

Regulatory Impact Statement

Policing Amendment Bill

Agency disclosure statement

This Regulatory Impact Statement has been prepared by New Zealand Police.

It assesses how to address the existing legislative restrictions on Police employees standing in local elections.

In this respect, removing the restrictions will ensure that NZ Police staff are not treated differently to other state servants.

None of the options considered will:

- impose additional costs on business;
- impair private property rights, market competition, or the incentives on business to innovate and invest; or
- be likely to override fundamental common law principles.

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Status quo and problem definition

1. The Police Act 1958 created a framework for prohibiting Police employee involvement in local authority elections, but the additional step required (to prescribe in the Police Regulations 1992 the relevant local authorities to which the prohibition applied), was never taken.
2. Therefore, Police staff were able to take part in local authority elections, provided they first obtained clearance for secondary employment, and their electioneering activities did not compromise their political neutrality as members of Police. On that basis, there were five Police employees holding office as local councillors, as well as performing their policing duties, at the time the Policing Act was passed in 2008.
3. The Policing Act 2008 introduced clear legislative restrictions on Police employees wishing to stand or serve in local authority elections. These provisions were introduced to manage conflicts of interest, whether actual or perceived, as a result of a Police employee standing for elections or holding the dual roles of police employee and elected member of a local authority. Police employees are required to remain politically neutral during local government elections, as they are required to at the national level (as set out in sections 52 and 53 of the Electoral Act 1993). The 2008 Act provisions also ensured that Police, as the lead employer, would be able to exercise its side of the employment relationship and not be restricted by the fact that the employee has been publicly elected with a three year mandate.

4. The restrictions in the Policing Act set some Police staff (constables, authorised officers and supervisors) apart from other state servants who are not prevented by legislation from serving on local authorities as secondary employment. The restrictions on Police could be seen to impose unreasonable constraints on Police employees' rights of political expression. The restrictions could also place limits on already established legitimate partnerships between Police and local authorities.

Objective

5. The objective of the Policing Amendment Bill is to remove the restrictions in the Policing Act. This would enable all Police employees to stand for local council elections without being placed on leave, and if elected, they would not need to vacate their position as a Police employee.

Regulatory impact analysis

Alternative Options

6. The existing sections in the Policing Act could continue to remain in force unchanged. Police throughout the country maintain excellent relationships with territorial authorities and would still be able to stand for community boards and other representative bodies (for example, school boards of trustees, district health boards). The Local Government (Auckland Council) Act 2009 provides for the establishment of 20-30 local boards which will sit alongside the main governing body. The local boards will have more powers than existing community boards, including adopting local board plans and developing proposals for local bylaws.

Preferred Option

7. Removing the existing restrictions in the Policing Act will ensure that there are no legislative limits on Police employees being free to stand as candidates for elections (except for general elections, which is addressed in the Electoral Act 1993). This would put Police in the same position as other state servants.
8. Any Police employees who decide to stand for local authority elections and those that are subsequently elected will still need to abide by Police internal policies that may be in place. This includes the Code of Conduct, which amongst other things, sets out that "Where employees do participate in political matters in a personal capacity, they do not bring themselves into conflict with their primary role as Police employees". The Police Manual sets out Police policies and procedures. The chapter on 'Conditions of approval of secondary employment' outlines criteria that must be met before applications for secondary employment can be considered. For example, the secondary employment must not interfere with the efficient and impartial performance of the applicant's police duties. The chapter on 'Standing as a candidate for election' requires employees to ensure their participation in political matters does not bring them into actual or perceived conflict with their duty as Police employees.
9. These internal policies will need to be reviewed to cover the specific situation of members of the Police standing for or sitting as a member of a local council, where actual or perceived conflicts of interest issues may arise. For example, it may need to be clarified that Police officers should not be involved in drafting or approving bylaws.

Consultation

10. The Ministry of Justice, Department of Internal Affairs, Treasury and State Services Commission have been consulted. The Department of the Prime Minister and Cabinet was informed.
11. The NZ Police Association and the NZ Police Managers' Guild were also consulted.

Conclusion

12. The current provisions in the Policing Act 2008 relating to standing for elections restrict some Police employees from standing for election to, and serving on, local authorities. The Policing Amendment Bill will ensure that these provisions are repealed and, in this respect, ensure NZ Police staff are not treated differently from other state servants.

Implementation

13. Information about the new provisions on Police participating in local elections will be communicated to all Police staff when the Policing Amendment Bill is passed.