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BILLS DIGEST

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Policing Bill 2007

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Published: 07 February 2008 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The main aim of the Bill is to repeal and replace the Police Act 1958 to update the law in relation to organisation of the Police and the powers of members of the Police.

Background

"Existing legislation on the provision of policing services, and in particular the governance, organisation and administration of the New Zealand Police, is inadequate"¹.

Main Provisions+

Purpose

The Bill provides that its purpose is to provide for policing services in New Zealand, and to state the functions and provide for the governance and administration of the New Zealand Police (*Part 1, Clause 3, the "purpose clause"*).

¹ Policing Bill, 2007 No 195-1, Explanatory note, General policy statement, p. 1.

The Commissioner, other appointments and command structure

The Bill provides that the Commissioner of Police is appointed by the Governor-General on the recommendation of the Prime Minister for a term not exceeding five years.

The Commissioner holds office at the pleasure of the Governor-General and retains his or her office as constable when appointed Commissioner. Similar provision is made for the appointment of one or more Deputy Commissioners of Police. The Commissioner is given responsibility for the appointment of the people that the Commissioner thinks necessary for the efficient exercise of the powers, functions, and duties of the Police.

The Commissioner must prescribe a code of conduct. The appointment of constables is covered in detail. Authorised officers (who may exercise the powers of a constable under any other enactment except the power to arrest or search any person) may also be appointed. The Bill also sets out the command structure of the Police. Every Police employee must obey and be guided by: general instructions; the Commissioner's circulars, and any applicable local orders (*Part 2, Subpart 2, Clauses 12 - 16; Subpart 3, Clauses 18 - 27; Subpart 4, Clauses 28 and 29; Subpart 5, Clauses 30 - 31*).

Powers of constables to take identifying details

The Bill provides (as currently in Section 57 of the Police Act 1958) that where a person is in the lawful custody of the Police, a constable may only use reasonable force that may be necessary to secure that person's identifying details (i.e. biographical information (e.g. name, address, and date of birth), the person's image, details of height, fingerprints, palm-prints, or footprints, scars, marks, or tattoos, other physical details relevant to the offence).

The Bill provides that if a person is not in the lawful custody of the Police, a constable who has good cause to suspect the person of committing an offence may, for the purpose of enabling the commencement of a prosecution against that person, detain the person at any place in order to take the person's identifying details, subject to the following:

- only those details necessary to identify the person may be taken;
- the person may be detained only for the period reasonably necessary to take those details;
- the person's details must be taken in a manner that is reasonable in the circumstances;
- there is no authority to conduct a strip search of the person (*Part 3, Clauses 32 and 33*).

Constables' powers to close roads

The Bill provides that (following Section 342A of the Local Government Act 1974) a constable may temporarily close to traffic any road leading to or from or in the vicinity of a place, if the constable has reasonable cause to believe that:

- public disorder exists or is imminent at or near that place; or
- danger to a member of the public exists or may reasonably be expected at or near that place; or
- an indictable offence not triable summarily under section 6 of the Summary Proceedings Act 1957 has been committed or discovered at or near that place (*Part 3, Clause 34*).

Constables' powers to deal with intoxicated people

A constable who finds a person intoxicated in a public place, or intoxicated while trespassing on private property (following Section 37A of the Alcoholism and Drug Addiction Act 1966) may detain (for a maximum of twelve hours) and take the person into custody if the constable reasonably believes that the person is:

- incapable of protecting himself or herself from physical harm; or likely to cause physical harm to another person; or likely to cause significant damage to any property; and

- the constable is satisfied it is not reasonably practicable to provide for the person's care and protection by taking the person to his or her place of residence or taking the person to a temporary shelter.

A person who is detained must be released as soon as the person ceases to be intoxicated (*Part 3, Clause 35*).

The fundamental relationship between constables and the Courts prescribed

The Bill provides that constables must obey and execute all lawful criminal court orders (*Part 1, Clauses 47 - 46*).

Offences relating to the Police

The Bill sets out various offences including:

- gaining employment with the Police by submitting false or forged documents or by making false representations;
- pretending to be a Police employee (by words, conduct, or demeanour) or by assuming the name, designation, or description of a Police employee;
- without reasonable excuse, uses certain things (for example a Police uniform, a Police article, or clothing that closely resembles a Police uniform) "in circumstances reasonably likely to lead a person to believe that the use is a police Employee;
- using an operating name that includes the word "Police" or the words "New Zealand Police" in a manner reasonably likely to lead a person to believe that the activity is endorsed by the Police or any part of the Police";
- unlawfully possessing Police property;
- unlawfully dealing with prisoners; and
- killing or injuring Police dogs (*Part 4, Clauses 47 - 50; Clauses 52 and 53*).

Duty of persons to help Police employee

Currently, Section 53 of the Police Act 1958 provides that a member of the police in the lawful execution of his or her duty may ask any person who is 18 years old or older to help the member of the police do either or both of the following: to apprehend or secure any person; to convey any person in the charge of the member of the police to a police station or other place.

The member of the police may only ask the person for such help if it is, in the circumstances, a reasonable necessity. Any person who fails to comply with the request commits an offence and is liable on summary conviction to a fine not exceeding \$500. However, a failure of that kind before the commencement of the Human Rights Amendment Act 2001, and by a person who is not a male, is not an offence under subsection (3).]

The Bill rephrases this provision much more simply, and in particular, removing the exemption for women, and provides that " ... a Police employee in the lawful execution of his or her duty may, if it is reasonably necessary in the circumstances, ask a person who is 18 years old or older to help the Police employee do 1 or both of the following:

- apprehend or secure a person:
- convey a person in the employee's charge to a Police station or other place.

A person who fails to give help, when so asked, commits an offence and is liable to a fine not exceeding \$2,000 (*Part 1, Clause 51*).

The employment of Police employees

The bill provides that the employment of all Police employees is subject to the Employment Relations Act 2000 unless expressly stated otherwise. However, there are special provisions relating to

retirement and compulsory retirement where an employee is unable his or her duties because of an inability to meet certain standards of physical, medical, and psychological health required by the Commissioner of Police employees (*Part 4, Clauses 54 - 77*).

Biometric information on employees or prospective employees

The Bill allows prospective Police employees to be required to provide a bodily sample (for obtaining a DNA profile) and biometric information. Current Police employees and Police associates may (voluntarily) provide voluntarily bodily samples and biometric information. The Bill provides that such information can only be used for strictly defined purposes and must be destroyed promptly (*Part 5, Subpart 1, Clauses 78 - 83*).

Police employees overseas

The Bill substantially re-enacts the Crimes and Misconduct (Overseas Operations) Act 2004 to:

- ensure that Police employees and other persons serving in overseas operations involving peacekeeping, the maintenance or restoration of law and order or functioning government institutions, or similar activities, are subject to the jurisdiction of New Zealand courts for offences against New Zealand law committed overseas, unless there is good reason why they should not be subject to that jurisdiction;
- ensure that Police employees engaged in such operations are subject to the disciplinary processes that apply to Police employees in New Zealand.

This Bill makes it clear that the above provisions apply to activities that do not necessarily relate to peacekeeping, or the maintenance or restoration of law and order or functioning government institutions but are, nevertheless, significant (*Part 5, Subpart 2, Clauses 84 - 88*).

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