



**JOINT SUBMISSION FOR CONSULTATION ON  
'LEGISLATION FOR THE NEW ZEALAND POLICE VETTING  
SERVICE' by the Independent Police Conduct Authority  
and the Office of the Privacy Commissioner**

## **Introduction**

### *Joint review of the Police Vetting Service*

1. In October 2016 the Independent Police Conduct Authority (IPCA) and the Office of the Privacy Commissioner (OPC) released the results of a joint review of the Police Vetting Service.
2. The joint review considered the policies and procedures associated with a Police vet. For the purposes of the joint review, a Police vet is a review of all information held by the Police about an applicant to inform their potential employer's or licensing body's decision as to their suitability for the role.
3. The Police undertake a range of processes relating to the release of information, each of which has its own statutory framework. These include:
  - Individuals seeking access to their own personal information under the Privacy Act 1993
  - the Family Violence Information Disclosure Scheme operating under the Official Information Act 1982
  - information sought by the New Zealand Security Intelligence Service (NZSIS) under the Intelligence and Security Act 2017, and
  - Family Court processes.
4. It is important that the Police Vetting Service and its potential legislation is not conflated with these other Police processes. The Police Vetting Service is a specific process undertaken for the purpose of vetting the suitability of persons for employment in particular fields.
5. Currently, only approved agencies may request a Police vet for an individual. Around 13% of Police vets result in information being disclosed to the approved agency for consideration. Most vets conducted are required under statute, such as the Vulnerable Children (Requirements for Safety Checks of Children's Workers) Regulations 2015, or the Land Transport Act 1998.
6. The joint review identified improvements to ensure that vulnerable people are protected while upholding the privacy interests of individuals subject to the Police Vetting Service.

### *Public consultation on legislation for the Police Vetting Service*

7. One of the key findings of the joint review was that a lack of a clear statutory framework creates uncertainty about the process and what information Police can consider as part of the process. We recommended that Police consider developing a clear statutory framework for vetting.
8. We are pleased that Police are consulting on potential legislative structures and frameworks for the Police Vetting Service. The consultation document also consults on proposals that were not considered by us in our joint review. Many of these proposals go beyond the scope of what we understand to be a Police vet and stray into general information sharing or other Police practices. While we have provided our preliminary observations on these proposals, we would be concerned if these proposals were included in draft legislation without further policy development and consultation.
9. OPC has found some of the consultation questions to be open ended, sometimes leading and unclear as to how Police are proposing to structure any vetting service legislation. OPC therefore recommends that following consideration and consolidation of the feedback received, Police conduct a further round of public consultation on any proposed legislation. This would provide the public and stakeholders an opportunity to

review and comment on the detail of the proposed structure rather than just the high level conceptual basis for it.

10. The IPCA and OPC raise a number of considerations for Police in our answers below and are happy to discuss these further should this be useful. Areas where the IPCA and OPC hold different views are clearly marked.

## **Consultation questions**

### **General**

1. Should there be a statutory framework for the Police Vetting Service?

Yes.

### **Purpose of the Police Vetting Service**

2. What should be the purpose of the Police Vetting Service?

The purpose of the Police Vetting Service should be to assist agencies to assess suitability for particular positions of trust or to meet certain statutory vetting requirements.

### **Functions of the Police Vetting Service**

3. What should be the functions of the Police Vetting Service?

We are comfortable with the list of functions proposed by Police.

4. Should the functions of the Police Vetting Service be reflected in legislation?

Yes. However, in our view the functions as currently described comprise too much of a detailed set of processes to be included in legislation. A more general statement of functions would be preferable.

### **Who can use the Police Vetting Service**

5. Should individuals have direct access to the Police Vetting Service?

Police propose two different circumstances where individuals may access the vetting service:

- where the individual is requesting a vet on themselves, and
- where the individual is requesting a vet on others.

#### *Individuals request a Police vet on themselves*

Both the IPCA and OPC consider that individuals should be able to request a vet on themselves, if they meet the criteria of an approved agency (as discussed in question 8).

An example of a situation where an individual can vet themselves might be a sole trader plumber who undertakes work at schools. We consider that in such cases it may be most efficient for an individual to access the Police Vetting Service directly to request a vet on themselves rather than a vet coming from multiple agencies for the same person. However, there is the risk of alteration or amendment should the vetting outcome be provided to the individual for distribution rather than to the agencies concerned, and there may also be issues around the timeliness of the vet ie how long it would be considered accurate before another vet was required. This could be overcome by having an online system where both the vetting candidate and the agency needing the vet can log in to see the outcome.

The OPC considers that where individuals do not meet any of the criteria of an approved agency they should make a request for information from the Police under Information Privacy Principle 6 of the Privacy Act 1993.

*Individuals requesting vets on others*

OPC view:

OPC does not consider it appropriate for individuals to access the Police Vetting Service to request vets on other individuals. This is outlined further in the answers to question 6.

Alternative processes, such as the Family Violence Information Disclosure Scheme, are in place to manage the situations of particular risk where individuals should be able to get Police information on other individuals.

IPCA view:

The IPCA considers that there are circumstances in which individuals should be able to access the vetting service in order to request vets on other individuals. This is outlined further in the answers to question 6.

6. In what circumstances, if any, should individuals be able to request a Police vet on others?

OPC view:

Individuals requesting a Police vet on others was not considered in the joint review. Should an individual wish to know whether Police hold information on another individual they can already request this under the Official Information Act and Police can release this information where they consider there to be a public interest in doing so – such as under the Family Violence Information Disclosure Scheme.

OPC considers that individuals acting in their personal capacities should not be able to request a Police vet on other individuals, e.g. a parent requesting a Police vet on a babysitter. OPC's view is that there is significant risk of abuse if this were permitted. This is because:

- It creates potential for requests to be sought where consent has not been granted.
- There are also issues around individuals being the holders of potentially sensitive personal information about vettees.
- There are likely to be circumstances where the vetting requestors do not engage obligations as an agency under the Privacy Act, e.g. where parents request a vet on their babysitter.

In these situations Police as the usual holder of that information would normally protect that information. This leaves a vettee's information open to inappropriate disclosure or abuse. Allowing individuals to request vets on other individuals raises significant privacy risks to individual privacy.

IPCA view:

The IPCA thinks that in principle individuals should be able to access the vetting service when they are engaging others to undertake services that may pose a risk to vulnerable individuals. However, we agree with OPC that this should only be available if individuals are subject to the same restrictions on the disclosure of the information as agencies.

7. In what circumstances, if any, should individuals be able to request a Police vet on themselves?

As above – see answer to 5.

### **Criteria for approval to access the Police Vetting Service**

8. With regard to New Zealand vetting requesters, what do you think the criteria should be for approval to access the Police Vetting Service?

#### *Being a government agency should not be a criteria*

We are broadly supportive of the current criteria Police use to assess whether New Zealand agencies should be given access to the Police Vetting Service. However, we do not agree that any government agency shall be provided with access to the Police Vetting Service by dint of them being a government agency.

We recommend removing point one from the criteria - 'the agency is a government agency'. 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.

Any employer, including government agencies who do not meet the required criteria to request a Police vet, will still be able to conduct a criminal history check if such a check is necessary for employment.

#### *Community safety and security should be more precise and constrained*

The criterion 'community safety and security' is a broad concept capable of encompassing a far wider range of agencies than is intended. (e.g. security camera installers). This particular criterion would benefit from being more precise and constrained.

#### *Vetting law enforcement staff*

The criteria could also include an ability to vet law enforcement staff (both government and non-government) who have coercive law enforcement powers (eg SPCA or Fish and Game rangers).

#### *Defining 'agency' within Police vetting legislation*

Police say it may be helpful to have a definition of the term 'agency' similar to that found in the Privacy Act. We do not support the inclusion of this definition as it risks confusion with the Privacy Act. The criteria will already provide a definition of 'approved agency' which would appear sufficient in the circumstances.

9. Should the criteria also allow for access at the discretion of Police?

No. The criteria should be enshrined in legislation. The Police should not have discretion to conduct vets as they see fit.

Police should also consider if criteria should be in primary legislation or supporting regulations.

10. Should government agencies be able to access the Police Vetting Service without having to meet any other criteria?

No. See answer to 8.

11. What criteria could there be for an offshore vetting requester to gain access to the Police Vetting Service?

We agree that in order to access the vetting service the off shore agency must be subject to similar legislation to New Zealand which protects individuals' rights to privacy. We question how this assessment would be made and would welcome discussing this with Police. We are also interested in the regularity with which this assessment would be reviewed.

The joint review noted that an approved agency can be a foreign consulate undertaking vets for visa purposes. Police should also consider whether it is necessary for these offshore agencies to continue to obtain Police vets when in many cases a criminal history check would appear sufficient. Police vets contain subjective information untested by the courts which creates significant privacy risks for individuals when released to a foreign government.

### **Circumstances under which an individual vetting request from an approved vetting requester will be accepted**

12. Should vetting requests only be accepted where the vetting subject's role relates to the purpose of the Police Vetting Service?

Yes.

13. Should all vetting requests from government agencies be treated as meeting the purpose of the Police Vetting Service?

No. See answer to 8.

14. With regard to an individual's role in an organisation that cares for vulnerable people, what factors should be considered by the Police Vetting Service when deciding whether to accept a vetting request (for example, any opportunity to have contact with vulnerable people)?

This appears to be an administrative rather than a legislative matter. However, as our answer to 12 states, the role must relate to the purpose of the vetting system, and that should be spelt out in legislation. It follows that the Police would need to have a process and some internal criteria for determining this, rather than relying upon the vetting requester. There would need to be some detail as to how the proposed role is to be carried out, and an assessment of the extent to which this role will bring the subject into contact with vulnerable people in a manner that will give rise to risk. It may not be possible to develop strict criteria beyond this. For example, whether a plumber working in a school should be subject to a vet will be dependent on where and when the work is being undertaken.

### **Consent and advance notice of disclosure**

15. Should there be a general requirement for the consent of the vetting subject to be obtained before a Police vet can be undertaken?

Yes.

16. How should the Police Vetting Service treat non-consented requests for information made under statutory authority?

As per question 15, we consider that the Police Vetting Service should always operate with the consent of the individual being vetted.

In the case where there is a legislative requirement that a Police vet be undertaken eg. under the Vulnerable Children Act 2014, Police are still required to ensure that the approved agency has obtained the individual’s consent. While this obligation falls on the agency requesting the vet, Police should assure themselves that this has happened prior to conducting the vet. We understood from our joint review that Police require any approved agency, at sign up, to agree to seek individuals consent before submitting the request to Police.

Police note in the consultation document that they received non-consented requests for information from NZSIS and the Family Court. We address the question of NZSIS below (question 17).

It is not clear to us that requests by the Family Court would fall within the scope of the Police Vetting Service. As noted in our opening comments, Police appear to have conflated many of their information sharing practices and other statutory requirements with their Police vetting role – this is inappropriate and we are concerned that any legislation ensure that the service is clear and confined in its scope.

17. Should there be a clear distinction between consent to process the vetting request, and consent to release the Police vet?

We understand that currently the consent to conduct the vet and the consent to disclose it are treated the same ie consent is not sought twice. We do not see a case for changing this. However, consistent with our recommendations in our joint review we agree that it is appropriate to provide advance notice to the vetting subject of any adverse information where they are not expecting its release – this provides the vetting subject with the opportunity to withdraw their initial consent and withdraw from the vet without the adverse information being passed on to their potential employer. It also provides the vetting subject with the opportunity to view and comment on the adverse information in a way that may alter the Police’s view of whether it is necessary to release the information.

We note that Police state that there are cases where they receive requests for information from the NZSIS as part of their security vetting function, and that Police view these as requests for Police vets. Our view is that Police has conflated these two functions. Where the NZSIS conducts a security vet they are doing so with the consent of the vetting subject, where they request information from Police they are either asking Police to consider disclosure under one of the exceptions to information privacy principle 11 or are making a request pursuant to their statutory information gathering powers. Police therefore should not be treating these information requests as ‘Police vets’ but rather as a request/statutory demand for information. Therefore there is no requirement for the Police Vetting Services’ legislation to address these requests.

Similarly, Police suggests that a parent may be interested in their child’s vet and request it under the Official Information Act and that this is an ‘unconsented vet’. Our view is this is a request under the Official Information Act and should be treated accordingly. It does not engage a new vet of the child or other person.

18. How should the issues of consent and advance disclosure be addressed? Options include:

	Consent to release Police vet	Advance disclosure of Police vet to vetting subject
Option (a)	Obtained prior to processing vetting request (in all circumstances)	No advance disclosure

Option (b) Status quo	Obtained prior to processing vetting request (in all circumstances)	Partial advance disclosure (of information the vetting subject will not be expecting to be released only)
Option (c)	Separate consent to release obtained after processing vetting request (for non-conviction information only)	Partial advance disclosure (of non-conviction information only)
Option (d)	Separate consent to release obtained after processing vetting request (for all information)	Full advance disclosure

In our view Option (b), the status quo, is the most appropriate mechanism for dealing with consent and disclosure of adverse information.

### Age of vetting subject

19. In what situations should it be possible for children and young people to be vetted by Police, and in what situations should it not be possible?

We understand that currently vetting requests can be made for anyone 10 years old or older. It would be helpful for Police to explain the circumstances under which a 10-13 year old is undertaking a role that falls within the scope of an approved agency. Currently, we cannot see the case for this age group to have Police vets undertaken on them.

OPC are concerned that vets on 10-13 year olds would necessitate access to and disclosure of information about youth justice proceedings which are subject to section 438 of the Oranga Tamariki Act 1989 – discussed further below.

20. If possible, at what age should a child or a young person be able to be vetted by Police (currently children can be vetted at the age of ten as this is the age of criminal responsibility in New Zealand)?

Police note that the age of criminal responsibility is 10 years old. However in practice children under 14 can only be prosecuted for the most serious of offences - murder or manslaughter. We can anticipate situations where a 14 year old may hold a job where a Police vet is required eg 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 legislation.

21. Who should give consent for a child or a young person to be vetted (for example, the child themselves if they have the ability to do so; or their parent or legal guardian)?

If the minimum vetting age was raised to 14 years old we consider it to be appropriate for the young person to give consent for the vetting to take place. We are of the view that it would be inappropriate for a parent to give such consent. There may be circumstances where a young person is aware of information held by Police about them and therefore decide not to proceed with a Police vet. They should not have to be put in the position of disclosing this fact to their parents in order to convince them not to submit a Police vet.



## **Vetting of family members of vetting subject**

22. How should the issue of family members be addressed when it is intended that they be vetted?

Where the NZSIS request information from the Police either about a person they are security vetting or one of that person's family members Police should treat these as information requests. These are not requests for Police to engage the Police Vetting Service.

In situations where an individual has applied for a position with the Police and a vet of that person's family members is undertaken the applicant should be made aware that their immediate family will also be investigated – this would then allow the individual to raise any issues of concern with Police prior to the vet being undertaken and to notify family members as appropriate. It should not be necessary for Police to seek or obtain the consent of individual family members of Police job applicants in order to conduct a background check on the individual applicant.

## **Sharing of Police vets**

23. With a vetting subject's authorisation, should a vetting requester be able to legitimately share a Police vet with other would-be vetting requesters?

Yes. Currently, Police vets cannot be shared between agencies and each approved agency who has an interest in an individual must separately submit a request for vetting for that individual. We are supportive of a system whereby either a vet can be shared across agencies or an individual can access the vetting system directly (where they are requesting a vet on themselves). Where the sharing is agency-agency this should be done with the vetting subject's consent and should be subject to restrictions around sharing. We do not think both states (ie sharing and individual access) need to be provided for and Police need to determine what is going to be most effective at addressing the multiple vet issue.

IPCA view:

If a vet is to be shared across agencies, consideration should be given to how long a vet stays current for eg 6 months.

24. If so, in what circumstances should the sharing of Police vets be allowed?

The sharing of the vet, like the conducting of one, should be done with the individual's consent.

Police should also consider whether the two agencies looking to share the vet would receive the same vet report, as vets are individual and tailored to meet the needs of each agency. For example, a vetting report highlighting issues with vulnerable people would be appropriate for a vet requested by an agency which regularly deals with vulnerable people, but another agency without that additional circumstance would not need to know those details of the report.

25. Should the sharing of Police vets by the original vetting requester be subject to an appropriate agreement with other would-be vetting requesters?

See answer to 23.

## Screening agencies<sup>12</sup>

26. Is the use of screening agencies desirable?

Yes, where a screening agency is available eg Education Council these should be utilised. The use of a screening agency is a privacy enhancing measure and they reduce the need for multiple vets.

27. What sector or industry groups could benefit from the use of screening agencies?

We are unsure what other industry groups may benefit from use of a screening agency.

### **Maintaining the validity of Police vets through ongoing monitoring**

28. Should legislation provide authority for the Police Vetting Service to:

- maintain the validity of Police vets through ongoing monitoring
- disclose new relevant Police vets to vetting requesters, as appropriate?

OPC view:

The 'on-going monitoring' of Police vetting subjects was not a matter considered in our joint review. The on-going monitoring proposal appears to allow Police to keep tabs on a vetting subject for a period of time and notify an agency of any updates. While we note that the Police are not actively gathering information, they are responding to information put into NIA that has not been tested to a high level (eg through the judicial system). We do not support the provision of an 'ongoing' or surveillance mechanism for the Police Vetting Service.

Given the large number of Police vetting subjects we think this would have a negative impact on individual privacy, be unwieldy for the Police to manage and also be an inappropriate use of resources. If there are concerns around the on-going validity of vets this may support the case for more regular Police vets for individuals in particularly high risk positions.

OPC therefore does not support this proposal without significantly better policy assessment, including a privacy impact analysis.

IPCA view:

'On going monitoring' is desirable in principle to ensure that a risk factor that emerges after the vet has been undertaken is drawn to the attention of the agency if the vetting subject is still in the role for which the vet was undertaken. However, consideration should be given to whether the test for the release of information that subsequently comes to light should be the higher test of "unequivocally and substantially relevant" that is proposed in relation to suppressed information. Release should be subject to the requirement that the vetting subject be informed in advance of the information that is to be released (unless this would prejudice an on-going investigation).

If Police intend to proceed with this proposal we would welcome further discussions about the process and appropriate safeguards. Given the large number of Police vetting subjects we think this would likely have significant impacts on Police resources in order to ensure the safeguards were administered appropriately.

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<sup>12</sup> National bodies responsible for submitting vetting requests of sector workers.

29. Should vetting subjects be allowed to give their authority to the Police Vetting Service to release new Police vets to vetting requesters they nominate?

See above.

30. With regard to the release of new Police vets, how should the issue of advance disclosure to the vetting subject be addressed?

See above.

31. How long should monitoring continue if authorisation is not withdrawn?

See above.

### **What information can be released in a Police vet**

32. Should only Police-held information be considered and released in a Police vet?

Police should only release information it holds as part of a Police vet. Police should take into account information received from other agencies where those agencies inform Police about particular concerns it holds or is aware of. However, Police should only use the information given to it by the approved agency to substantiate information Police already hold.

We note that a Police vet is not an opportunity for Police to solicit new information. An agency may (and should) provide Police with relevant information to their vet of an individual, but Police should not make information requests of other agencies or individuals for the purposes of conducting a Police vet.

33. Should there be a general test that information released in a Police vet must be relevant and substantiated?

Yes. Police remain subject to information privacy principle 8 which requires agencies to take reasonable steps to ensure the accuracy of information before use.

However, consistent with our joint report (paras 94-105) we recommend that Police ensure that there is clarity around what is meant by 'relevant' and 'substantiated'. This may not be a matter for legislation but should be clearly articulated in written and published policies governing the vetting service.

We note that Police propose that under this test they could release acquittal information. An acquittal means that guilt is not proved beyond reasonable doubt. The threshold for release of information in relation to Police vets is lower than the criminal standard of proof. We understand that Police records do not currently contain detail as to the reasons why charges are withdrawn, dismissed or result in an acquittal. In order to determine whether the substantiation threshold is met and whether Police should therefore release information, the quality of record keeping would need to improve.

We also note that the last two bullet points – 'any interaction a vetting subject has had with Police in any context' and 'any information received or obtained by Police for any purpose' - are expressed too broadly. We do not believe that information obtained through any interaction with the Police and for any purpose should be subject to release.

## Limitations on information released in a Police vet

34. Should the legislation allow for potential limitations on the information that can be released in a Police vet (which may create safety risks for vulnerable people)?

Yes.

35. As mentioned in our introduction this question is unnecessarily leading. Should the legislation provide for Police to release relevant information that is required to be kept confidential and unavailable to the vetting subject (which may be prejudicial and breach natural justice for the vetting subject)?

We understand that as a result of our joint report Police are no longer releasing a statement to agencies saying that they hold relevant information but cannot release it to them. This is a positive step. We therefore can see the case for including in the legislation a provision that allows for information to be provided to the approved agency or screening agency but not the vetting subject, but only in exceptional circumstances.

There should be a presumption for sharing the full vetting report with the vetting subject (consistent with natural justice principles) only to existing exceptions providing for withholding information from an individual under the Privacy Act, such as where necessary to avoid a prejudice to the maintenance of the law, for example where there is an active and on-going investigation.

The scenarios described by the Police reinforce the need for screening agencies (where they are available) as this means that neither the approved agency or the vetting subject sees the confidential information.

IPCA view:

If information were proposed to be disclosed to the approved agency but not the vetting subject (eg information about an on-going investigation), the IPCA considers that the Police may need to consider the inclusion of an offence provision in the legislation to prevent the on-sharing of that information from the approved agency to the vetting subject.

OPC view:

OPC does not consider the inclusion of an offence provision necessary.

36. In either case, what could be potential considerations in terms of allocating weight to the competing risks and interests?

The test for release of this information should be the same as suppressed information ie that there is a genuine interest in relation to the vetting subject's role and the information is unequivocally and substantially relevant.

## Disclosure of suppressed information

37. In some cases should the Police Vetting Service be able to disclose suppressed information in a Police vet?

Yes.

38. If so, what could be the main features of a test for the disclosure of suppressed information in a Police vet?

The test proposed by Police is that the information is only released if the vetting requester has a "genuine interest" in relation to the role the vetting subject is applying for and that the information is unequivocally and substantially relevant. This is a higher test than the normal

“relevant and substantiated” and it is consistent with the *ASG v Harlene Hayne*<sup>13</sup> case. We believe this is an appropriate test.

However, we note that there are sometimes issues with the record keeping in the National Intelligence Application (NIA) where the reasons for suppression are not recorded. The test of “genuine interest” would not in our opinion be able to be met without Police being fully aware of the reasons for suppression.

In such cases, Police should make further enquiries of the Court file and if necessary seek the leave of the Court to release suppressed information.

We note that Police are responsible for conducting ‘due diligence’ on information untested by the judicial process prior to making adverse vetting comment – ie ensuring it is relevant and substantiated.

39. Should a test for the disclosure of suppressed information be included in the legislation?

Yes.

### **Disclosure of youth justice proceedings and outcomes**

40. In some cases should the Police Vetting Service be able to disclose suppressed information concerning youth justice proceedings and outcomes in a Police vet?

OPC view:

Currently, if Police wished to release information suppressed by the Youth Court they could seek leave from the court to do so. We would support a provision within any proposed legislation that reinforces this position ie in certain prescribed circumstances Police may seek the leave of the Youth Court to release youth justice information.

All Youth Court proceedings are automatically suppressed under section 438 of the Children Young Persons and their Families Act 1989. The legislative intent of this provision is to protect young people from the mistakes made in youth from affecting their adult lives.

Police should be able to release information in limited circumstances, however it is OPC’s view that the ability to release such information should, remain with the court. There may be circumstances of such seriousness eg violent sexual offending that warrant Police seeking such leave.

OPC also recommends Police consult with the Children’s Commissioner and the Youth Court about any proposed provision.

IPCA view:

IPCA does not agree with this view. It would mean that the Police would be prevented from releasing information about Youth Court proceedings, but would be able to use information about offending that resulted in some form of alternative action. There would also be something paradoxical about allowing vets of 14-16 year olds, as we have supported above, but not allowing information about their offending to be used.

IPCA think the better position is to allow the information to be used, but subject to the higher threshold proposed for the release of adult suppressed information.

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<sup>13</sup> [2017] NZSC 59

41. If so, what could be the main features of a test for the disclosure of suppressed information concerning youth justice proceedings and outcomes in a Police vet?

See above.

42. Should a test for the disclosure of suppressed information concerning youth justice proceedings and outcomes be included in the legislation?

See above. The IPCA believes that it should be. OPC considers that the current law, whereby Police can seek the leave of the Court is the appropriate test, and that this could form part of Police vetting legislation.

### **Disclosure of mental health information**

43. In some cases should the Police Vetting Service be able to disclose mental health information in a Police vet?

Mental health information that is unrelated to offending behaviour should not be disclosed by Police. Police are not public health experts or mental health practitioners. They therefore do not have expertise in assessing risk associated with different presentations of mental health.

Consistent with our joint report we do not consider it is appropriate for the Police to release, in a vetting response, information about the mental health of an individual where this information has been recorded in a non-criminal context and there is no evidence of a link between the individual's health and any offending.

Where there is evidence of a link to offending behaviour it may be appropriate to release mental health information if the information is relevant and substantiated. However, a test of 'likelihood of risk to others' (for example, because their behaviour may upset others) is inappropriate, as it provides a more subjective test which Police as non-experts are not qualified to make. The 'likelihood' element also requires Police to make predictions of future outcomes about a person's future mental health, which in our view they are not qualified to do. It is up to the employer to seek a separate medical or mental health assessment if this is relevant to the role the vetting subject is applying for.

44. If so, what could be the main features of a test for the disclosure of mental health information in a Police vet?

As above, the test should be linked to evidence of offending behaviour such as the conduct/actions of the individual.

45. The Police are not qualified to be making risk assessments based on the presence of a mental illness. Should a test for the disclosure of mental health information be included in the legislation?

No – if Police apply the same test as they do to other information ie that it is relevant and substantiated in regards to a risk of offending behaviour, then a separate test for mental health information is not necessary.

### **Clean slate legislation**

46. Do you agree with how the clean slate scheme is being applied by the Police Vetting Service?

Yes. We understand that information is automatically concealed under the clean slate scheme where appropriate. We agree with this process and recommend that it continues. We understand that there are exceptions that Police currently apply to this scheme, administered under section 19(3) of the Criminal Records Act and section 31(3) of the

Vulnerable Children Act. This allows for the disclosure of information where a person's role predominantly involves the care and protection of children or young people. We understand that Police will only release information normally concealed under this scheme if one of the above sections applies. We do not consider there to be any basis for amendment.

47. If not, how should the clean slate scheme be applied by the Police Vetting Service?

N/A.

### **Disciplinary information held by professional organisations**

48. Should specified professional organisations in New Zealand who use the Police Vetting Service be legally obligated to disclose to the Police Vetting Service when members are de-registered?

We support reciprocal information sharing where it is triggered only by specified conduct/reasons for deregistration directly related to the purposes of the Police Vetting Service. For example, where a teacher is convicted of sexual assault.

We do not think it is appropriate for Police to be informed of voluntary deregistrations or cases where a person is deregistered for poor performance. For example, section one, para 32 of the Education Council's registration policy anticipates the possibility of teachers voluntarily deregistering.

The deregistration of a person from an organisation should only be notified to Police where that deregistration is connected with alleged offending.

49. If so, what sort of organisations should be subject to an obligation to disclose to the Police Vetting Service when members are de-registered?

Only those with a likely need to obtain a Police vet. The consultation document does not list all professional bodies in New Zealand that require their members to be registered, but we anticipate there being professional bodies that have registration schemes that are not relevant to Police eg engineering. Organisations required to inform Police of certain deregistrations could be prescribed through regulation.

50. If so, what details should be disclosed to the vetting requester?

Information about deregistration should only be used by Police as a means of substantiating other information they already hold but this should not be passed on to the vetting requester as part of a vetting report.

## **Reciprocal information sharing between the vetting requester and Police**

51. What should be the extent of any reciprocal information sharing between the vetting requester and Police?

Vetting requesters are able to share any relevant information or concerns with Police about a vetting subject to assist the Police in making decisions about what information to release as part of a vet. Legislation regulating the Police Vetting Service does not need to address this issue.

### **Review process**

52. On what grounds should a vetting subject be able to challenge a Police vet (for example, the Police vet is factually incorrect)?

Individuals will continue to have rights under information privacy principle 7 (IPP 7) when subject to a Police vet. They are therefore entitled to both request a correction be made to the vet and require a statement of correction be attached to the vet if no correction is made by Police. IPP 7 does not require an individual to have particular 'grounds' for making a request for correction and Police are obliged to attached a statement of correction if such a request is made.

Similarly, Police are required to take reasonable steps to ensure information is accurate, up to date, complete and not misleading before they use the information (IPP 8).

53. Following a review by the Vetting Review Panel in Police, should a vetting subject be able to appeal the decision (regarding what information is released in a Police vet) to a tribunal or court?

As noted in our joint report, the Vetting Review Panel's composition and structure lacks consistency and clarity of process and decision-making – if it is to continue the recommendations around policy, procedure and dedicated staffing should be heeded.

There need not be a further formalised review process. Vetting subjects will continue to have the ability to complain jointly or separately to the Office of the Privacy Commissioner and the Independent Police Conduct Authority. Police decisions will also remain subject to judicial review.

In our opinion if the Police Vetting Service process and legislation is sufficiently robust then further review bodies are unnecessary.

### **Establishment of an independent vetting body**

54. Would the establishment of an independent body to manage all Police vetting be desirable?

No

55. In practice, how would an independent vetting body function?

N/A.

### **Other feedback**

56. With regard to vetting by Police, please provide feedback on any other issues you think are important.

We have no further comments to make however we would be happy to discuss any of the above comments with Police if they would find that useful.