

28 March 2008

Secretariat
Law and Order Committee
Parliament House
Wellington

SUBMISSION OF MAXIM INSTITUTE ON POLICING BILL

1. Maxim Institute is an independent research and public policy think tank, based in Auckland. The Institute is a charitable trust, funded by donations.
2. Maxim Institute supports the Policing Bill (“**Bill**”) in its current state, with the exception of clause 97, and believes it is a timely and appropriate piece of legislation. We do not wish to appear before the Committee to make an oral submission on the Bill.

Process

3. Before commenting on the Bill itself, we would like to commend the Minister of Police, the Commissioner of Police, the Police Act Review team and the numerous individuals and organisations that have been involved, on the way the Bill has been developed, refined and finalised.
4. We have followed the process of the review of the Police Act from its inception in March 2006, including the release of the eight Issues Papers from June to December 2006. We have also alerted the over 13,000 subscribers to our weekly email *Real Issues* to the Review in order that a wide range of ideas and responses could be heard.
5. We believe that the process culminating in the current Bill has been transparent, wide reaching and effective and has led to a Bill that reflects the needs of the New Zealand Police and our communities in the twenty first century.
6. We are pleased that the Bill has also been managed in a way that has involved all parties from the beginning and is therefore non-contentious and supported by all members of the House. Policing is a crucial part of our democracy and one that needs to be free from ideologically driven positions and “politicking”. As the Minister of Police said in her speech at the first reading of the Bill, policing legislation “should command the broadest possible cross-party support.”¹ We commend the Minister on following a process whereby this has been possible.

Status and principles

7. We support the specific acknowledgement of the legal and constitutional status of the New Zealand Police as set out in clause 7 of the Bill. The Police are an important part of any functioning democracy and it is appropriate and practical to set out their legal and constitutional status as an instrument of the Crown.

8. We support the inclusion of the principles of policing in clause 8 of the Bill. We are pleased that the Bill has retained the principles that the Police Act 1958 was founded upon. It is critical, in such an important piece of legislation, to include only those principles that have been proved over the years to be trustworthy and relevant.
9. We would, however, recommend replacing “human rights” in clause 8(d) with “the rights and freedoms as guaranteed in the New Zealand Bill of Rights Act 1990.” This latter description is clearer and provides certainty about what is intended by referring to a specific and appropriate Act of Parliament.

Roles of others acknowledged

10. We are very supportive of the inclusion of clause 10 of the Bill which acknowledges that “agencies and bodies other than the Police have important and valuable roles in the performance of the functions of the Police” and that “it is often appropriate, or necessary, for the Police to perform some of its functions in cooperation with individual citizens, or agencies or bodies other than the Police.”
11. However, we would like to see the efforts of “individuals, families, community organisations and communities” explicitly included in clause 10, as was outlined in *Policing Directions in New Zealand for the 21st Century*.² The safety and wellbeing of our communities is not merely the responsibility of the Police and other Government agencies; it is the responsibility of the whole community and those within it, including individuals, families and non-governmental community organisations. We believe that clause 10 would be enhanced by reflecting this wider responsibility more clearly, rather than just referring to “agencies and bodies.”
12. We note that recommendation 57 from the Commission of Inquiry into Police Conduct (headed by Dame Margaret Bazley) stated that “each police district should establish groups of community representatives, chaired by recognised community leaders, which meet regularly to provide comment and feedback on police service delivery and policing issues throughout the district.”³
13. Whilst we agree that groups of community representatives operating in this way may be effective, we agree with the approach taken by the Police Act Review team of not specifically legislating for this, but recognising the value of groups and individuals in clause 10. We hope that once the Bill is passed, efforts will be made within the New Zealand Police to establish groups of community representatives as suggested by the Commission of Inquiry.

Independence of Commissioner and police employees

14. We support the clarification of the relationship between the Commissioner of Police and the Minister of Police as set out in clauses 16 and 17 of the Bill. We are particularly pleased to see explicit recognition of the operational independence of the Police in clause 16(2). We also support the clarification of command and control issues in clauses 30-31 and support the elevation of these features from regulation to statute. In particular, we support the addition of clause 30(4) relating to the independence of police employees and a prohibition on acting “under the direction, command, or control of a Minister of the Crown.”

15. It is essential to the proper functioning of a democracy that Police are not influenced in their enforcement of the law by members of the Government or other elected representatives. This applies to constables, other police employees and critically it must apply to the highest position in policing, that of Commissioner.
16. New Zealand is one of the most non-corrupt countries in the world and our police play a vital role in this. The common law doctrine of constabulary independence, for example, is one that is embedded in the New Zealand Police. We believe that this doctrine is preserved, and perhaps even enhanced, by the inclusion of clauses 16(2) and 30(4).
17. We believe it is appropriate that the Bill has set out some key principles in statute, rather than attempting to cover every eventuality of the relationship between Commissioner and Minister.

Police employees

18. We understand the rationale for moving to a model of police employees and constables, rather than sworn and non-sworn officers, with the ability for some targeted powers of constables to be assigned to police employees. We agree that the powers of arrest should stay solely with constables as set out in clause 24(1)(a). We support the measures in clauses 22-27 of the Bill because we believe that they will increase the clarity of, and authority attached to, the position of constable.
19. We also support the inclusion of clause 20 of the Bill which requires the Commissioner to prescribe a code of conduct for police employees and requires police employees to conduct themselves in accordance with this code. We believe that this clause, together with the measures in Part 4 of the Bill (in particular clause 69 relating to the removal of police employees), will ensure that internal disciplinary matters and performance issues are dealt with in a much more efficient and timely manner than they have been in the past. We believe this improved process will help restore credibility that may have been damaged in recent times by the actions of a few.
20. We also support the inclusion of clause 79 of the Bill which sets out that prospective police employees may be required to provide a bodily sample suitable for obtaining a DNA profile and biometric information for the limited purposes set out in clause 81. We also support the inclusion of clause 80 of the Bill which sets out that current police employees and associates may voluntarily provide this information. We believe these clauses will assist in ensuring that the New Zealand Police remains staffed by honest and respected individuals.
21. We are pleased that the proposal to introduce a Policing Registration Board has not been legislated for in the Bill but rather has been allowed for under regulations, pursuant to clause 100. We do not support an additional layer of bureaucracy and administration unless it can be clearly shown that police employees will support and benefit from the new body. We understand that there are a number of University papers, courses and training opportunities offered to current police officers and a system for recording them through *Peoplesoft*, so it would be important to show that the proposed Registration Board would offer something new and valuable to police employees before any regulations were contemplated.

Police involvement in elections

22. We note clause 97 of the Bill proposes changes to the position established by section 31 of the Police Act 1958 regarding the involvement of Police in elections.
23. We submit that the current wording of clause 97 is too wide as it allows police officers to be elected to “local authorities” and to remain as serving police officers, which we believe compromises the doctrine of the separation of powers. The Police Act Review team also noted that, “while legally permissible” under the existing framework, “the possibility of conflicts of interest exist if a serving member of Police becomes involved in the functions of local government,” and suggested that “one way to achieve this [avoidance of conflict of interest situations] would be to take the same basic arrangements which apply to Police staff who wish to serve as Members of Parliament and translate them to any staff who wish to serve on local authorities.”⁴
24. We submit that clause 97 and related legislation should be amended to prohibit police officers from being elected to local authorities unless they take leave of absence for the election and resign from the Police if they are elected, in the same way as officers who wish to become members of Parliament pursuant to the Electoral Act 1993.
25. We note that the definition of “local authority” in section 5(1) of the Local Government Act 2002 includes City Councils, Regional Councils and District Councils, but excludes bodies such as Community Boards, District Health Boards and School Boards. Local authorities, such as City Councils, are regularly called upon to pass legislation (bylaws) enforced by members of the Police (for example bylaws relating to brothels and alcohol bans).
26. Therefore, a police officer who is elected to a local authority will be part of both the legislative branch of government (through passing bylaws as a Councillor) and the executive branch of government (through putting the law into operation as a police officer).
27. We submit that this results in a blurring of the distinction between the different arms of government. Although we acknowledge that New Zealand does not have an absolute separation of powers, we submit that each of the three branches of government should be kept separate and distinct and should be carried out by separate individuals, where possible.
28. Therefore we submit that police officers should be restricted from holding the office of a Councillor on a City Council, Regional Council or District Council (that is, from being elected to a “local authority”), but should not be restricted from holding office on a body such as a Community Board or District Health Board.
29. We believe that this distinction is appropriate because the ability to pass bylaws does not exist at lower levels of local government. In fact, we believe it is beneficial to have police officers as elected representatives at the lower levels of local government, such as on Community Boards, as they are able to provide great insight and guidance on local issues.
30. Of course, it is beneficial for local authorities to also have this insight and guidance, but because of the concern for separation of powers, we submit that this is better achieved at this higher level by ensuring that local authorities consult with police (as currently occurs) rather than by serving police officers also serving as elected representatives on local authorities.

31. We also believe that a restriction on election to local authorities will maintain public confidence and trust in the Police, as it avoids the perception that the Police are involved in making rules that they enforce. As the Police Act Review team said, “distancing [of Police from participation in political matters] is critical if Police is to maintain governmental and public confidence in the impartiality of actions taken, and advice given, by Police staff.”⁵
32. We submit that this issue can be resolved by amending clause 97 of the Bill and relevant related legislation so that police officers who wish to stand for election to a local authority are treated in the same way as those who wish to become Members of Parliament.

Conclusion

33. We believe that the Policing Bill is a timely and appropriate piece of legislation that deserves the support of all Members of Parliament. However, we would like to see three minor amendments:
 - a. the deletion of the words “human rights” and the substitution of the words “the rights and freedoms as guaranteed in the New Zealand Bill of Rights Act 1990” in clause 8(d);
 - b. the addition of a reference to “individuals, families, community organisations and communities” in clause 10; and
 - c. an amendment to clause 97 of the Bill and all related legislation to specify that police officers who wish to stand for election to local authorities must take leave of absence to do so and must resign from the Police if elected, in the same way as officers who wish to stand for Parliament.
34. Please do not hesitate to contact us with any questions relating to this submission.

Yours faithfully,
MAXIM INSTITUTE

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¹ Hon Annette King, Minister of Police, Speech to House of Representatives on first reading of Policing Bill, 19 February 2008 (available at <http://www.beehive.govt.nz/speech/first+reading+policing+bill>).

² Police Act Review, *Policing Directions in New Zealand for the 21st Century* (Wellington: New Zealand Police, 2007), 17.

³ Dame Margaret Bazley, *Report of the Commission of Inquiry into Police Conduct, Volume 1* (Wellington: Commission of Inquiry into Police Conduct, 2007), 318.

⁴ Police Act Review, *Issues Paper 8: Conduct and Integrity* (Wellington: New Zealand Police, 2006), 10.

⁵ Police Act Review, *Issues Paper 8: Conduct and Integrity*, 10.