on how Police vets are undertaken (this was identified in the IPCA and OPC joint review).

The 2018 consultation revealed a general lack of public awareness of the level of detailed information that may be disclosed in a Police vet. More specifically, complaints from individuals subject to a Police vet raised concerns about the accuracy and relevance of information released and whether it gave a balanced account of a reported incident or outcome. In 2017, 14 complaints were made, increasing to 22 complaints in 2018. A lack of a statutory framework has created uncertainty about what information can be considered as part of the vetting process.

#### ***The Opportunity***

The establishment of a statutory framework will address the problems identified in the IPCA and OPC joint review and provide significant opportunity to improve the Police Vetting Service to better achieve its purpose, to better balance the rights and obligations of its users, and ensure the Service can adapt to the changing needs and demands of employers and society as a whole for Police vetting.

The proposed statutory framework provides for changes to the Police Vetting Service, which Police believes are both needed and wanted by stakeholders.

It provides an opportunity to improve:

- For people being vetted:
  - the security and privacy of information held on them, and
  - the process of review and a strengthening of natural justice.
- For all users, efficiencies that will:
  - reduce duplication of Police vets where a person works in multiple environments that each require vetting although the role is essentially the same (in 2018, 72,771 vetting subjects were vetted by Police two or more times).



- provide a faster Police vet result to speed up employment decisions (90% of requests being completed within 20 working days is the current target for issuing a Police vet to employers).

It provides an opportunity to extend:

- the validity of a Police vet from a 'point in time' when the request was made, to a vet whose validity is maintained by a system where relevant information on a vetting subject is kept current and employers are informed of changes to information in the original Police vet in a timely way
- Police vetting to individuals to request a vet on themselves for the purpose of demonstrating their suitability for particular employment.

It provides an opportunity to align the Police Vetting Service with other legislation and regulatory frameworks that directly affect the Service, including legislation that requires certain organisations to request Police vets such as:

- the Children's Act 2014, sections 25 and 26
- regulations under the Land Transport Act 1989, 'fit and proper person' requirement
- the Education Act 1989, section 355 (1) and sections 78 and 319.

It will improve clarity and consistency for users and those impacted by Police Vetting Service, on how legislation determines what information can be released, and how personal information is applied to vetting, including but not limited to the:

- Criminal Records (Clean Slate) Act 2004
- Privacy Act 1993.

#### **2.4 Are there any constraints on the scope for decision making?**

One of the biggest constraints on developing a statutory framework for the Police Vetting Service is in correctly balancing the rights and interests of the different parties. At the heart of the service is protecting vulnerable people from harm. To do this, employers have an interest in, and right to information about who they employ either in paid or voluntary work where a vulnerable person is at risk. Provision must also be given to the person being vetted, who also has the right to have personal information kept private, the right to a fair and accurate Police vet, and the ability to challenge the information being released.

It is Police's view that this proposal takes all of the above into account.

The option put forward by Police is a statutory framework that reflects the Police Vetting Service as it is now, with some recommended changes to address problems identified. It also proposes some future developments to improve the efficiency and effectiveness of the Police Vetting Service, but which would need to await technological enhancements. The new legislation will enable implementation in the future of these new processes and services, but will not involve a commitment to these enhancements in the absence of additional funding being secured for necessary system developments (particularly information technology). This cost is estimated at \$2-3 million, and will be sought via the usual government funding/budget cycle. The Bill will need to allow for staged implementation of various recommendations subject to system capability and funding.

Some of the proposed changes will also have implications for the fees for vetting set in regulations, which will need to be reviewed.

## 2.5 What do stakeholders think of the policy problem?

The Police Vetting Service is far reaching across society and this is reflective of the broad spectrum of stakeholders: those needing to use a Police vet to protect the vulnerable in their care, the individuals being vetted, and the vulnerable people themselves, and their families.

During consultation in 2018 on the Police Vetting Service, stakeholders identified a number of problems and there was a broad consensus on how they could be addressed. Police received 76 submissions on the 56 questions that covered: the spectrum of Police Vetting Service work, issues highlighted by the IPCA and OPC review, and complaints received by the IPCA and OPC. The response to the consultation was broadly representative of the wide range of stakeholders affected by the Police Vetting Service (56% of submissions came from the education, health, and community services sectors, and 8% were from central government agencies).

The main comments from submitters to the consultation centred on the need for greater clarity, certainty and consistency in how Police vets are processed and what information can be released. These comments were consistent with the findings of the IPCA and OPC review.

Another key theme from submitters was the unnecessary duplication of Police vets which was repeatedly raised as a frustration for users, given the extra cost and time associated with the process of obtaining a Police vet. Submitters recognised the need for greater efficiencies. Questions relating to efficiencies drew the largest number of responses. In particular, whether individuals should be able to request a vet on themselves, and whether a Police vet could be shared with other vetting requesters with the vetting subject's consent.

## Section 3: Policy proposals

### 3.0 Introduction to Policy Proposals

This section lays out the multiple issues that make up the Policy problem and the options for addressing it. The analysis is set out as follows:

- **Section 3.1** deals with the lack of clear legal and policy direction and the resulting uncertainties and legal risks. This is the overarching problem raised in the IPCA and OPC review of the Police Vetting Service that needs addressing. The sections hereafter deal with other issues and opportunities to improve the Police Vetting Service.
- **Section 3.2** addresses the need for greater clarity and consistency of the purpose of the Police Vetting Service.
- **Section 3.3** addresses the need for greater clarity and consistency of the functions of the Police Vetting Service.
- **Section 3.4** addresses issues on who can access the Police Vetting Service, and in particular, the need for clear parameters. There are three proposals in this section.
- **Section 3.5** addresses issues on obtaining the consent of the vetting subject to the Police vet, and the subsequent release of the results of the Police vet. There are three proposals in this section.

- **Section 3.6** addresses the issue of risk associated with a Police vet as a point-in-time result and the opportunity to broaden the current limited practice of keeping Police vets up-to-date.
- **Section 3.7** addresses the need for greater efficiencies in the way Police vets are obtained.
- **Section 3.8** addresses issues on what information can be released in a Police vet. There are four proposals in this section.
- **Section 3.9** addresses the issue where a vetting subject has been de-registered from their professional organisation and the Police do not hold this information.
- **Section 3.10** addresses issues relating to the right of the vetting subject to seek a review of information planned for release in a Police vet.
- **Section 3.11** considers other options that have been ruled out of scope, or are not considered, and why.

### **Objectives**

These sections are set within the context of the high-level objectives of a clear legislative and policy direction for the Police Vetting Service, improved consistency and clarity for users, and reduced legal risks relating to how Police vets are undertaken. A longer term, high-level objective is to increase efficiencies in Police vetting.

In many instances, the options for consideration are limited to a non-statutory option (often the status quo) or a statutory option. The overarching problem of a lack of legal and policy direction for the Police Vetting Service, and the uncertainties and legal risks resulting from that, make the proposal of a statutory framework the strongest option to address it. Consequently, if this is the accepted 'best option' for the overarching problem, it leads the way for the manner in which individual issues are best addressed. In view of this, the merits of non-statutory options are limited.

### **Options Analysis**

The options in this paper are assessed against the following criteria.

- **Purpose:** This assesses the extent to which the option supports the purposes of the Police Vetting Service, being to protect vulnerable people from harm and support national security.
- **Effectiveness:** This assesses the extent to which the option addresses the policy problem.
- **Practicality:** This assesses the extent to which the option is a practical approach to addressing the issue.

# Section 3.1: A clear set of rules needed for the Police Vetting Service in legislation

## 3.1.1 What is the problem?

For the past 19 years, Police has provided Police vetting under section 9 (Functions of Police) of the Policing Act 2008. There are no specific provisions for the Police Vetting Service or vetting in the Policing Act, other than a reference to the provision of vetting services by Police in section 79B, which states that it is an example of a demand service provided by Police that can be made subject to cost recovery.

The review of the Police Vetting Service in 2016 by the IPCA and OPC identified that due to the breadth of information held by Police that can form part of a Police vet result, the lack of clear legislative or policy direction creates uncertainties and legal risks for users of the Service, and Police. This is consistent with complaints received by the IPCA and OPC about the Police Vetting Service.

Since the review, Police has adopted 16 of the 17 recommendations made by the IPCA and OPC and is now progressing the final key recommendation to develop a statutory framework. Police share the view that a statutory framework will give certainty to all parties around the purpose of Police vetting, what information may be considered and released, and clear parameters of the legal responsibilities of the different parties (i.e. Police, vetting requesters, and vetting subjects).

As part of the analysis, Police has reviewed and considered vetting systems in other countries. There are few examples from overseas jurisdictions of statutory provisions for Police vetting to draw on. As part of New Zealand Police’s consultation in 2018, comparisons were made with Ireland’s National Vetting Bureau (Children and Vulnerable Persons) Act 2012 to test different approaches and whether they would work in the New Zealand context.

## 3.1.2 What options have been considered to address the problem?

The options to address the problem of uncertainty and legal risks are limited to legislation or ongoing reliance on operational policy. It is considered that the appropriate vehicle for a statutory framework is an amendment to the Policing Act. Police has considered and consulted on the establishment of an independent vetting body. This has been discounted as an option as it is believed it would not satisfactorily address the problems, and would add another layer of bureaucracy and increase cost for users.

The option put forward by Police is a statutory framework that reflects the Police Vetting Service as it is now, with some recommended changes to address the problems identified above.

In addition, Police proposes the statutory framework provide for future developments that would improve the efficiency and effectiveness of the Police Vetting Service, but which would need to await technological enhancements.

This involves the development of an Information Technology solution, plus capability and the development of regulations. This would enable the following to be implemented:

- Individual access to the Police Vetting Service (see section 3.4.3)

- A two-step consent process (see section 3.5.2)
- Maintaining the Validity of Police vets (see section 3.6)
- Reducing duplication of Police vetting (see section 3.7).

A funding bid is planned (but has not yet been made) for the \$2-3 million that such an IT solution is expected to cost. The reason for enabling these changes in the original statutory framework, even though they are dependent on funding not yet available, is to avoid the need to do a further amendment to the Policing Act in the next 18 months once funding and capability is available adding preventable cost and delays to implementation. The legislation would not involve a commitment to these enhancements in the absence of a case being made for this additional funding.

Each of the recommended changes to the Police Vetting Service are dealt with individually with detailed analysis of options for Cabinet’s consideration. Except where provision for future changes are recommended in this document, it is intended that the Police Vetting Service be incorporated into legislation as it is currently structured.

For this reason, the options listed in this section (3.1 A clear set of rules needed for the Police Vetting Service) are limited to:

**Options:**

**Option 1:** Status quo: Continue to rely on internal operational policies.

**Option 2:** Amend the Policing Act 2008 to include a statutory framework for the Police Vetting Service.

<b>Assessment of each option against criteria</b>				
	<b>Criteria 1:</b> Purpose	<b>Criteria 2:</b> Effectiveness	<b>Criteria 3:</b> Practicality	<b>Net benefit</b>
<b>Option 1:</b>  <i>Status quo (internal operational policies)</i>	Medium/High  Allows the Police Vetting Service to achieve its purpose.  Tends to allow some Police vetting requests that fall outside of the purpose of the Police Vetting Service which is not best use of resources. 2,600 vetting requests were rejected in 2018	Low  Would not address the legal risks identified by the review or uncertainty over the roles covered by the Police Vetting Service.	Medium  No change required, but does not resolve the issues identified.	Low/Medium  Adds nothing to current position.

	for not meeting the purpose.			
<b>Option 2:</b>  <i>Amend the Policing Act 2008 to create a statutory framework for the Police Vetting Service</i>	High  Would provide a clear statement of the purpose of the Police Vetting Service.  Would establish a legal foundation for the provision of Police vetting.  Would reduce vetting requests that do not meet the purpose.	High  Would provide a clear set of rules that can be applied consistently to every Police vet requested.  Would increase certainty for users and reduce the legal risks for all parties.	Medium  Requires change to existing legislation, but most of the framework for the Police Vetting Service is pre-existing in a non-statutory form.  Changes will be phased in at a later date, as capability/funding becomes available.	High/Medium  A clear set of legal rules would provide a practical and effective approach that will benefit stakeholders, the Police, and NZ society as a whole.

### 3.1.3 Which of these options is the proposed approach?

**Option 2 is recommended as the most effective in ensuring there is clarity over the service that the Police Vetting Service is delivering.**

## Section 3.2: A clear statement of the purpose of the Police Vetting Service

### 3.2.1 What is the problem?

The 2018 consultation by the Police Vetting Service demonstrated that there were divergent views among users and the public on the purpose of the Police Vetting Service.

A Purpose Statement for the Police Vetting Service can be found on the Police website, and a different, but not dissimilar statement is set out in the agreement between Police and approved agencies using the Police Vetting Service. These statements are open to different interpretations and need to be clarified to ensure that Police vets are only sought where they meet the stated Purpose. A lack of clarity means Police receives vetting requests for purposes that the Police Vetting Service was not intended for, which is not the best use of resources.

As an example, in 2018, 2,600 vetting requests were rejected (returned as un-processed) by the Police Vetting Service because the role of the vetting subject did not meet the purpose of the Police Vetting Service. The majority of these were for administrative roles where there

is little contact with children or the vulnerable. Roles relating to financial, IT, administrative, or retail services are the most common to be rejected.

A clear statement identifying the purpose of the Police Vetting Service would set a clear legislative and policy direction and provide a solid foundation for the provision of this service.

There was widespread support from submitters in the 2018 consultation for the key purpose of the Police Vetting Service being 'public safety', and to a lesser extent, 'national security'.

### 3.2.2 What options have been considered to address the problem?

#### Options:

**Option 1:** Status quo: Continue to rely on internal operational policies and leave the current purpose statements on the website and in the Approved Agency Agreement as they are.

**Option 2:** Develop a clear statement of the purpose with the focus on (i) the public safety of vulnerable members of society, and (ii) national security.

**Option 3:** Develop a clear statement of the purpose with the focus on (i) the public safety of vulnerable members of society (including the protection of their property and finances), (ii) national security, and (iii) trust in government.

A small number of submitters suggested that the scope of the purpose could be broadened to include matters such as maintaining 'trust in government', which can be eroded by incidents of senior state servants committing fraud (suggested by the State Services Commission), or 'protection of property and finances', specifically those of vulnerable people (suggested by three of the 54 submitters who responded to the question).

#### Assessment of each option against criteria

	Criteria 1: Purpose	Criteria 2: Effectiveness	Criteria 3: Practicality	Net benefit
<b>Option 1:</b>  <i>Status quo: Continue to rely on internal operational policies</i>	Low  Police vets are sought where there is little or no risk of harm to vulnerable people or national security by taking Service resources away from valid vetting requests.	Low  Continues to allow different interpretations resulting in a lack of clarity and possible inconsistencies in the way Police vetting requests are treated.	Medium  Easy to implement, as it requires nothing to be done.	Low/Medium  Provides no added benefit for stakeholders and does not answer the need for clear policy direction.
<b>Option 2:</b>  <i>Develop a clear</i>	Medium/High  Would support a common	High  Users would have a greater	Medium/High  The new statement of	High/Medium  Addresses the policy problem



<p><i>statement of the purpose with the focus on (i) the public safety of vulnerable members of society, and (ii) national security</i></p>	<p>understanding of the purpose and intention of the Police Vetting Service to enable consistency.</p>	<p>appreciation as to why the Police Vetting Service exists, what it does, and when a Police vet is suitable.</p> <p>Included in a statutory framework it would provide a clear legal foundation for the Police Vetting Service.</p>	<p>Purpose could be included on the Police website and in the Approved Agency Agreements prior to legislation if desired. This would enable a quick and simple response to the problem.</p> <p>Legislation is required, but would be relatively easy to draft and include in the Act.</p> <p>Would need a clear communications strategy to ensure that the change is communicated to stakeholders.</p>	<p>effectively and interim measures are available so that change can happen if desired prior to enactment of legislation, to ease the transition to legislation.</p>
<p><b>Option 3:</b></p> <p><i>Develop a clear statement of the purpose with the focus on (i) the public safety of vulnerable members of society (including the</i></p>	<p>Low/Medium</p> <p>Broadening the purpose could increase the scope for misinterpretation.</p> <p>This could adversely affect vulnerable people if the Police Vetting Service is overburdened with requests for</p>	<p>Medium</p> <p>It could add a further dimension to the protection of vulnerable people.</p> <p>The broader scope may add further confusion around the purpose than there is</p>	<p>Low</p> <p>It would have significant resourcing and capability issues for the Police Vetting Service which is already stretched.</p> <p>As a cost recovery service, the additional</p>	<p>Low/Medium</p> <p>Broadening the purpose would require a significant increase in capability and is likely to create more uncertainty and inconsistency.</p>

<p><i>protection of their property and finances, (ii) national security, and (iii) trust in government</i></p>	<p>Police vetting and unable to function effectively.</p>	<p>currently. It would have to be clear about what is meant by ‘trust in government’ and the property and finances of vulnerable people.</p>	<p>expenses would need to be met by an adjustment to the vetting fee.</p> <p>Legislation is required, and would be more difficult to draft and interpret than Option 2.</p> <p>Would need a clear communications strategy to ensure that the change is communicated to stakeholders.</p>	
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**3.2.3 Which of these options is the proposed approach?**

**Option 2 is recommended because this rates highest for clarifying and communicating the purpose of the Police Vetting Service and for effectiveness.**

Police is concerned that broadening the scope in the way set out in Option 3 would move the Police Vetting Service into new territory and require a large-scale programme of professional training of vetting analysts to tailor Police vets to serve this new purpose. It would also carry a significant risk of creating a high demand for Police vetting that could not be met and would overburden the system. The broad nature of the purpose may also cause more uncertainty and more inconsistency, and is therefore unlikely to assist the policy problem.

## Section 3.3: A clear statement of the functions of the Police Vetting Service

**3.3.1 What is the problem?**

The 2018 consultation by the Police Vetting Service revealed different expectations among users and the public of the functions of the Police Vetting Service, specifically, its role and responsibilities.

Outside of the consultation document there is no list of the functions of the Police Vetting Service. Consequently, there is a need for clarity around what the Police Vetting Service does and is responsible for, and how Police manage and process Police vetting requests. A clear statement of the functions will help underpin the purpose of the Police Vetting Service,

set a clear policy direction, and provide a solid legal foundation, especially if set within a statutory framework.

A large majority of submitters (79% of those who responded) supported reflecting the functions of the Police Vetting Service in legislation.

From consultation, Police has identified a high-level list of functions of the Police Vetting Service. It:

- determines which agencies are approved to access the Police Vetting Service.
- processes vetting requests with the vetting subjects consent
- maintains the validity of a Police vet in certain circumstances
- reviews Police vets at the request of the vetting subject.

### 3.3.2 What options have been considered to address the problem?

The status quo has been in place for nearly two decades, and a lack of a clear statement of functions has not hindered the provision of the Police Vetting Service. There is an opportunity at this time to make a clear statement of the high-level functions of the Service, to give a clear picture for users and the public in general.

#### Options:

**Option 1:** Status quo – no list of functions

**Option 2:** A clear statement of functions of the Police Vetting Service.

#### Assessment of each option against criteria

	Criteria 1: Purpose	Criteria 2: Effectiveness	Criteria 3: Practicality	Net benefit
<b>Option 1:</b>  <i>Status quo (internal operational policies)</i>	Medium  No added benefit for vulnerable people or national security.	Low  The lack of clarity around what the Police Vetting Service does, persists.	Medium  Requires nothing to be done.	Medium  Retaining the status quo will not add any benefit to the overall need to formalise the Police Vetting Service.
<b>Option 2:</b>  <i>A clear statement of functions of the Police</i>	High  Establishes how the purpose is put into practice to protect vulnerable	Medium  Provides high-level clarity on what Police do as part of	Low/Medium  The new statement of functions could easily be published	High/Medium  A greater understanding for users and the public of the role and

<i>Vetting Service</i>	people and national security.	providing Police vetting.  It can be included in a statutory framework to give weight and policy direction to the Purpose.  It can be a basis for the more specific legislative provisions on the Police vetting process.	on the Police Website as desired.  Legislation is required.	responsibilities of the Police Vetting Service.
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### 3.3.3 Which of these options is the proposed approach?

**Option 2 is recommended as the most effective and as best serving the purpose of Police vetting. It also provides a strong basis for more specific legislative provisions governing the operation of the Police Vetting Service.**

## Section 3.4: Revising the criteria for who can access the Police Vetting Service (i.e. who can be an ‘approved agency’)

### Section 3.4 Introduction

Police vetting is only accessible to organisations registered with the Police Vetting Service as an approved agency. To be considered as an approved agency with the Police Vetting Service agencies should meet one or more of a list of six criteria (the current criteria are published on the Police website). There are three proposals in this section:

- 3.4.1 Police discretion
- 3.4.2 Automatic access for government agencies
- 3.4.3 Access for individuals.

### SECTION 3.4.1: POLICE DISCRETION

#### 3.4.1 (a) What is the problem?

Currently, the Police website states that agencies ‘should’ meet one or more of the criteria to become an approved agency, and thereby gain access to the Police Vetting Service. The term ‘should’ suggests that this is a desirable goal, but is not a requirement.

As the wording does not make the criteria mandatory, this is an issue for Police when requests to be an approved agency are received from agencies for which the service was never intended. After the 2016 IPCA and OPC joint review, the Police Vetting Service

undertook an exercise to review all of its approved agencies to remove any that did not meet the existing approval criteria.

Despite this, the Police Vetting Service continues to receive a significant volume of applications for approval to access the Service from agencies who do not meet the existing approval criteria. These applications take significant resources to assess and respond to, and it is believed that outlining the purpose and criteria for accessing the Police Vetting Service will reduce the volume of these applications.

Examples of applications for approval that will always be rejected as not meeting the purpose include law firms, real estate companies, construction companies, budget advisors, and cleaning companies. In 2018, a total of 667 requests for access were rejected.

To prevent the continuance of this problem, the criteria need to be clear and consistently applied, to ensure the purpose of the Police Vetting Service is being achieved, as well as fairness and certainty for all parties.

A simple word change from 'should' to 'must' would make meeting one or more of the criteria for access to the Police Vetting Service a requirement. However, there is still an issue of whether this will be able to deal with all appropriate circumstances needing a Police vet and whether there should still be some Police discretion for including circumstances outside of the criteria.

### 3.4.1 (b) What options have been considered to address the problem?

Three options have been identified.

#### Options:

**Option 1:** Status quo: Continue to rely on internal operational policies, including periodic review of approved agencies to ensure they have a demonstrable need for Police Vetting.

**Option 2:** Replace the word 'should' with 'must' to make the criteria mandatory, and include the criteria in legislation. Include a criterion that gives the Commissioner of Police discretion to include requesters outside the criteria.

**Options 3:** Replace the word 'should' with 'must' and remove all discretion from the criteria.

#### Assessment of each option against criteria

	Criteria 1: Purpose	Criteria 2: Effectiveness	Criteria 3: Practicality	Net benefit
<b>Option 1:</b>  <i>Status quo: Continue to rely on internal operational policies</i>	Low  Police will continue to be asked to exercise their discretion and takes resource away from	Low  This may leave the Police open to criticism of inconsistency and unfairness.	Medium  No change required.	Low  No additional benefits for stakeholders and known problems will persist.

	where it is needed.			
<p><b>Option 2:</b></p> <p><i>Replace the word 'should' with 'must' to make the criteria mandatory. Include a criterion that allows the Commissioner of Police to exercise discretion outside of criteria</i></p>	<p>High/medium</p> <p>The strict criteria would reinforce the requirement to demonstrate a need for Police vetting in line with the Purpose of the Police Vetting Service.</p>	<p>High</p> <p>This option would increase certainty and clarity of what circumstances an agency can apply to be an approved agency.</p> <p>Police discretion would be limited, reducing the likelihood of criticism, but providing for exceptions to be made where needed.</p>	<p>Medium</p> <p>This option can be included in a statutory framework to provide clear legal direction on who can access the Police Vetting Service.</p> <p>It will give Police clear grounds to remove access for approved agencies who do not meet the criteria.</p>	<p>High/Medium</p> <p>It will provide both the clear legal and policy direction needed to ensure that the Police Vetting Service is operating as effectively as possible whilst giving the flexibility needed in certain circumstances.</p>
<p><b>Option 3:</b></p> <p><i>Replace the word 'should' with 'must' and remove all discretion from the criteria</i></p>	<p>High</p> <p>The strict criteria would reinforce the requirement to demonstrate a need for Police vetting, in line with the Purpose of the Police Vetting Service.</p>	<p>Medium</p> <p>This option would increase certainty and clarity as to what circumstances an agency can apply to be an approved agency.</p> <p>No provision for limited discretion means that there could be agencies with a demonstrable need for Police vetting that cannot access</p>	<p>Medium</p> <p>This option can be included in a statutory framework to provide clear legal direction on who can access the Police Vetting Service.</p> <p>It will give Police clear grounds to remove access for approved agencies who do not meet the criteria.</p>	<p>Medium/High</p> <p>It will provide both the clear legal and policy direction needed to ensure that the Police Vetting Service is only accessed by those requiring it.</p>

		the Police Vetting Service.		
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### 3.4.1 (c) Which of these options is the proposed approach?

**Option 2 is recommended because the net benefit rates highest for effectiveness in terms of making it clear that the specified criteria are mandatory whilst giving flexibility in certain circumstances.**

The grounds for the exercise of limited discretion would need to be set out clearly. The suggested criterion could be: 'and in such other circumstances as may from time to time be approved by the Commissioner of Police'.

## SECTION 3.4.2 AUTOMATIC ACCESS FOR GOVERNMENT AGENCIES

### 3.4.2 (a) What is the problem?

All criteria, except one, are based on the purpose of the Police Vetting Service. One criterion requires only that the agency is a government agency. This has resulted in approved agencies that do not necessarily have a need to Police vet and vetting requests that do not always meet the intended purpose of the Police Vetting Service.

As stated by the IPCA/OPC in their submission:

*“Not all government agencies have a need to conduct Police vets on their staff. Police vets are significantly more intrusive than the criminal history checks available to all employers and are more subjective as they release information that has not been tested by the courts. Government agencies should be subject to the same criteria as non-government agencies.”*

Responses to the 2018 consultation showed strong support that criteria to be an approved agency should support the purpose of the Police Vetting Service, and an agency should not be approved just because it is a government agency. Any employer, including a government agency, who does not meet the required criteria to request a Police vet, will still be able to conduct a criminal history check through the Ministry of Justice if such a check is necessary for employment.

### 3.4.2 (b) What options have been considered to address the problem?

#### Options:

**Option 1:** Status quo: Continue to rely on internal operational policies.

**Option 2:** Remove the criterion providing automatic access for government agencies.



<b>Assessment of each option against criteria</b>				
	<b>Criteria 1: Purpose</b>	<b>Criteria 2: Effectiveness</b>	<b>Criteria 3: Practicality</b>	<b>Net benefit</b>
<p><b>Option 1:</b></p> <p><i>Status quo (internal operational policies)</i></p>	<p>Medium</p> <p>Not all government agencies have a need to Police vet, and their status as an approved agency does not support the Purpose of the Police Vetting Service.</p>	<p>Low</p> <p>Does not address the problem and does not treat all approved agencies equally.</p>	<p>Medium</p> <p>No action is required.</p>	<p>Medium/Low</p> <p>No need shown for including all government agencies.</p>
<p><b>Option 2:</b></p> <p><i>Remove the criterion providing automatic access for government agencies</i></p>	<p>High</p> <p>Ensures that all approved agencies have a demonstrable need to Police vet, rather than by fact of being a government agency.</p> <p>Concentrating resources where they are needed.</p>	<p>High</p> <p>This would ensure that all agencies government and non-government have to meet the same criteria.</p> <p>This sets a clear policy direction for all agencies.</p> <p>It will encourage agencies who no longer have access to the Police Vetting Service to look to alternative options, like criminal history checks.</p>	<p>Medium</p> <p>The criterion can be removed from the Police website and Approved Agency Agreement template with ease.</p> <p>The removal can be transferred into the statutory framework proposed for the Police Vetting Service to provide clear legal direction.</p> <p>Reasons for removing automatic access will need to be clearly communicated</p>	<p>High/Medium</p> <p>It will provide both the clear legal and policy direction needed to ensure that the Police Vetting Service is accessed only by those requiring it.</p>

			with government agencies.	
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**3.4.2 (c) Which of these options is the proposed approach?**

**Option 2 is recommended as the most effective and supportive of the Purpose of the Police Vetting Service.**

**SECTION 3.4.3 INDIVIDUAL ACCESS**

**3.4.3 (a) What is the problem?**

***Individual access***

Current criteria preclude individuals from accessing the Police Vetting Service. While this was deliberate, it does not enable considerable efficiencies that could be made if individuals (whose employers would ordinarily request a Police vet) could get a Police vet on themselves. In other words, this would allow the vetting subject to make the vetting request directly to the Police Vetting Service and share this with prospective employers.

Eighty-one percent of submitters who responded to this issue in the consultation document broadly supported individuals having direct access to the Police Vetting Service to obtain a vet on themselves. Police recommend that in order for individuals to access the Police Vetting Service, it will need to be on the basis that the role or requirement, for which the Police vet is being sought, relates to the purpose of the Police Vetting Service (in contrast to agencies whose access is on the basis that they meet the criteria for approved agencies). Guidelines will set out a list of pre-defined roles that relate to the purpose of the Police Vetting Service (although this is unlikely to be exhaustive).

This represents a significant change from the current operations of the Police Vetting Service, and requires the technical enhancements and improved capability referred to in Section 3.1.2 What options have been considered to address the problem?.

It is important that any statutory framework developed now allows for this option to be implemented at a later date, so as to avoid the costs and delays that would be associated with needing to amend the Policing Act within two years after commencement.

Police has identified two ways to achieve this; the Policing Act either:

- enables regulations to be made providing for individuals to access the Police Vetting Service, or
- allows for individuals to access the Police Vetting Service, but for this to come into force at a later date (by Order in Council).

Efficiencies and benefits can be gained by allowing individuals to request a Police vet on themselves when combined with the later proposals for change detailed further on in this document (Section 3.6: 'Reducing duplication of Police vets').

The nature of the dependencies means that it is not possible, with any accuracy, to assess at this early stage, the financial implications for the Police Vetting Service or for users and individuals accessing the Service.

### 3.4.3 (b) What options have been considered to address the problem?

**Options:**

**Option 1:** Status quo: only approved agencies can have access to the Police Vetting Service to request Police vets.

**Option 2:** Provision is made to enable access to the Police Vetting Service by individuals to request a Police vet on themselves, where their role relates to the Purpose of the Police Vetting Service.

**Assessment of each option against criteria**

	<b>Criteria 1:</b> Purpose	<b>Criteria 2:</b> Effectiveness	<b>Criteria 3:</b> Practicality	<b>Net benefit</b>
<p><b>Option 1:</b></p> <p><i>Status quo: Only approved agencies can have access to the Police Vetting Service to request Police vets</i></p>	<p>Low</p> <p>With each approved agency needing to apply for separate Police vets on the same individual there is unnecessary duplication, which slows down the vetting needed for public safety or national security.</p>	<p>Low</p> <p>The status quo ignores the need for greater efficiencies for users of the Police Vetting Service.</p>	<p>Medium</p> <p>No action is required.</p>	<p>Low/Medium</p> <p>The Police Vetting Service will continue to be weighed down by an increased number of Police vetting requests. This waste of resource is borne by the users as it is a cost recovery service.</p>
<p><b>Option 2:</b></p> <p><i>Provision is made to enable access to the Police Vetting Service by individuals to request a</i></p>	<p>High</p> <p>Suitable people can be engaged more quickly in roles that require Police vetting.</p> <p>This provision would particularly benefit contract</p>	<p>High</p> <p>It will improve efficiency as in many instances just one Police vet will be required where previously multiple Police vetting requests</p>	<p>Low/Medium</p> <p>Provision can be made in the statutory framework to enable the proposal at a later date.</p> <p>IT systems will need to be</p>	<p>High/Medium</p> <p>This option represents an opportunity to modernise and streamline the Police Vetting Service which has operated in the same fashion</p>

<i>Police vet on themselves</i>	service providers going into multiple environments with vulnerable people (i.e. plumbers), or workers who transfer a lot (i.e. health workers), where Police vetting has sometimes been a barrier to getting the right people in a role within the timeframes needed.	would have been needed.  Police Vetting Service's resources can be used more effectively.  There will be less administration to obtain a Police vet for approved agencies.	upgraded to receive individual Police vetting requests.  Investment is needed to enable the upgrade to the IT systems. This is one of several proposals in this document that could be served by an IT system upgrade.	for nearly two decades.  It will be less cumbersome for the Police Vetting Service to administer, and more user friendly for those needing to Police vet.
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### 3.4.3 (c) Which of these options is the proposed approach?

**Option 2 is recommended as the most effective to achieve the efficiencies needed to provide Police vetting.**

## Section 3.5: Creating a two-step process for consent to being vetted and consent to release of information

### Section 3.5 Introduction

This section looks at the policy issues around consent to being vetted by Police. There are three proposals in this section:

- 3.5.1 All Police vets require consent
- 3.5.2 A two-step consent process
- 3.5.3 Minimum age at which an individual can be vetted.

### SECTION 3.5.1 ALL POLICE VETS REQUIRE CONSENT

#### 3.5.1 (a) What is the problem?

In the majority of cases, a Police vetting request can only be submitted by an approved agency to the Police Vetting Service with the signed consent of the vetting subject. When they sign the form, the vetting subject is agreeing to being vetted by Police and for the information in the Police vet to be released to the requesting approved agency.

As an additional measure, the vetting request form also requires the approved agency to confirm it has obtained the vetting subjects authorisation and verified their identity. As there is no direct contact between the individual being vetted and Police, the process relies on integrity of the approved agency.

However, Police receives, in certain circumstances, requests for information where the consent of the individual has not been obtained. Non-consented requests for information are not considered to be vetting requests, and as such are not addressed in the proposed legislation. This includes requests for official information under the Official Information Act 1982, and requests submitted without the individual's consent in reliance on a statutory provision permitting the obtaining of personal information (for example, intelligence collection under the Intelligence and Security Act 2017). Such requests are often dealt with by other workgroups of Police, rather than the Police Vetting Service.

Eighty-seven percent of submitters to the 2018 consultation supported the consent of the vetting subject of a Police vet being obtained before a Police vet can be undertaken. Police support this view as representing best practice in balancing the competing rights and interests of the different parties involved, as the vetting subject is unaware they are being vetted by Police and are not given an opportunity to respond or challenge any information released in the Police vet. Police vetting without the consent of the vetting subject comes with both privacy and natural justice concerns.

### 3.5.1 (b) What options have been considered to address the problem?

#### Options:

**Option 1:** Status quo. Police continue to receive and process Police vetting requests where the consent of the vetting subject is not always obtained.

**Option 2:** The express consent of the vetting subject must be obtained as part of a Police vetting request. Any non-consented requests for information on an individual accepted by the Police Vetting Service should not be treated as vetting requests.

#### Assessment of each option against criteria

	Criteria 1: Purpose	Criteria 2: Effectiveness	Criteria 3: Practicality	Net benefit
<b>Option 1:</b>  <i>Status quo: Police continue to receive and process requests for vetting as Police vets where the consent of the vetting</i>	Not applicable	Low  The status quo does not represent best practice.  This option does not resolve confusion over consent.	Medium  No change required.	Low/Medium  Lack of clarity over what constitutes a Police vet remains.

<i>subject is not always obtained</i>				
<p><b>Option 2:</b></p> <p><i>The express consent of the vetting subject must be obtained as part of what constitutes a Police vetting request</i></p>	Not applicable	<p>High</p> <p>Balances the vetting subject's rights with the need for approved agencies to vet.</p> <p>Provides much needed clarification on the issue of consent. Mandatory consent can be included as a provision in a statutory framework to provide a legal basis for the policy.</p>	<p>Medium</p> <p>This requirement would need to be set out in the primary legislation.</p> <p>It would not be difficult to implement.</p>	<p>Medium</p> <p>Police vets are significantly more intrusive than other background checks. This option upholds the right of the vetting subject not to be vetted by Police without their express consent.</p>

**3.5.1 (c) Which of these options is the proposed approach?**

**Option 2 is recommended because the net benefit rates highest for obtaining clarity in the part consent plays in the Police vetting request process.**

**SECTION 3.5.2: TWO-STEP CONSENT PROCESS**

**3.5.2 (a) What is the problem?**

The current vetting request form does not differentiate between consent to process a Police vet and consent to release the information in a Police vet to the requesting approved agency. By signing the form, a vetting subject also consents to the release of information.

The vetting subject is not usually given an opportunity to see the Police vet prior to it being released to the approved agency, although Police encourage approved agencies to discuss the content of a Police vet with the vetting subject. This process prevents the vetting subject from being able to challenge any information that they believe to be inaccurate prior to release, or to withdraw from the vetting process altogether.

In a small number of cases, the process has resulted in inaccurate information being released to the approved agency. The automatic release of information raises issues of natural justice and privacy of what can be sensitive information on the vetting subject.

In certain limited circumstances, Police gives vetting subjects advance notice of proposed disclosure, and the opportunity to comment. Although adequate, Police does not consider the current approach to be best practice. A slim majority of submitters to the 2018 consultation supported the current practice.

If Police provided vetting subjects with the opportunity to choose to see their Police vet before it is released to a vetting requester it would give them more control over the use of their information and would help safeguard the rights of individuals. Vetting subjects could seek review of the Police vet, disclose the information (e.g. the fact that they have a conviction) to the vetting requester themselves, or withdraw their consent for the Police vet (so that it is not released).

Some respondents to the 2018 consultation raised concerns that this could add to the 20-day turnaround for obtaining a Police vet result. Police estimate the majority of people requiring a vetting request for employment purposes will not request to see it before it is released. The people who are most likely to want to see their vetting result prior to it being released are those who know or suspect that there may be information released (approximately 15% of vetting requests are released with a result).

The option of a two-step consent process is a significant change from the current operations of the Police Vetting Service, and requires the technical enhancements and improved capability referred to in [Section 3.1.2 What options have been considered to address the problem?](#).

It is important that any statutory framework developed now, allows for this option to be implemented at a later date, so as to avoid the costs and delays that would be associated with needing to amend the Policing Act twice in as many years.

The nature of the dependencies means that it is not possible, with any accuracy, to assess at this early stage, the financial implications of this proposal for the Police Vetting Service or for users and individuals accessing the Service.

### **3.5.2 (b) What options have been considered to address the problem?**

One option has been identified to address the problem of natural justice arising with vetting subjects lacking control over the release of information that may adversely affect them, but which they may not understand is going to be released.

#### **Options:**

**Option 1:** Status quo: the consent of the vetting subject is agreement to be vetted by Police and for automatic release of the information to the approved agency.

**Option 2:** The vetting subject is given the option to request to provide consent to release the information once they have viewed the Police vet.



<b>Assessment of each option against criteria</b>				
	<b>Criteria 1: Purpose</b>	<b>Criteria 2: Effectiveness</b>	<b>Criteria 3: Practicality</b>	<b>Net benefit</b>
<p><b>Option 1:</b></p> <p><i>Status quo (the consent of the vetting subject is agreement to be vetted by Police and for automatic release of the information to the approved agency)</i></p>	<p>Low</p> <p>Is neutral regarding improving the public safety of vulnerable people or national security.</p>	<p>Low</p> <p>Ignores the rights of the vetting subject to address any inaccuracies, or to address any unexpected results, prior to the release of information to the approved agency.</p>	<p>Medium</p> <p>Requires no action.</p>	<p>Low/Medium</p> <p>Avoids delays as the Police vet result is released as soon as completed, but overrides any rights of the vetting subject for control over how their information is managed.</p>
<p><b>Option 2:</b></p> <p><i>The vetting subject is given the option to provide consent to release the information once they have viewed the Police vet</i></p>	<p>Medium</p> <p>Provides an opportunity to ensure that approved agencies are basing their decision making on accurate information.</p>	<p>High</p> <p>Upholds the principles of natural justice.</p> <p>It could lead to delays in releasing the Police vet.</p> <p>Retains the option to consent to Police vet and automatic release, which is still expected to be the most popular choice.</p> <p>The option can be included within a statutory framework.</p>	<p>Medium</p> <p>May result in more challenges to information in a Police vet.</p> <p>A two to three year timeframe is expected before the Police Vetting Service has the capability to provide the two step consent process.</p>	<p>High/Medium</p> <p>The majority of Police vets are expected to be processed as before, but this option gives the vetting subject the option of viewing the content of the Police vet prior to release, thereby ensuring they have personal control over how they manage any information contained within the Police vet.</p>

### 3.5.2 (c) Which of these options is the proposed approach?

**Option 2 is recommended as the fairest procedure noting that this does not compromise meeting the purpose of the Police Vetting Service.**

The opportunity to view the Police vet before it is released to a vetting requester is subject to system capability and funding.

## SECTION 3.5.3: MINIMUM AGE AT WHICH AN INDIVIDUAL CAN BE VETTED

### 3.5.3 (a) What is the problem?

Currently, the minimum age at which an individual can be vetted by Police is 10 years. This is in line with the age of criminal responsibility.

Police tested the support for this internal operational policy in the 2018 consultation. Of submitters who responded to this issue, 66% supported the current minimum age. However, some submissions made strong arguments for raising the minimum age to 14 years. The IPCA and the OPC commented:

*“We can anticipate situations where a 14 year old may hold a job where a Police vet is required e.g. a volunteer at a children’s holiday camp. But we have difficulty envisaging situations where a vet would be required for a younger person. We would expect there to be a clear need to conduct these types of vets if a minimum age was to be prescribed.”*

In 2018, the Police Vetting Service received 145 vetting requests for 10-13 year olds – all were released without results. The main purpose given was ‘VIP event vetting’, and may have been requested because they would be in close proximity to VIPs visiting New Zealand. Other roles included vetting as a household member of a caregiver, coaches and assistant coaches for sports, and non-teaching support services.

Police does not consider there to be a strong policy justification for vetting 10-13 year olds. Although raising the minimum age at which an individual can be vetted goes against the majority views received in the 2018 consultation, Police believe there is a stronger policy justification for doing so.

### 3.5.3 (b) What options have been considered to address the problem?

Two options have been identified to address the problem of what should be the minimum age at which an individual can be vetted.

One option is to maintain the current minimum age of 10 years. This option has been the status quo for many years. The age of 10 also received the greatest support from submitters to the 2018 consultation and aligns with the age of criminal responsibility in New Zealand.

Another option is to set the age at 14 years as the minimum age an individual can be vetted. This reflects the age at which many young people may look to volunteer (e.g. at after school/holiday programmes) or seek casual employment (e.g. babysitting). These roles may involve direct contact with vulnerable people and so a strong case for Police vetting could be made.

Fourteen years is also in line with the definition of a young person in the Oranga Tamariki Act 1989 (a young person is a person of or over the age of 14 years, and a child is a person under the age of 14 years). Furthermore, there are no statutory requirements for a Police vet at a younger age. Applications for New Zealand citizenship do not require evidence of 'good character' (which includes a Police vet) for individuals under 14 years.

**Options:**

**Option 1:** Confirm the minimum age an individual can be vetted at age 10 years.

**Option 2:** Set the minimum age an individual can be vetted at age 14 years.

<b>Assessment of each option against criteria</b>				
	<b>Criteria 1: Purpose</b>	<b>Criteria 2: Effectiveness</b>	<b>Criteria 3: Practicality</b>	<b>Net benefit</b>
<p><b>Option 1:</b></p> <p><i>Status quo: Confirm the minimum age an individual can be vetted at age 10 years</i></p>	<p>Low</p> <p>The policy aligns with the age of criminal responsibility rather than any specific risk to public safety and national security.</p>	<p>Low</p> <p>Hard to justify the age in light of the level of risk posed.</p> <p>Only a small number of vetting requests received for 10-13 year olds.</p>	<p>Medium</p> <p>Represents current internal policy so no change required.</p> <p>Could be included in legislation as part of a statutory framework for Police vetting.</p>	<p>Low/medium</p> <p>There is no expected increase in benefit of Option 1 over Option 2.</p>
<p><b>Option 2:</b></p> <p><i>Set the minimum age an individual can be vetted at age 14 years</i></p>	<p>High</p> <p>Can be justified as 14 years represents an age where young people are taking up roles for which a Police vet may be required or desired.</p>	<p>High</p> <p>Fits with statutory requirements (e.g. applications for NZ citizenship)</p>	<p>Medium</p> <p>This can be adopted either by a simple change to internal operational policy, or in legislation as part of a statutory framework.</p>	<p>High/Medium</p> <p>It will better align with the age at which people would begin in roles requiring Police vets.</p>

### 3.1.3 Which of these options is the proposed approach?

**Option 2 is recommended as there is clear justification for young people over the age of 14 years to be vetted by Police, and it is more consistent with the purpose of the Police Vetting Service in respect of roles requiring a Police vet.**

## Section 3.6: Maintaining the validity of Police vets

### 3.6.1 (a) What is the problem?

A Police vet is only accurate at the point in time it is released to an approved agency and consequently should not be relied upon for an unreasonable period of time. Where there is no statutory term for re-vetting, approved agencies must decide the period for subsequent Police vetting of their employees. Police is aware that some employees are only vetted prior to an offer of employment and are not subsequently re-vetted, while others are vetted annually or every few years.

People and circumstances change, and a point-in-time Police vet means that an approved agency would not know of any newly obtained information that would be relevant for disclosure, unless an employee was re-vetted. This presents a risk for the approved agency who may be unaware when an employee becomes no longer suitable for the role.

### 3.6.1 (b) What options have been considered to address the problem?

Police has considered options that will make the Police Vetting Service operate more efficiently, including changes that allow Police to maintain the validity of Police vets over a period of time. This is a service currently provided in very limited circumstances (e.g. for Police vets under the Children's Act 2014, and for Police vetting requests submitted by NZTA). In these cases, the Police Vetting Service can disclose newly obtained relevant information to the approved agency if it is considered justified under the Privacy Act (i.e. had it been available at the time of the Police vet it would have been disclosed) and if the purpose of the Police vet still exists (i.e. the employment role or requirement).

For the majority of Police vets the problem is twofold:

- the risk to vulnerable people between one point-in-time Police vet and the next
- the duplication of Police vetting requests because of the necessity to re-vet.

One option would be to set out circumstances in which the Police Vetting Service could maintain the validity of Police vets. This would be an additional service provided by the Police Vetting Service, and would not be undertaken for all Police vets. In many circumstances a point-in-time Police vet is sufficient to meet the purpose of the Service. This would extend the practice of maintaining validity to a wider number of Police vets. It would enable new information to be acted on as quickly as possible and, consequently, ensure the risk to vulnerable people is mitigated as far as possible. It would also reduce the need to re-vet, or for approved agencies to have to decide how often a re-vet is needed. It would also facilitate other solutions to reducing the duplication of Police vetting requests outlined in [Section 3.7. Reducing Duplication of Police Vets.](#)

This represents a significant change from the current operations of the Police Vetting Service, and requires the technical enhancements and improved capability referred to in Section 3.1.2 What options have been considered to address the problem?.

It is important that any statutory framework developed now, allows for this option to be implemented at a later date, so as to avoid the costs and delays that would be associated with needing to amend the Policing Act within two years after commencement.

Another option could be the instigation of a minimum requirement policy that where no other statutory provision exists, an employee whose role requires a Police vet must be re-vetted within three years of the date of the latest Police vet, if they are still employed in the role. A risk remains that an employee could become unsuitable for their role within the three-year period, but this option ensures that re-vetting occurs at least every three years to reduce the risk. This would bring other Police vets in line with similar requirements in the Children's Act 2014 for safety checks. This option could also form part of a statutory framework for the Police Vetting Service.

**Options:**

**Option 1:** Status quo: Continue to provide maintaining validity of Police vets only in a very limited number of circumstances provided by statute.

**Option 2:** Allow the validity of Police vets to be maintained in certain circumstances for a period of up to five years,<sup>1</sup> after which a new Police vetting request must be made if still required. This could be in a statutory framework, with regulations specifying what these circumstances are, which could be broadened as considered appropriate to make it more widely available.

For Police to maintain the validity of Police vets:

- the vetting requester requests maintaining validity or there is a legislative requirement for maintaining validity
- the vetting subject consents to maintaining validity
- a pint-in-time Police vet is not sufficient to protect the public from harm, uphold national security or to meet statutory or regulatory requirements
- the vetting subject would need to still be employed or engaged in the role for which they were initially vetted (or the requirement for which they were initially vetted calls for maintaining validity); and
- there is an end date up to a maximum of five years, or shorter if stipulated by the vetting subject and vetting requester, at which point Police ceases to maintain the validity of a Police vet, and a new vetting request is submitted.

**Option 3:** Set a minimum requirement for employers to periodically re-vet within three years of the date of the latest Police vet.

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<sup>1</sup> Police vet requests submitted by NZTA are currently maintained for up to five years in line with re-vetting requirements in legislation.

<b>Assessment of each option against criteria</b>				
	<b>Criteria 1: Purpose</b>	<b>Criteria 2: Effectiveness</b>	<b>Criteria 3: Practicality</b>	<b>Net benefit</b>
<p><b>Option 1:</b></p> <p><i>Status quo: Continue to provide maintaining validity of vets in a very limited number of circumstances provided by statute</i></p>	<p>Low/Medium</p> <p>A point-in-time assessment of suitability is not as high protection against harm as maintaining the validity of the Police vet. In this option, in all but a limited number of Police vets, a risk of harm to vulnerable people exists.</p>	<p>Low</p> <p>Some employers will opt to Police vet only at point of employment.</p> <p>This option perpetuates the need for regular duplication of Police vets and is less efficient than other options.</p>	<p>Medium</p> <p>No change required.</p> <p>Could be put into a statutory framework but it is difficult to determine how limited selective application of maintaining validity would work in legislation.</p>	<p>Low/Medium</p> <p>It will only provide benefit in the limited areas where maintaining validity of Police vets is currently offered.</p>
<p><b>Option 2:</b></p> <p><i>Allow the validity of Police vets to be maintained in certain circumstances.</i></p>	<p>High</p> <p>Presents a significant improvement to the protection of vulnerable people, as employers are alerted if an employee becomes unsuitable and they can then take appropriate measures.</p>	<p>High</p> <p>Reduces the need to re-vet more frequently.</p> <p>The circumstances where the validity of a Police vet is maintained can be included in a statutory framework. This would allow for a gradual and controlled broadening of the availability of this option so that maximum benefit is achieved.</p>	<p>Medium</p> <p>If included in a statutory framework, it would require the development of regulations.</p> <p>Broadening the availability of this type of Police vet would require increased capability. While that relies on investment that may not be available for two to three years, in its current</p>	<p>High/Medium</p> <p>Provides ability to expand maintaining validity to benefit more vetting requesters and vetting subjects once capability is available to deliver it.</p>

		This option works well with other proposals to allow individuals to request a Police vet on themselves and share their Police vet with more than one employer.	basic form, maintaining the validity of Police vets can be put into the statutory framework and take immediate effect.	
<p><b>Option 3:</b></p> <p><i>A minimum requirement for employers to periodically re-vet within three years of the date of the latest Police vet</i></p>	<p>Medium</p> <p>Would reduce the risk to vulnerable people from one-off vetting, particularly when an individual holds a role for many years.</p> <p>Still a point-in-time Police vet and so a risk to vulnerable people exists in the three year period between each Police vet.</p>	<p>Medium</p> <p>Sets a standard of periodic re-vetting in line with Children’s Act requirements.</p> <p>Not as effective as maintaining the validity of Police vets.</p>	<p>Low/Medium</p> <p>This option could be included in the statutory framework.</p> <p>Would require a change to primary legislation if later it is decided to change to maintaining validity.</p>	<p>Medium</p> <p>Sets a minimum standard for timeframes in which a Police vet should be redone if the employee is still in that role, but does not ensure that vetting requesters have any new information they need at the earliest opportunity.</p>
<p><b>3.6.1 (c) Which of these options is the proposed approach?</b></p>				
<p><b>Option 2 is recommended because it rates highest for meeting the purpose of the Police Vetting Service and for effectiveness.</b></p>				



# Section 3.7: Reducing duplication of Police vets

## 3.7.1 (a) What is the problem?

Currently, a Police vet can only be made available to one vetting requester at a time and cannot be shared with other would-be vetting requesters. This is because the information released in a Police vet may vary depending on the purpose of the vetting request, and is only accurate at the point in time it is released to an approved agency, so cannot be relied upon by another approved agency.

Consequently, there are circumstances where one person may be vetted multiple times in a year. For example, contractors doing maintenance work at a number of schools are vetted by each school even though they are doing substantially the same work at each school. Duplication of Police vets:

- delays employment decisions as each employer (approved agency) must wait up to 20 days for a Police vet result.
- increases demand on the Police Vetting Service for Police vets.
- increases costs for employers who have to pay \$8.50 each time they vet someone.

In 2018, 72,771 individuals were vetted by Police on two or more occasions resulting in 162,421 vetting requests. In the same year, 15,242 individuals were vetted on more than one occasion by the same organisation, and three vetted by the same organisation eight times in a one-year period. Eliminating this duplication could reduce the number of Police vets undertaken in a year by approximately 90,000.<sup>2</sup>

Police has identified several explanations for this.

- The result of the first vetting request directed the organisation to reapply at a later date, due to the presence of active charges or an active investigation.
- Multiple users of the Police Vetting Service within the same organisation are not aware of requests that others are submitting.
- The organisation has 'lost' the vetting result for the initial request and therefore submits a second request.
- The organisation requesting the vet has internal processes that mean the initial vetting result becomes out of date by the time they are ready to progress with employment/licensing.

The consultation identified duplicate vetting as a key frustration for stakeholders. This is because it may result in losing out on suitable employees due to the 20 day processing of a Police vet before a job offer can be made, as well as delays to business productivity, and the financial loss associated with this.

It is also placing the resources of the Police Vetting Service under strain to meet the increasing demand for Police vets.

<sup>2</sup> In 2018, it is estimated that there were 89,650 duplicated vetting requests.

### 3.7.1 (b) What options have been considered to address the problem?

One option is to allow vetting subjects to authorise a vetting requester to share the Police vet they have obtained with other would-be vetting requesters who need the same information. This would enable an individual who had consented to Police vetting by one approved agency to request that they share the result with other approved agencies who they work for, where the work is of a similar nature. In the example of the contractor above, this would enable one school to share the result of the Police vet with other schools that the contractor provides services to.

This would address the delays associated with making employment decisions, and procuring essential services. The difficulty is that the accuracy of the point-in-time Police vet may not be relied upon by subsequent approved agencies. There are also issues of privacy of sensitive information being passed from one approved agency to another and how this is managed. During consultation, a small number of submitters commented that, in this scenario, the first vetting requester would bear the costs of the vetting fee and administration in applying for the Police vet. This could mean that they are unwilling to share the vetting result with other vetting requesters.

Another option is using the secure Police Vetting Service Website to allow a Police vet to be accessed by more than one agency or individual with the consent of the vetting subject for the same or a very similar role. Unlike current practice, the information would be retained by Police and the vetting requester 'views' the Police vet on a secure site. This protects the vetting subjects' privacy, and prevents personal information from being copied or disseminated.

Obtaining faster Police vet results is a benefit of this option. Once the initial Police vet is completed, subsequent vetting requests on that vetting subject will be available to view once conditions of identification verification and authorisation have been met.

Sharing Police vets in this way will require the development of an online delegated authority system. Vetting subjects will be responsible for updating Police as to which vetting requesters may access their Police vet. Some of the process would need to be covered in regulations. Implementing the sharing of Police vets may also require amendments to the Policing (Cost Recovery) Regulations 2017, as the current fee structure is not based on the availability of this new service.

This option also fits with the proposal to maintain the validity of Police vets, so that an approved agency granted access to view a completed Police vet is assured that it is the latest information on the vetting subject. Also, if information held on an individual changes, the organisation can rely on the Police Vetting Service to proactively notify them if the information is relevant. This will remove the need to submit multiple vetting requests in a short space of time.

It also fits with the proposal to allow individuals to request a Police vet on themselves. Moreover, it is in line with giving the vetting subject more control over their information and how they use it.

Based on 2018 figures, if individuals were able to authorise the sharing of their up to date vetting result with multiple organisations, Police expects this would reduce the volume of vetting requests received by approximately 90,000 requests per year.

This represents a significant change from the current operations of the Police Vetting Service, and requires the technical enhancements and improved capability referred to in Section 3.1.2 What options have been considered to address the problem?.

It is important that any statutory framework developed now allows for this option to be implemented at a later date, so as to avoid the costs and delays that would be associated with needing to amend the Policing Act within two years after commencement.

A further option is to extend the current use of screening agencies. The screening agency requests and receives the Police vet, and then assesses the suitability of the vetting subject for the role or requirement for which the Police vet is being sought. It then provides a decision to the employer as to the suitability of the vetting subject for the role. This system avoids disclosing sensitive information to organisations. This may be particularly important if the vetting subject is allowed by legislation to share with an individual their Police vet for a role that meets the purpose of the Police Vetting Service (i.e. a nanny wishing to share their Police vet with parents looking to employ them directly rather than through an agency). Screening agencies have been established in certain sectors such as Education, Health, and Real Estate and could be extended to the vetting of all sector workers.

If this option were extended to other sectors, it would mean that an individual is vetted once by the sector screening agency, rather than each employer. This would reduce the number of vetting requests, as well as the number of vetting requesters dealing directly with the Police Vetting Service. This option is still a point-in-time vetting result as screening agencies do not advise vetting requesters of new information between Police vets.

The difficulty of this option would be in regulating the different screening agencies. Furthermore it is likely that some sectors would not be represented (i.e. voluntary workers and/or charities). The screening agencies are likely to be commercial organisations and could add extra cost to sectors that need to keep costs to a minimum. Presently, registered charities do not pay for their Police vetting.

**Options:**

**Option 1:** Allow Police vets to be shared, with the consent of the vetting subject, between vetting requesters where the nature and environment of the role is similar.

**Option 2:** Allow for the vetting subject to 'share' their Police vet via a secure Police Vetting Service website under specific circumstances.

**Option 3:** Extend the current system of screening agencies to other sectors where workers may be employed in multiple roles of a similar nature that require a Police vet.

<b>Assessment of each option against criteria</b>				
	<b>Criteria 1: Purpose</b>	<b>Criteria 2: Effectiveness</b>	<b>Criteria 3: Practicality</b>	<b>Net benefit</b>
<p><b>Option 1:</b></p> <p><i>Allow Police vets to be shared, with the vetting subjects consent, between employers where the nature and environment of the role is similar</i></p>	<p>Medium</p> <p>Would expedite the employment of suitable people into roles where a Police vet is needed.</p>	<p>Low</p> <p>Would avoid costs associated with duplicated Police vets and assist in faster procurement of services.</p> <p>Would create significant privacy issues as an individual's information is being transferred or copied from one organisation to another.</p>	<p>Low</p> <p>Keeping track of who had a vetting subject's private information would be difficult.</p> <p>The initial vetting requester would bear the cost and administrative burden of obtaining the Police vet and may be unwilling to share.</p>	<p>Low</p> <p>Would require a complex set of rules to manage and would be unwieldy to regulate. It is also unlikely to result in any significant sharing among vetting requesters due to the difficulties identified.</p>
<p><b>Option 2:</b></p> <p><i>Employers can view with the vetting subject's consent, the Police vet on a secure Police Vetting Service website</i></p>	<p>High</p> <p>Expedites the employment of suitable people into roles where a Police vet is needed.</p>	<p>High</p> <p>Would protect the privacy of the vetting subject's information.</p> <p>Significant efficiencies of cost and time could be achieved.</p> <p>Would reduce the number of new Police vets (from the number of positions being vetted for, to the number of different roles</p>	<p>Medium/High</p> <p>Provides a 'one-stop shop' for anyone needing a Police vet.</p> <p>Vetting requester does not have to manage sensitive Police vet information on their own premises.</p> <p>Can be included within a statutory framework to enable this option once investment and capability are</p>	<p>High</p> <p>Offers a quicker and easier way to make vetting requests and the vetting subject retains control of their information. Legislation can allow for the development of regulations when the capability to deliver the proposal is available.</p>

		requiring Police vetting).	available in two to three years.	
<b>Option 3:</b>  <i>Extend the current system of screening agencies to other sectors</i>	Medium  The screening agency decides the suitability of the vetting subject. This works well in certain sectors but in other sectors approved agencies have identified that an insufficient understanding of the role could increase the risk of employing someone unsuitable.	Medium  Tried and tested as an effective way to vet workers in some of New Zealand's larger industry sectors requiring Police vets, but may not be a good fit for other areas.  Avoids the disclosure of sensitive information to employers.	Low  Could result in many private screening agencies that would require regulating to ensure the quality of advice.  Some sectors may not be provided for.	Medium  Could widen the scope for the use of screening agencies, but unlikely to have a significant impact. More of a complementary option than one on its own.

### 3.7.1 (c) Which of these options is the proposed approach?

**A combination of option 2 and option 3 are recommended because they rate highest on all three criteria of Purpose, Effectiveness, and Practicality.**

## Section 3.8: A clear set of rules on what information can be released in a Police vet

### Section 3.8 Introduction

This section looks at the policy issues relating to creating a clear set of rules on what information can be released in a Police vet. There are four parts to this section:

- 3.8.1 Criminal and traffic convictions
- 3.8.2 Other Police held information
- 3.8.3 Limitations on the release of information
- 3.8.4 Withholding information from the vetting subject.

## SECTION 3.8.1 CRIMINAL AND TRAFFIC CONVICTIONS

### 3.8.1 (a) What is the problem?

Currently, Police releases all criminal and traffic convictions identified in a vet (subject to the Criminal Records (Clean Slate) Act) as part of a Police vet. This is in alignment with the Ministry of Justice. A criminal conviction history is intended to be an ongoing record of prior criminal behaviour. It has reduced privacy implications because of the public nature of our court system.

It is the policy of Police that the individual concerned must expect their record to follow them (except where the Clean Slate scheme applies, or there is a suppression or non-publication order). It is up to the individual to explain historic convictions to any prospective employer, preferably prior to being vetted by Police.

The consultation revealed confusion among a small number of submitters as to whether the test of relevance applies to criminal convictions. This has never been the case. Regardless of the role applied for, a Police vet result will show all convictions not precluded by the Clean Slate Act or a court order.

A clear policy for conviction information needs to be established to ensure certainty for vetting subjects about what conviction information will be released in a Police vet.

Including this in a statutory framework would confirm current practice and be an opportunity to make the policy clear and distinct from other Police-held information, for which the application of relevance is applied.

### 3.8.1 (b) What options have been considered to address the problem?

#### Options:

**Option 1:** Status quo. Maintain the current practice and provide more detailed guidelines for users on the application of conviction information to Police vetting.

**Option 2:** A clear policy statement within a statutory framework confirming that all conviction information is released as part of a Police vet (subject to the Criminal Records (Clean Slate) Act.)

#### Assessment of each option against criteria

	Criteria 1: Purpose	Criteria 2: Effectiveness	Criteria 3: Practicality	Net benefit
<b>Option 1:</b>	Low	Low	Medium	Low
<i>Status quo: Continue to rely on internal operational policies</i>	Adds no further protection to vulnerable people.	It would not address the need for clarity.  Information may be released that vetting subjects	No action is required.	Adds no further benefit for stakeholders or protection for vulnerable people.

		were not expecting. This could lead to unnecessary requests for review.		
<p><b>Option 2:</b></p> <p><i>A clear policy statement within a statutory framework that all conviction information is released as part of a Police vet unless precluded by statute or a court of law</i></p>	<p>Medium</p> <p>Confirms that conviction history is comprehensive so that employers can fully understand the risk to vulnerable people.</p>	<p>High</p> <p>This option ensures certainty and clarity for both vetting subjects and vetting requesters.</p> <p>Balances the rights and needs of all parties for information.</p>	<p>Medium</p> <p>Requires an amendment to legislation.</p> <p>May reduce the number of complaints to the IPCA or OPC if a clear set of rules around release of conviction information is set out in legislation.</p>	<p>Medium/High</p> <p>Knowing the rules could mitigate the number of complaints around inappropriate release of information. This option fits well with the two-step consent and right of review proposals.</p>

### 3.8.1 (c) Which of these options is the proposed approach?

**Option 2 is recommended because it rates higher for purpose and effectiveness and reduces the legal risk when releasing sensitive information.**

## SECTION 3.8.2: OTHER POLICE-HELD INFORMATION

### 3.8.2 (a) What is the problem?

#### **Police**

There is a lack of awareness by the public generally, and users of the Police Vetting Service specifically, of what is meant by 'other Police held information'. Examples of this type of information includes information that other government agencies have passed on directly to Police, and information on Police files, such as warrants to arrest, charge history or any interaction with the Police in any context, whether or not charges result.

The use of this information for Police vets is critical to meeting the purpose of vetting as a prevention activity. The vetting subject may not have any convictions but Police may have other information that show the vetting subject poses an unacceptable level of risk if they were appointed to the role they have applied for. This information is often critical for



employers to make robust employment decisions that safeguard the well-being of vulnerable people.

The lack of awareness of what constitutes 'other Police-held information' has resulted in challenges to Police vet results, where the vetting subject did not expect certain information to be released.

The IPCA and OPC noted in their joint review that most of the Police vetting complaints received by them involved the difficult and complex cases where Police must consider whether or not to disclose non-conviction details to the vetting requester.

The IPCA and OPC stated:

*“Given the breadth of the information potentially available, our view is that the lack of clear legislative or policy direction on how Police vetting checks are to be undertaken, or the manner in which Police responses should be provided, gives rise to uncertainties and legal risks for all parties.”*

The joint review recommended clear guidelines be produced. This recommendation was adopted and Police's website lists examples of information that Police may hold and release. However, submissions from the 2018 consultation revealed there remained a lack of clarity about what types of information Police hold.

In addition, the consultation asked respondents if there should be a general test that information released in a Police vet must be relevant and substantiated. Relevance is linked to the risk that the vetting subject may pose in the role (or in relation to the requirement) for which they are being vetted. It may diminish over time. Substantiation involves the consideration of matters such as the accuracy, veracity, and integrity of the information.

While there was strong support for a general test on this basis, submissions showed some confusion and divergent views regarding what this meant, and when Police would release other Police held information in a Police vet. It is necessary for Police to maintain a degree of discretion and flexibility in terms of what information is released in a Police vet. A balance needs to be struck between an individual's right to natural justice and privacy, while ensuring this does not affect the ability to protect vulnerable people in the community or compromise national security.

Police recognise that the test of 'relevant and substantiated' needs greater clarity for what is regarded as a threshold for the release of information. This will ensure that vetting requesters and vetting subjects understand what information can be considered and how it is considered. This will also support the need for transparency and robustness of decision making on how Police process Police vets.

### 3.8.2 (b) What options have been considered to address the problem?

Police adopted all of the recommendations of the report by the IPCA and OPC from the 2016 review. This included more information on Police’s website about what information Police may release. This is clearly signposted for individuals searching on the website.

One option is to provide more guidance on the website to clarify what ‘other Police-held information’ is and how it is assessed for inclusion in a Police vet.

Another option is to include criteria in legislation for determining what information can be released in a Police vet. In respect of non-conviction information, this may only be released if it is:

- relevant to the risk that the vetting subject may pose in the role for which they are being vetted (or in relation to the requirement they are seeking to fulfil); and
- substantiated (this will involve the consideration of matters such as the accuracy, veracity, and integrity of the information).

Police propose that this second option includes guidelines to provide further information about the criteria for determining whether non-conviction information can be released in a Police vet. This will include further information on the level of substantiation required, depending on the role of the vetting subject and the associated level of risk. It will also depend on whether the information is suppressed information, youth justice information, or mental health information.

#### Options:

**Option 1:** Status quo. Rely on current internal operation policies.

**Option 2:** Make more guidance information available on the Police website.

**Option 3:** Include criteria in legislation for the release of non-conviction information in a Police vet. Provide guidelines to support understanding of the criteria.

#### Assessment of each option against criteria

	Criteria 1: Purpose	Criteria 2: Effectiveness	Criteria 3: Practicality	Net benefit
<b>Option 1:</b>  <i>Status quo (internal operational policies)</i>	Low  Challenges to information released in a Police vet persist where a lack of clarity means vetting subjects are not expecting the result.	Low  Examples of non-conviction information on Police’s website have not removed the uncertainty and confusion around what information can be considered	Medium  Requires no action.	Low/Medium  There is no additional benefit derived from this option.

	Challenges to Police vet results take resources away from processing Police vets. This affects the efficiency and ability of the Police Vetting Service to carry out its role.	and released as part of a Police vet.		
<p><b>Option 2:</b></p> <p><i>Make more guidance information available on the Police website</i></p>	<p>Medium</p> <p>This could provide the necessary clarity to reduce the number of challenges to the Police vet result.</p>	<p>Medium</p> <p>More information will give a clearer picture for vetting subjects as to how information is considered.</p> <p>It will provide more transparency of decision-making.</p>	<p>Medium</p> <p>The website can be easily altered to include more information.</p>	<p>Medium</p> <p>The benefits can be quickly and simply achieved by providing more guidance information on Police's website.</p>
<p><b>Option 3:</b></p> <p><i>Criteria for the release of non-conviction information in a Police vet to be in legislation. Guidelines to support understanding of the criteria</i></p>	<p>High</p> <p>Legal criteria for what and when information will be released ensures consistency and fairness and strikes the important balance to ensure the protection of</p>	<p>High</p> <p>Addresses the need for clear legal and policy direction on what information can be considered and when it can be released.</p> <p>Guidelines would support understanding</p>	<p>Medium</p> <p>Requires inclusion in legislation as part of an overall statutory framework for the Police Vetting Service.</p>	<p>High/Medium</p> <p>Clear criteria set out in law would support consistency, clarity and transparency around what non-conviction information may be released in a Police vet.</p>

	vulnerable people.	of how the test will be applied.  Would provide reassurance for both vetting requester and vetting subject on the robustness of the decision making and the Police vet.		
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**3.8.2 (c) Which of these options is the proposed approach?**

**Option 3 is recommended as the most effective proposal to ensure certainty, consistency, and fairness.**

**SECTION 3.8.3: LIMITATIONS ON THE RELEASE OF INFORMATION**

**3.8.3 (a) What is the problem?**

Police sometimes hold relevant information (including conviction information) about a vetting subject that it is unwilling or unable to release. This may be information relating to an active investigation where premature disclosure to the vetting subject (e.g. as the alleged offender) would adversely affect the investigation, or where release would breach a Court order or statutory provision.

The IPCA and OPC joint review, and the 2018 consultation, identified a need for greater clarity on the limitations of what information Police can release as part of a Police vet. Often this information is highly sensitive for either Police or the vetting subject. This is because of the likely prejudicial effect on an investigation, or on the vetting subject, and the potential breach of natural justice.

The impact that releasing this information can have means that there needs to be clear policy to ensure that all such information is treated consistently, and that the decision making process is transparent.

The 2018 consultation showed that the majority of submitters supported legislation setting out limitations on information that can be released in a Police vet. Police has identified three types of situations where clear parameters are needed to ensure certainty and consistency of what highly-sensitive Police-held information will be withheld and what may be released. This is where disclosure:

- would breach a Court Order or statutory provision (i.e. name suppression and Youth Court outcomes), or
- includes mental health and substance abuse information (e.g. self-harm threats, Police attendance where a person been referred to mental health services, or where information about a vetting subject’s substance abuse results in a Police warning or caution), or

- would be likely to prejudice the maintenance of the law or safety of a person (e.g. confidential or intelligence information, information that would adversely affect a Police investigation, or safety of an individual).

Presently, a limited degree of guidance is provided for these situations in the Approved Agency Agreement, and there is no separate guidance on Police’s website.

The IPCA and OPC joint review recommended a higher test for releasing this type of information than the ordinary relevance and substantiation thresholds. This proposal needs to identify what that test should be and how it is best promulgated. This will ensure vetting subjects and vetting requesters have certainty around what information will be released and when.

### **3.8.3 (b) What options have been considered to address the problem?**

The following options have been identified to address the problem of clarity and consistency in the treatment of information Police is unwilling or unable to release as part of a Police vet.

One option is to provide more general guidance on what the limitations on the release of information are, on Police’s website. Currently, the only information available is in the Approved Agency Agreement, which a vetting subject is unlikely to be aware of. This option will make guidance available to the public and support a greater understanding of how Police decides what information can and cannot be released.

Another option is to develop criteria in legislation for determining when this type of information should be withheld and when it can be released in a Police vet. The criteria proposed by Police have a higher threshold than for other information.

Police recommend the following criteria for each of the two types of information identified:

1. Disclosure would breach a Court Order or statutory provision (e.g. name suppression and Youth Court outcomes).

a) Criminal conviction history that is suppressed information or youth justice information, may only be released in a Police vet (subject to Clean Slate Act) if it is:

- relevant and substantiated to a degree that the vetting requester has an objectively established genuine need to know.

For Youth Court outcomes this would be a higher threshold than for cases involving adults. For example, a conviction for child sex offending where the role for which the vetting subject is being vetted involves contact with children.

b) Non-conviction information that is suppressed information may only be released if it is:

- relevant and substantiated to a degree that the vetting requester has an objectively established genuine need to know.

For Youth Court outcomes this would be a higher threshold than for cases involving adults.

2. Disclosure includes mental health or substance abuse information (e.g. suicide/self-harm threats, Police attendance where a person has attended or been referred to mental health services).

(a) The criteria for determining when mental health and substance abuse information can be released in a Police vet relates to non-conviction information only and may only be released if:

- it is relevant and substantiated to a degree that the vetting requester has an objectively established genuine need to know; and
- there is evidence of a link to offending behaviour or likelihood of risk to others.

Police propose that this second option includes guidelines to provide further information about the criteria to support understanding among users of the Police Vetting Service and the general public.

**Options:**

**Option 1:** Status quo: rely on current internal operation policies.

**Option 2:** Make more guidance information available on the Police website.

**Option 3:** Develop criteria on the limitations on the release of information in a Police vet that provides clear policy and legal direction. Provide guidelines to support understanding of the criteria.

**Assessment of each option against criteria**

	<b>Criteria 1:</b> Purpose	<b>Criteria 2:</b> Effectiveness	<b>Criteria 3:</b> Practicality	<b>Net benefit</b>
<p><b>Option 1:</b></p> <p><i>Status quo (internal operational policies)</i></p>	<p>Low</p> <p>Challenges to information released in a Police vet would persist where a continued lack of clarity means vetting subjects are not expecting certain information to be released.</p> <p>Challenges take resources away from processing Police vets. This affects efficiency and ability of the</p>	<p>Low</p> <p>Does not improve the accessibility of information relating to limitations on the release of information for vetting subjects or the public generally.</p> <p>Limited transparency or clarity of decision-making.</p>	<p>Medium</p> <p>Requires no action.</p>	<p>Low/Medium</p> <p>Problems of lack of certainty and unnecessary challenges will continue.</p>

	Police Vetting Service to carry out its role.			
<p><b>Option 2:</b></p> <p><i>Make more guidance information available on Police's website</i></p>	<p>Medium</p> <p>This could provide improved clarity to reduce the number of challenges to the Police vet result.</p>	<p>Medium</p> <p>More information would give a clearer picture for vetting subjects as to how information is considered.</p> <p>It would provide more transparency of decision making.</p> <p>It may not be enough to meet the need for clear policy and legal direction as this is a key policy issue.</p>	<p>Medium</p> <p>The website can be easily altered to include more information.</p>	<p>Medium</p> <p>The benefits can be quickly, and simply achieved by providing more guidance information on the Police website.</p>
<p><b>Option 3:</b></p> <p><i>Develop criteria in legislation on the limitations on the release of information in a Police vet to provide clear policy and legal direction.</i></p>	<p>High</p> <p>Criteria for what and when information will be released ensures consistency and fairness and strikes the important balance Police needs to achieve to ensure the</p>	<p>High</p> <p>Addresses the need for clear legal and policy direction on when information can be considered and when it can be released.</p>	<p>Medium</p> <p>Requires inclusion in legislation as part of an overall statutory framework for the Police Vetting Service.</p>	<p>High/Medium</p> <p>A clear set of criteria in law would support consistency, clarity and transparency around what information may and may not be released in a Police vet.</p>



<p><i>Guidelines to support understanding of the criteria.</i></p>	<p>protection of vulnerable people.</p>	<p>Guidelines would support understanding of how the criteria will be applied.</p> <p>Would provide reassurance for both vetting requester and vetting subject on the robustness of the decision making and the Police vet result.</p>		
<p><b>3.8.3 (c) Which of these options is the proposed approach?</b></p>				
<p><b>Option 3 is recommended as providing the force of legislative backing needed to address the policy issue.</b></p>				

#### SECTION 3.8.4: WITHHOLDING INFORMATION FROM THE VETTING SUBJECT

<p><b>3.8.4 (a) What is the problem?</b></p>
<p>In exceptional circumstances there are conflicting interests between the need to protect the integrity of an active Police investigation, and the need of the vetting requester to have information which is highly pertinent to whether the vetting subject is suitable for the role they have applied for. As the vetting subject has the right to ask the vetting requester to see their Police vet result, if this information were released it would alert the vetting subject to the fact they were under investigation and could affect the success of the investigation.</p> <p>An example of such exceptional circumstances may be an individual who is being investigated for child sex offending, seeking employment in the childhood education sector (where the individual's knowledge of the case would be likely to jeopardise the investigation).</p> <p>Currently, in these circumstances, the information is withheld from the Police vet. However, Police is concerned that current practice puts vulnerable people and national security at significant risk as a Police vet result may appear to show the vetting subject is suitable for a role when they are not.</p> <p>Of the more than 11,500 vetting requests processed each week, the Police Vetting Service anticipates that these exceptional circumstances will occur 1 or 2 times per annum.</p>

### 3.8.4 (b) What options have been considered to address the problem?

The following option has been identified to address the problem of exceptional circumstances where a conflict of interest exists between the Police and the vetting requester exists.

Police considers it would be beneficial, in exceptional circumstances, to be able to release in a Police vet, relevant information that is required to be kept confidential and unavailable to the vetting subject. This would involve creating two versions of a Police vet, one for the vetting subject, and one for the agency or individual seeking to employ the vetting subject.

The two versions of the Police vet result would be necessary to cover situations where the vetting subject has chosen to see their Police vet either before it is released (i.e. under the two-step consent process), or subsequently once the vetting requester is in possession of the information. In the latter instance, the vetting requester would need to refer the vetting subject back to the Police Vetting Service for the Police vet result as they would not be able to share their information with the vetting subject.

This option has significant implications, particularly for the vetting subject, as the information may be prejudicial to them (overriding the presumption of innocence) and breach natural justice. The vetting subject will be unaware that the vetting requester has received highly sensitive information about them.

This option would also affect the vetting requester as they must keep the information they have received confidential. If the information is instrumental in the vetting subject being unsuccessful for a role they have applied for, the vetting requester will not be able to divulge to the vetting subject the reason for their decision. There is also a risk that the vetting requester and the vetting subject know each other.

This option was supported by a slim majority of submitters who responded to the question of whether legislation should provide for Police to release relevant information that is required to be kept confidential and unavailable to the vetting subject.

Clear rules and parameters are needed particularly around the disclosure of this more sensitive information to establish certainty and consistency. It would also need to balance the competing interests of vulnerable people, employers, and vetting subjects.

The criteria for exceptional circumstances where information is released in a Police vet that is unavailable to the vetting subject is proposed as where withholding the information from an agency or individual requesting it would be likely to put vulnerable people, criminal investigations, privacy or national security at significant risk.

#### **Options:**

**Option 1:** The status quo: highly pertinent information relating to an active investigation is not released in the Police vet.

**Option 2:** Include in legislation that Police can, in exceptional circumstances, release information in a Police vet that is unavailable to the vetting subject. Provide guidelines to support understanding of the criteria.

<b>Assessment of each option against criteria</b>				
	<b>Criteria 1: Purpose</b>	<b>Criteria 2: Effectiveness</b>	<b>Criteria 3: Practicality</b>	<b>Net benefit</b>
<p><b>Option 1:</b></p> <p><i>Status quo (highly pertinent information relating to an active investigation, is not released in the Police vet)</i></p>	<p>Low</p> <p>The vetting requester is unable to properly protect vulnerable people in their care and may employ someone who is unsuitable because highly pertinent information is not passed on in the Police vet result.</p>	<p>Low/Medium</p> <p>It prioritises the presumption of innocence and the right to natural justice for the vetting subject over public safety and national security.</p> <p>A criminal investigation is not jeopardised by the Police vet.</p>	<p>Medium/High</p> <p>No action required, but this policy could be included in a statutory framework as per section <u>3.8.3 Limitations on the release of Information</u> above.</p>	<p>Low/Medium</p> <p>It provides a simple response to the problem that is straightforward to implement but does not align with the Purpose of Police vetting, namely, to protect vulnerable people from harm.</p>
<p><b>Option 2:</b></p> <p><i>Include in legislation that Police can, in exceptional circumstances, release information in a Police vet that is unavailable to the vetting subject.</i></p> <p><i>Provide guidelines to support understanding of the criteria</i></p>	<p>High</p> <p>Prioritises the purpose of Police vetting to protect against significant risks to vulnerable people and national security.</p> <p>Vetting requesters are assured they have all the information they need to employ suitable people.</p>	<p>Medium</p> <p>Highly pertinent information is passed on confidentially when it is needed.</p> <p>A criminal investigation is not jeopardised by the Police vet.</p> <p>Ignores the vetting subject's rights to natural justice and presumption of innocence.</p> <p>In a small number of circumstances,</p>	<p>Medium</p> <p>Requires legislation that can be easily drafted as part of a statutory framework.</p> <p>The vetting requester will not be able to share the Police vet result with the vetting requester (as is currently done), but will have to refer them back to Police.</p>	<p>High/Medium</p> <p>This option affects the rights of the vetting subject by placing greater weight on the need to protect public safety and national security, and the maintenance of the law.</p>

		the vetting subject and vetting requester may know each other.		
<b>3.8.4 (c) Which of these options is the proposed approach?</b>				
<b>Option 2 is recommended for rating the highest for meeting both purpose and effectiveness.</b>				

## Section 3.9: Disclosure of disciplinary information

<b>3.9.1 (a) What is the problem?</b>
<p>The Police Vetting Service does not currently hold information about disciplinary processes or action undertaken by professional organisations, licensing authorities, or registration authorities. This means, for example, a Police vet involving a teacher who has had their registration cancelled by the Teaching Council due to serious misconduct, would not show the deregistration because this is not Police held information. The teacher could volunteer or apply for work other than a teaching role, without de-registration being picked up.</p> <p>As part of its considerations into disclosure requirements, Police has considered Irish legislation. It requires named professional organisations to notify the National Vetting Bureau where, as a result of any investigation, inquiry, or regulatory process, there is a legitimate concern that the person being investigated poses a risk to a child or vulnerable person. Police does not propose to adopt a policy this broad, as there is concern that it may be difficult to substantiate, or to rely on the accuracy of the information.</p> <p>The responses in the 2018 consultation revealed there was a high level of support (or support in specific situations) from submitters (78%) for deregistration information held by professional organisations to be passed onto the Police Vetting Service.</p>
<b>3.9.1 (b) What options have been considered to address the problem?</b>
<p>Police has identified two options to address the policy problem. The only way that Police can obtain this information is if it is provided by the professional organisations concerned. The options, therefore, are confined to either enabling professional organisations to share this information, or to require them to share it. Police is concerned that requiring professional organisations to share deregistration information would be difficult to enforce.</p> <p><b>Options:</b></p> <p><b>Option 1:</b> This is not current practice.</p> <p><b>Option 2:</b> Enable certain professional organisations to voluntarily provide deregistration information to the Police Vetting Service.</p> <p><b>Option 3:</b> Require certain professional organisations to provide deregistration information to the Police Vetting Service.</p>

<b>Assessment of each option against criteria</b>				
	<b>Criteria 1: Purpose</b>	<b>Criteria 2: Effectiveness</b>	<b>Criteria 3: Practicality</b>	<b>Net benefit</b>
<p><b>Option 1:</b></p> <p><i>Enable certain professional organisations to voluntarily provide deregistration information to the Police Vetting Service</i></p>	<p>Medium</p> <p>Would increase protection for vulnerable people as more information is available for consideration of suitability.</p>	<p>Medium</p> <p>Would only be relevant in a small number of Police vets.</p> <p>It would provide clear legal and policy direction for professional organisations.</p>	<p>Medium</p> <p>Would require legislation, but would legally enable professional bodies to pass on the relevant information.</p>	<p>Medium</p> <p>Acknowledges that there can be other useful information outside of convictions and 'other Police-held information' that could be relevant as part of a Police vet. Will give a fuller picture of the suitability of a person for a particular role.</p>
<p><b>Option 2:</b></p> <p><i>Require certain professional organisations to provide deregistration information to the Police Vetting Service</i></p>	<p>Medium</p> <p>Would increase protection for vulnerable people as more information is available for consideration of suitability.</p>	<p>Medium</p> <p>Would only be relevant in a small number of Police vets and therefore would be unlikely to make any greater impact than the voluntary option.</p> <p>It would be more difficult to incorporate into a statutory framework as compliance issues would need to be addressed.</p>	<p>Low</p> <p>Would need legislation to require professional bodies to pass on the relevant information.</p> <p>Police would need to enforce it.</p>	<p>Medium/Low</p> <p>Requiring professional organisations to provide this information would create an enforcement burden on Police to ensure compliance. The benefit is not expected to outweigh this.</p>

### 3.9.1 (c) Which of these options is the proposed approach?

**Option 1 is recommended because it provides the simplest approach and rates high for both effectiveness and practicality.**

## Section 3.10: Right of review

### 3.10.1 (a) What is the problem?

Currently a vetting subject is entitled to request and see a copy of their Police vet after it has been released to the approved agency (vetting requester). This is usually done by a direct request from the vetting subject to the approved agency. The Police Vetting Service encourages the approved agency to discuss the Police vet with the vetting subject.

If the vetting subject or approved agency wants to contest any information released in a Police vet, they are required to email the Police Vetting Service with a description of the issue. This may be made on the grounds that the information disclosed does not relate to the vetting subject, is inaccurate, or should not have been released. Senior vetting staff resolve the vast majority of such complaints. If the Police vet is found to be inaccurate, a new Police vet is released to the vetting requester. Where erroneous information is found in Police's National Intelligence Application (NIA), a statement of correction is added to NIA for future reference.

However, as the correction is added retrospectively after the release of the information to the approved agency, this may cause harm to the vetting subject's reputation.

Current practice is that a Vetting Review Panel provides advice and guidance in complex cases, predominantly prior to the release of the Police vet. On rare occasions,<sup>3</sup> the Vetting Review Panel also deals with disputes. Its members are senior staff from a number of workgroups in Police, namely the Police Vetting Service, Legal Services, Organisational Assurance (Chief Privacy Officer), Criminal Investigation Branch, and Communication Centres Management.

Of the submitters who responded to this issue, all but two submitters supported the vetting subject being able to challenge a Police vet. The key reasons given for being able to challenge a Police vet were where it was considered to be factually incorrect, where the information was irrelevant to the Police vet, where disclosure was unauthorised, or there had been a significant time lapse since the last event.

Of those who responded to the question of whether the vetting subject should be able to appeal the decision of a review by the Vetting Review Panel in Police, to a tribunal or court, 85% of submitters were in support of this.

Police supports a vetting subject's right to review, particularly their right to question the information in their Police vet. A vetting subject should be able to seek a review of their Police vet both before and after it has been released to the vetting requester. Police also recognises the benefit of a vetting subject being able to seek further external review beyond the administrative review process by senior vetting staff and/or the Vetting Review Panel. This would be based on existing complaints avenues, including the OPC.

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<sup>3</sup> A handful a year.

### 3.10.1 (b) What options have been considered to address the problem?

An option is to add a review process that would enable the vetting subject to challenge information in a Police vet prior to its release. Police would need to be clear on what grounds information could be contested (i.e. factual accuracy, information that is not relevant to the role or in relation to the requirement they are seeking to fulfil, or information that is not substantiated. It is proposed that in the first instance review is to the Police Vetting Service. Existing external review avenues would also be available.

Police estimate the majority of people requiring a vetting request for employment purposes will not request to see it before it is released. The people who are most likely to want to see their vetting result prior to it being released are those who know or suspect that there may be information released. Approximately 15% of vetting requests are released with a result.

The functionality of the process will mean the default option is for the result to be released directly to the agency and the individual at the same time. A vetting subject will need to 'opt in' if they want to view their vetting result prior to it being made available to a vetting requester. In this case, the vetting requester would be notified that the request has been completed and the result will be made available once the vetting subject authorises it.

This option would synchronise with the proposed two-step consent process that incorporates prior disclosure and consent to release the Police vet and provides the vetting subject with the opportunity to review the Police vet before its release and/or withdraw their consent for the Police vet to proceed.

The option of giving a right of review could delay the release of a small number of vets, but it would uphold the principles of natural justice and privacy for all vetting subjects and reassure the vetting requester that the information eventually released can be relied upon for decision making. The impact of delays is also expected to be partially mitigated by the proposal in section [3.7 Reducing duplication of Police vets](#). Reducing duplication where once the original Police vet is completed, means subsequent vetting requests on that vetting subject can be made available more quickly.

#### Options:

**Option 1:** Status quo: Continue to rely on internal operational policies where the right of review happens after the Police vet information is released.

**Option 2:** Establish a review process that can be used either before or after the Police vet information is released.

Assessment of each option against criteria				
	Criteria 1: Purpose	Criteria 2: Effectiveness	Criteria 3: Practicality	Net benefit
<b>Option 1:</b>	Low	Low	Low	Low
<i>Status quo: Continue to rely on</i>	Would not provide the same guarantee of	Only enables retrospective correction. Any damage or	Deals with problems of inaccurate	Ignores the need to ensure that released information is



<i>internal operational policies</i>	reliability of information able to be checked as Option 2.	perceived damage to the vetting subject's reputation would be difficult to undo.	information after the event.	accurate and reliable at the point of release rather than afterwards.
<b>Option 2:</b>  <i>Establish a review process that can be used either before or after the Police vet information is released</i>	Medium/High  Supports the purpose as the information released can be tested beforehand and the approved agency can rely on it.	High  Promotes the principles of natural justice and privacy.  It can be incorporated into a statutory framework.	Medium  Requires legislative change.  The option is a practical approach to balancing the rights and needs of all parties.	Medium/High  The vetting requester is assured that the information is reliable and the vetting subject is assured information is not released without an opportunity to contest the content of the Police vet.

### 3.10.1 (c) Which of these options is the proposed approach?

**Option 2 is recommended because it best achieves the purpose of the Police Vetting Service and rates higher for both effectiveness and practicality.**

## 3.11: Other options

### What other options have been ruled out of scope, or not considered, and why?

#### ***The establishment of an independent vetting body***

Within the 2018 consultation, Police tested with stakeholders the option of establishing an independent body (much like a screening agency) to manage Police vetting for all requesters. It was broadly viewed that it would increase bureaucracy and costs and add another layer of complexity. This option was not taken any further.

# Section 4: Conclusions

## 4.1 What option, or combination of options, is likely best to address the problem, meet the policy objectives, and deliver the highest net benefits?

The options that most effectively meet Police policy objectives and deliver the highest net benefits is the establishment of a statutory framework for the Police Vetting Service that incorporates the functions and features recommended in the proposed options for change detailed earlier in Sections 3.1 A clear set of rules for the Police Vetting Service - 3.9 Disclosure of disciplinary information of this Regulatory Impact Assessment.

This is also consistent with the views expressed by submitters in the 2018 consultation. Of the 62 submitters who responded to a question asking if there should be a statutory framework for the Police Vetting Service, 57 (92%) supported a statutory framework. Four others provided comment only and one submission did not support a statutory framework, asking what problem will be solved by introducing a statutory framework for the Police Vetting Service. Police believe this question has been satisfactorily answered in this document.

The proposals to address the multiple issues have been developed from policy analysis, the views expressed and support given by stakeholders who responded to the discussion document, and drawing on the experience of some overseas jurisdictions. These have been combined with the expertise of the Police Vetting Service to create the statutory framework.

Specifically, submitters broadly supported the following proposals:

- That the Police Vetting Service’s key purpose is protecting vulnerable people from harm
- There should be direct access to the Police Vetting Service by individuals in certain circumstances
- That consent of the person being vetted is obtained before a Police vet can be undertaken
- The sharing of Police vet results among vetting requesters, with the consent of the person being vetted, to reduce duplication of vetting requests
- Maintaining the validity of Police vets where relevant information on a vetting subject is kept current and employers are informed of changes to information in a Police vet in a timely way
- A general test that information in a Police vet be ‘relevant and substantiated’
- A process to appeal and/or review information released in a Police vet

The proposed options take into account all the feedback received by Police, and are considered by Police as the necessary legislative and policy directions required for the future effective operations of the Police Vetting Service.

## 4.2 Summary table of costs and benefits of the preferred approach

Affected parties (identify)	Comment: <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (e.g. compliance rates), risks</i>	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>	Evidence certainty (High, medium or low)
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### Additional costs of proposed approach, compared to taking no action

Regulated parties	<p>Initially there are no expected additional costs to approved agencies applying for Police vets arising from legislation.</p> <p>As additional services enabled by legislation are implemented, fees will need to be reviewed. This will require a review of the Policing Cost Recovery Regulations to ensure that the Police Vetting Service can continue to be self-funding.</p>	<p>\$8.50 per vet</p> <p>Unknown at this time</p>	<p>Nil</p> <p>Low</p>
Regulators	<p>There is a one-off administrative cost to Government to develop and implement the first stage of the statutory framework.</p> <p>There is a one-off cost to government to develop the modernised Police vetting IT systems and capability for some provisions of the legislation to be implemented (second stage).</p>	<p>This administrative cost is met within the baseline.</p> <p>The IT costs are still being determined and a business case for funding will be developed.</p> <p>An estimate of these costs is \$2-3 million based on other recent enhancements to the Police Vetting Service's systems and will be sought via the usual government funding/budget cycle.</p>	Medium

Wider government	Not applicable		
Other parties	Once enabled, there will be a one-off cost for individuals requesting a Police vet on themselves.	Unknown	Medium
<b>Total Monetised Cost</b>		Medium/High	Medium
<b>Non-monetised costs</b>		Medium/High	Medium

<b>Expected benefits of proposed approach, compared to taking no action</b>			
Regulated parties	Approved agencies will receive a more consistent, transparent, and faster service.  Vetting subjects will receive a service that facilitates their employment and gives more weight to their privacy rights and needs.	Medium	Medium
Regulators	Police will be able to provide Police vetting more effectively and efficiently.	Medium	Medium
Wider government	As approved agencies, some of the benefits will be passed on to other government agencies.	Medium	Medium
Other parties	The effectiveness and efficiency gains will increase protection for the vulnerable as well as society as a whole.	Medium/High	Medium
<b>Total Monetised Benefit</b>		Not applicable	
<b>Non-monetised benefits</b>		Medium/high	

#### **4.3 What other impacts is this approach likely to have?**

Initially the impact of the statutory framework will be reasonably low. The Police Vetting Service will largely remain as it is now but with a clearer policy direction that focuses the Service on its Purpose. There may be approved agencies who no longer meet the criteria and the Police Vetting Service will need to advise them that access is no longer available. Similarly, there are likely to be vetting requests that do not meet the requirements to be accepted, or Police-held information that can no longer be released as part of a vet.

This could affect the Ministry of Justice, as any organisations Police ceases vetting for may look to seek a criminal records history check instead. An element of re-training may be required for vetting staff relating to what agencies and roles meet the access criteria, and what information can be disclosed in a Police vet.

The main benefits of the statutory framework will be realised once investment and capability are available to enable the development of regulations to implement the two-step consent process and the sharing of Police vets.

By improving the effectiveness of the Police Vetting Service, there will be a benefit to New Zealanders as a whole. A statutory framework will demonstrate the high importance being given to protecting New Zealand's vulnerable members of society, and will increase public confidence that the most suitable people are in the jobs serving and caring for them.

Additional impacts include potentially speeding up the recruitment process, as a vetting result will be immediately available if the subject has been vetted for that purpose already. Agencies will need to submit fewer vetting requests where a Police vet is being maintained.

#### **4.4 Is the preferred option compatible with the Government's 'Expectations for the design of regulatory systems'?**

The proposed statutory framework for the Police Vetting Service, including new proposals to improve the efficiency and effectiveness of Police vetting, is compatible with Government's 'Expectations for the design of regulatory systems'.

The Police vetting request fees are set on a cost recovery basis and because the new proposals are not expected to come into effect for two to three years it is not possible to predict how this will affect the fee for vetting requests. The efficiencies of reducing the need to Police vet may off-set any increase in the fees for vetting requests required to deliver these new proposals.

A recent review of the fee has commenced and is likely to demonstrate that without an increase in the fee, the Police Vetting Service will continue to run at a deficit. This is due to a significant under-estimation of the volume of vetting requests by registered charities who received a fee exemption when the fee was originally set in July 2017.

The proposed new changes to the Police Vetting Service are expected to reduce duplicative requirements, set out clear policy objectives and legal obligations whilst being flexible enough to adapt to the changing demands for Police vetting.

# Section 5: Implementation and operation

## 5.1 How will the new arrangements work in practice?

The proposals will be given effect by amending the Policing Act to incorporate a new statutory framework for the Police Vetting Service. This is expected to come into effect in late 2021 or early 2022. The Police Vetting Service will be the implementing party.

Some parts of the legislation will be enabling and require the development of regulations before they can be implemented over the next two to three years. This is dependent on when the capability and investment required becomes available. It is not possible to provide a clearer implementation date at this stage.

While the Police Vetting Service will initially operate largely as it has before, some immediate changes following enactment will need to be communicated to stakeholders. For example, the changes to access criteria may mean that the approval for access to the Police Vetting Service may need to be re-evaluated for some agencies to ensure that they fall within the new requirements. Such changes will be communicated individually to the affected approved agencies. This might be via meetings or telecommunications.

Similarly, the Police Vetting Service will need to communicate to both vetting requesters and vetting subjects the rules around information that can be released and what cannot be released. It may wish to communicate to certain professional organisations the change that de-registration information can be voluntarily passed on to Police and form part of a Police vet if relevant to the role of the vetting subject. These communications might be made on the Police’s website, in published Police Vetting Service material, or via meetings with stakeholders if considered appropriate.

These are examples of impacts that will be immediate once the statutory framework is in force. There is sufficient time for the Police Vetting Service to devise and implement a clear communications and transition strategy prior to the statutory framework being enacted. This will include identification of any additional training needs for Police Vetting Service staff.

A further communications and transition strategy will be developed for the other new proposals that will come into force via supporting regulations over the next two to three years. Until the extent of the likely capability is known, it is not possible to predict how these changes can be appropriately communicated.

Once the necessary investment is received to modernise the Police Vetting Service’s IT systems, it will be developed and tested before going ‘live’. The system will be maintained by Police as the current system is. Information will be provided to vetting subjects around responsibilities for keeping delegated authorities up to date, and how and when to do this.

## 5.2 What are the implementation risks?

The proposals put forward in this Regulatory Impact Assessment are designed to reduce risks identified in the IPCA and OPC review of the Police Vetting Service in 2016. The proposals will deliver a more effective and efficient Police Vetting Service, that will benefit its users, and improve protection for vulnerable members of society.

The statutory framework is a mitigation strategy in its own right, setting out a clear set of rules and clear policy directives that can be applied consistently across all vetting requests.

There are risks for the Police Vetting Service with taking on new roles and responsibilities, needing to be adequately resourced, and having IT capability to meet stakeholder expectations. These are being mitigated by the intention to have a staged implementation of the provisions of the new legislation, supported by the capability to revisit fees for the Service should that prove necessary.

A big risk is if Police do not receive funding to make the system changes. Without investment, the Police Vetting Service will be unable to develop the capability to deliver the efficiencies outlined in the proposals for the statutory framework.

## Section 6: Monitoring, evaluation and review

### 6.1 How will the impact of the new arrangements be monitored?

The Police Vetting Service has existing systems in place to monitor and evaluate the impact of the statutory framework. There will be ongoing monitoring of the application of the new legislation and of service delivery according to performance measures.

It is intended that the legislation will be brought into force in two stages so that some new aspects will wait for other aspects to bed down and begin working effectively. After this, Police will be able to compare performance service levels pre and post implementation.

The current performance measure for the Police Vetting Service is that 90% of all vetting requests are processed within 20 working days. The Police Vetting Service's performance against this measure will continue to be evaluated after the introduction of the statutory framework.

The volume of queries and requests to review or remove information received by the Police Vetting Service is currently recorded, therefore comparisons can be made after the introduction of a statutory framework to see the impact it has had.

The Police Vetting Service has the ability to survey its approved agencies (customers) to obtain feedback on how it is performing. Surveys can be conducted post the introduction of a statutory framework to assess the impacts from a customer perspective.

Another measure is the volume of vetting requests that are received. Whilst the Police Vetting Service's volumes continue to increase each year, the introduction of functionality to allow vetting results to be maintained and shared should reduce the volumes of requests being received.

In the longer term, once the ability for vetting subjects to share vetting results is developed, the Police Vetting Service will be able to measure the reduction of duplicate vetting requests



for the same vetting subject, and therefore the savings in terms of cost and time for vetting subjects and requestors.

## **6.2 When and how will the new arrangements be reviewed?**

The impact of a statutory framework on the Police Vetting Service's performance against service levels could begin to be assessed within a few months after the legislation comes into force.

The Police Vetting Service can also monitor the volume of requests to review or remove information received by vetting subjects within a few months of the legislation coming into effect, to review how it is performing and identify any issues that need to be addressed. The introduction of a statutory framework should see this volume reduce.

However, once the two-stage consent process is developed, it is expected that the volume will increase, because it will allow the vetting subject to see the vetting result before it is disclosed to the vetting requestor, which is not currently the case.

It should be noted that any major improvements in service levels are not anticipated until the proposed technological efficiencies are in place, which is not expected to be for two to three years. The need for review of these will come when the new proposals are in place and can be done using a similar method of monitoring and review as currently occurs.