

Submission on legislation for the New Zealand Police Vetting Service

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About the New Zealand Nurses Organisation

NZNO is the leading professional nursing association and union for nurses in Aotearoa New Zealand. NZNO represents over 52,000 nurses, midwives, students, kaimahi hauora and health workers on professional and employment related matters. NZNO is affiliated to the International Council of Nurses and the New Zealand Council of Trade Unions.

NZNO promotes and advocates for professional excellence in nursing by providing leadership, research and education to inspire and progress the profession of nursing. NZNO represents members on employment and industrial matters and negotiates collective employment agreements.

NZNO embraces te Tiriti o Waitangi and contributes to the improvement of the health status and outcomes of all peoples of Aotearoa New Zealand through influencing health, employment and social policy development enabling quality nursing care provision. NZNO's vision is *Freed to care, Proud to nurse.*

EXECUTIVE SUMMARY

1. Tōpūtanga Tapuhi Kaitiaki o Aotearoa (NZNO) welcomes the opportunity to make a submission to the New Zealand Police on the public consultation document 'Legislation for the New Zealand Police Vetting Service.'
2. NZNO has consulted its members and staff in the preparation of this submission, in particular the organisers and legal team who have worked with members with concerns about 'safety checks' required by employers to meet the legislative requirements of the Vulnerable Children Act (VCA) (2014).
3. As the largest professional health workforce voice, NZNO aims to represent the main issues and concerns that nurses have about the police vetting process (PVP) including:
 - the increased likelihood that Māori will be over-represented in the group of vetting subjects who have information disclosed as a result of the PVP because of their disproportionate representation in both the justice and mental health systems;
 - this may include information related to convictions, suppression orders and mental health;
 - the lack of clarity about the release of information relating to vetting subjects being a victim of crime, or reporting a crime, or being



interviewed in relation to a reported crime and being investigated as part of a crime but subsequently found to not be involved.

4. The 2016 review by the Independent Police Conduct Authority (IPCA) and the Office of the Privacy Commissioner (OPC) is thorough and concluded with a comprehensive set of recommendations that are supported by NZNO particularly those that relate to the matters of ensuring appropriate information is released.
5. NZNO are also concerned about the lack of clarity about the 3 year vetting timeframe including the repeat safety check within 3 years of the initial check;
6. There are significant resourcing implications of the VCA requirement that core workers have been safety checked by 1/7/18 and non-core workers will be vetted by 1/7/19;
7. Issues related to the confidentiality of information released in the PVP including its storage, access, format and how long it is kept by the vetting requester need consideration and clarity;
8. The costs of vetting for both the vetting subject and vetting requester are in addition to those noted by the police vetting service itself and include 'administration fees' charged by vetting requesters, anecdotally \$120 per vetting request/subject. There are also efficiency costs for employers with the attendant slow-down in recruitment and re-checking processes every 3 years.
9. Vetting requester interpretation of the VCA requirements has in some cases generated a 'blanket' approach resulting in unnecessary and inappropriate vetting. For example tertiary education providers seeking authorisation from all students to be vetted even though the courses/programmes in which they are enrolled do not involve working with children. The vetting and disclosing of information needs to be clearly aligned with the purpose of the vetting requesters operations;
10. The effect on our members and other vetting subjects of the process currently used that is disproportionate to any benefit in terms of protecting vulnerable children. NZNO members have experienced situations in which information they did not know the police had including family violence 'red flags', mental health, driving offences and diversion, and that had not resulted in a conviction, has been disclosed to managers compromising their privacy and in some cases resulting in a withdrawal of employment offers.

CONSULTATION QUESTIONS:

General

1. Should there be a statutory framework for the Police Vetting Service (PVS)?
Yes

Purpose of the Police Vetting Service

2. What should be the purpose of the Police Vetting Service?
To fulfill the requirements of the VCA to protect children and other vulnerable people.

Functions of the Police Vetting Service

3. What should be the functions of the Police Vetting Service?
Provide information which is relevant, substantive and required by various legislation and pertains to the individual who has given vetting consent
4. Should the functions of the Police Vetting Service be reflected in legislation?
Yes

Who can use the Police Vetting Service

5. Should individuals have direct access to the Police Vetting Service?
Yes if the individual is seeking the information that police hold about themselves
6. In what circumstances, if any, should individuals be able to request a Police vet on others?
There maybe but there would need to be specific circumstances established in the framework to allow that
7. In what circumstances, if any, should individuals be able to request a Police vet on themselves?
In most circumstances.

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?
The criteria for an agency to be an approved vetting requester should include detail of how and where the information disclosed about a vetting subject will be stored and for how long.



9. Should the criteria also allow for access at the discretion of Police?
Not without appropriate consent from the vetting subject
10. Should government agencies be able to access the Police Vetting Service without having to meet any other criteria?
No. Release of information to an organisations designated privacy officer may be appropriate but safeguards are required to avoid the recent experience of one of NZNOs members. She was informed by her manager that the vetting process had resulted in the release of deeply personal information relating to family circumstances. She had not been made aware by the PVS that this information was to be released and indeed did not even know the police had the information on file. The information release compromised her wellbeing and was related to a situation in which she had been a vulnerable young person. Vulnerable people, including children, who should benefit from the PVP by being protected from harm will be vetting subjects in the future. They are also more likely to require the services of the justice and mental health systems and therefore find that the police hold information about their situations that will subsequently be released when they are vetting subjects.
11. What criteria could there be for an offshore vetting requester to gain access to the Police Vetting Service?
This would need verification of the offshore requester as a legitimate agency and that the purpose of the vetting was to keep children and vulnerable others safe.

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
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 question is unclear.

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

Consent and advance notice of disclosure

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

Yes

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

The vetting requester needs to be informed that consent has not been given so they can then decide how to respond to the non-consenting vetting subject.

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

Yes – in the situation where the vetting subject may not know of information that is deemed relevant by the Police Vetting Service (PVS).

19. How should the issues of consent and advance disclosure be addressed?

Option (b) <i><u>Status quo</u></i>	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)
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Age of vetting subject

20. 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?

Does this relate to an employment situation? Children under 14yrs cannot be employed.

21. 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)?

22. 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)?

Assent from the child/young person and consent from their parent or guardian



Vetting of family members of vetting subject

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

How does this relate to an employment situation?

Sharing of Police vets

24. 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

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

Only with consent of vetting subject.

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

Yes

Screening agencies

27. Is the use of screening agencies desirable?

Yes – as long as the 'separation' currently achieved by the PVS is maintained, there may be useful efficiencies achieved by for example a health sector specific screening agency.

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

Health, Education and Community Social Services sectors may benefit from using screening agencies.

Maintaining the validity of Police vets through ongoing monitoring

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

- maintain the validity of Police vets through ongoing monitoring

Ongoing monitoring of the vetting subject would need to be disclosed to that subject including the activities undertaken by the PVS as part of a monitoring function.

- Disclose new relevant Police vets to vetting requesters, as appropriate?

This would depend on the definition of 'appropriate' and who would

decides on relevance and appropriateness. If the PVS decides this then independence, neutrality and separation is compromised.

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

Yes

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

Refer above to questions 16, 17 and 18

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

Monitoring and the activities involved in that function need to be clearly defined in the new legislative framework. This needs to include the limits and parameters of monitoring. The perpetuation of institutional racism is a significant risk.

What information can be released in a Police Vet?

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

Yes

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

Relevance and substantiation of information needs to be clearly established. A first level 'test' might help but a general test may not cover all complexities in some situations.

Limitations on information released in a Police vet

35. 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 – vulnerable people are still at much greater risk from their own family members than they are from anyone about to be employed by a service they use. There is a disproportionate impact on vetting subjects of vetting and potential monitoring in terms of the release of sensitive personal information to employers or potential employers.

36. 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)?



This depends on how relevant information is defined and if and how the information has been substantiated.

37. In either case, what could be potential considerations in terms of allocating weight to the competing risks and interests?
Natural justice needs to be considered in terms of how incorrect information is corrected and opportunities for people to demonstrate that they are reformed and no longer a risk.

Disclosure of suppressed information

38. In some cases should the Police Vetting Service be able to disclose suppressed information in a Police vet?
Yes
39. If so, what could be the main features of a test for the disclosure of suppressed information in a Police vet?
The risk to vulnerable people with whom the vetting subject may be in contact would need to be clearly established
40. Should a test for the disclosure of suppressed information be included in the legislation?
Yes

Disclosure of youth justice proceedings and outcomes

41. In some cases should the Police Vetting Service be able to disclose suppressed information concerning youth justice proceedings and outcomes in a Police vet?
Yes
42. 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?
The risk to others and/or themselves and time elapsed since offending occurred needs to be taken into account.
43. 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?
Assessment of level of risk to others and/or themselves.
44. Should a test for the disclosure of suppressed information concerning youth justice proceedings and outcomes be included in the legislation?

Yes

Disclosure of mental health information

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

Yes

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

Assessment of level of risk to others and/or themselves

47. Should a test for the disclosure of mental health information be included in the legislation?

Yes

Clean slate legislation

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

Yes – could this be extended to cover other sensitive information that is held by police but is not associated with conviction(s) to which the 'clean slate' legislation could be applied.

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

Disciplinary information held by professional organisations

50. 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?

Yes

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

The regulatory authorities for the health professions should be informed for example, Nursing Council of New Zealand.

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

Simply the detail that the vetting subject has been de-registered by the regulatory authority should be sufficient information.

Reciprocal information sharing between the vetting requester and Police

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

Privacy Principle 8 needs to guide decisions in any situation in which



the vetting requester gives information to the PVS. For example, that the information shared with the PVS should not be misleading,

Review process

54. On what grounds should a vetting subject be able to challenge a Police vet (for example, the Police vet is factually incorrect)?
If the vetting subject has evidence that the information is unsubstantiated, mischievous or fabricated an appeal should be possible. They need to retain the right to correct incorrect information (Privacy Principle 7).
55. 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?
Yes

Establishment of an independent vetting body

56. Would the establishment of an independent body to manage all Police vetting be desirable?
If a functional legislative framework can be established that achieves some 'separation' for the PVS then 'no' – it would be resource hungry and may slow down the processing of requests.
57. In practice, how would an independent vetting body function?
It must function with regard to the NZ Bill of Rights Act and the Privacy Act.

Other feedback

58. With regard to vetting by Police, please provide feedback on any other issues you think are important.
The assessment of relevance of information by the PVS that is not related to conviction(s) should diminish over time. The 'clean slate' legislation addresses convictions and the time that has expired since a conviction but for information the police hold that is not related to a conviction, the information does not have the 'protection' of relevance diminishing over time. Diversion, while not a conviction, should also be 'time-limited', as to disclose diversion is antithetical to the purpose of diversion.

CONCLUSION

In conclusion NZNO recommends that you:

- Implement the recommendations of the review by the Privacy Commissioner and the Police Conduct Authority as soon as possible, particularly the definitions of and thresholds for information **relevance** and **substantiation**;
- That the process established for the PVS aligns as closely as possible with the twelve Privacy Principles established in the Privacy Act and that the risk of perpetuating institutionalism racism is addressed in the establishment of the process.
- That a legislative framework for the PVS include penalties for the PVS and vetting requesters in cases of breaches of the controls and processes.

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