

Regulatory Impact Statement: Amendments to the Policing Act 2008

Decision sought	Analysis produced for the purpose of informing final Cabinet decisions
Agency responsible	New Zealand Police
Proposing Ministers	Minister of Police
Date finalised	11 September 2025

This regulatory proposal amends the Policing Act 2008 to:

- A. provide recognition that it is lawful for Police to record images and sound in public (and in places Police may lawfully be) and to confirm that Police may collect and use personal information for any or all lawful purposes, including for the purpose of general intelligence (for example, for an unknown or unspecified future policing purpose)
- B. provide Police with temporary area closure powers, and to provide Police with associated powers to support effective enforcement of road and area closures, to maintain public safety and reduce community harms.

Summary: Problem definition and options

What is the policy problem?

This RIS addresses two problems.

(A) Collection of personal information (including images/sound) for policing purposes, including intelligence purposes

Police has operated on an understanding that common law authorities and statutory powers allowed Police to collect information for any or all lawful purposes, including the purpose of general intelligence (for example, for an unknown or unspecified future policing purpose). In more recent times, that understanding has been challenged in the courts and by regulators and has called into question Police's authority to collect information (including recording images) for *general* intelligence purposes. This has led to a narrower understanding of those intelligence purposes (short of an actual or likely investigation) and lack of clarity about how this interacts with any or all of Police's other lawful functions. This creates operational restrictions and uncertainties that may limit policing functions and have a constraining impact on effective policing practices unless resolved.

(B) Expanding existing temporary closure powers and introducing area closure enforcement powers for Police

Police has temporary road closure powers under the Policing Act (currently for situations of public disorder, danger, or when a serious offence has been committed). The Antisocial Road Use Legislation Amendment Bill (ASRU), currently before the House, will extend these powers further to respond to anti-social road use.

Road closure powers are not currently supported by specific associated enforcement powers to respond to non-compliance once a road closure is in place. This matter is only partially

addressed in the ASRU Bill, which introduces a \$1,000 infringement, or up-to \$3,000 court fine (if the infringement is appealed) for failing to comply with the direction to leave a temporarily closed accessible place (referred to as an area in the remainder of this document).

We consider there is also an opportunity to use the ASRU Bill's broader definition of types of areas that can be closed under section 35. This will improve consistency and operational effectiveness.

There remains an enforcement gap in managing compliance and ensuring safety as Police do not have powers to respond if members of the public do not provide their particulars for the purpose of issuing an infringement, or where they fail to comply with a direction not to leave a closed area.

What is the policy objective?

(A) Collection of personal information (including images/sound) for policing purposes, including intelligence purposes

The principal objective of clarifying Police's ability to undertake general intelligence gathering (including related to recording images and sound) is to ensure Police's ability to achieve its lawful functions and that the powers enabling Police to gather general intelligence and record images/sounds is clear, fit-for-purpose and support Police's functions and duties. As such, clarification is important to meet public expectations and maintain trust and confidence.

(B) Expanding existing temporary closure powers and introducing area closure enforcement powers for Police

The principal objective of the proposed changes is to enable the effective removal of people (including bystanders) from a temporarily closed area (within specified circumstances), supported by an escalated pathway of enforcement/penalties for non-compliance, and to support a consistent enforcement approach across all contexts in which a road may be closed. As such, these proposals will contribute to Police's ability to undertake its lawful functions, specifically maintaining public safety, keeping the peace, law enforcement, crime prevention, and community support and reassurance. This benefits the public's perception of trust and confidence in Police.

What policy options have been considered, including any alternatives to regulation?

(A) Collection of personal information (including images/sound) for policing purposes, including intelligence purposes

The options considered have been split into four categories: (1) options about Police's functions and lawful purposes, including recognising general intelligence gathering purposes; (2) options about recording images/sounds in public and when lawfully in private places; (3) options about the application of Information Privacy Principles, such as modifying their application when recording images/sounds; and (4) options about how further safeguards should be provided (operationally or legislatively).

(B) Expanding existing temporary closure powers and introducing area closure enforcement powers for Police

Option One (status quo), would only make the limited amendments provided for in the ASRU Bill. This option will retain the ASRU power as a separate provision within the Policing Act, but without the necessary additional enforcement powers Police seeks to effectively address non-compliance and manage any ongoing public safety risks.

Option Two would make amendments to the Policing Act to provide for policing powers to enforce ASRU Bill road closure amendments only. This option will retain the ASRU powers as a separate provision.

Option Three would expand the section 35 road closure powers to include areas and provide necessary enforcement powers. However, there is no power to detain and move a person who does not comply with a direction to leave. This inconsistency means this option will retain the ASRU power as a separate provision.

Option Four would expand the section 35 road closure powers, but excludes powers to arrest and powers to detain for ASRU activities. This option will retain the ASRU power as a separate provision.

Option Five (the preferred option) broadens road closure powers and provides enforcement powers for Police in all road closure scenarios. It provides additional enforcement powers to respond to non-compliance of a direction to leave a closed area. This option merges the powers into one provision.

What consultation has been undertaken?

(A) Collection of personal information (including images/sound) for policing purposes, including intelligence purposes

No public consultation was undertaken. A timely response following a recent Supreme Court judgment was instead prioritised, with an intent to enact changes as soon as possible given the impact on daily policing activity.

Agency consultation was undertaken on draft proposals, with a range of concerns raised, **s.9(2)(g) OIA**. The Ministry of Justice (Justice) supports Police's ability to collect personal information for intelligence purposes, and to record images and sound from public places, to the extent that those activities are necessary to support one of Police's existing functions. However, Justice was concerned that the proposals do not provide sufficient assurances that there will be clear and transparent protections to ensure that Police's collection, retention, and use of personal information remains proportionate to the actual policing value of that information. Justice and the Privacy Commissioner are particularly concerned about the modifications to four of the Information Privacy Principles and impacts on the oversight of the Privacy Commission. The Privacy Commissioner strongly opposes authorising Police to record and keep personal information for an unknown use and has serious concerns about the potential impacts that these changes will have on the privacy of all New Zealanders and by extension their democratic rights and freedoms.

(B) Expanding existing temporary closure powers and introducing area closure enforcement powers for Police

No public consultation was undertaken. There has been some initial consultation with the Ministry of Justice, and the Ministry of Transport alongside wider agency consultation.

Some agency feedback has questioned whether the additional powers to arrest under the ASRU area closure provision is necessary, given Cabinet's agreement to limit non-compliance to an infringement notice, and the lack of previous issues with enforcing the existing powers in section 35. The Attorney-General has considered the ASRU Bill's proposed area closure power for ASRU incidents and infringement offence is consistent with the New Zealand Bill of Rights Act 1990 (NZBORA).

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes, for both proposals.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information) <i>(A) Collection of personal information (including images/sound) for policing purposes, including intelligence purposes</i> There are no direct fiscal costs associated with the preferred options. However, system enhancements will enable Police to better manage people's personal information and maximise the operational benefits of collecting this information, which will better support Police to fulfil its wider policing functions more effectively. There will be some privacy impacts for people (as Police continues to collect and retain general intelligence information and recommences a wider range of recording images in public) and risks of over-collection. Clarifying the application of specific Information Privacy Principles for the recording of images may also impact the ways in which the Office of Privacy Commissioner approaches complaints/any potential breach analysis. <i>(B) Expanding existing temporary closure powers and introducing area closure enforcement powers for Police</i> There are no direct costs associated with the preferred option, as this provides additional tools to close areas, and undertake additional enforcement action when it is required. Members of the public (including bystanders) who do not comply with a direction to leave may face a financial penalty.
Benefits (Core information) <i>(A) Collection of personal information (including images/sound) for policing purposes, including intelligence purposes</i> There are likely to be material law enforcement and frontline safety benefits associated with the preferred options, as well as public safety and security benefits. Clarity, transparency, and accountability will be supported through the review and refresh of operational guidelines and instructions that will need to be developed and reported on. <i>(B) Expanding existing temporary closure powers and introducing area closure enforcement powers for Police</i> A broader approach to area closures with additional enforcement powers, provides Police with more tools to temporarily close an area and respond to instances of non-compliance where there are public safety risks. The preferred option (Option Five) will provide a comprehensive and cohesive area closure framework to ensure Police can exercise a consistent, graduated and effective enforcement response. This will help ensure that frontline police are clear about their legal powers, reducing the risk of inappropriate intervention and subsequent legal challenges. The additional powers will ensure Police can effectively enforce the closure provisions and provide for a graduated enforcement approach to reduce potential escalation into the criminal justice system.
Balance of benefits and costs (Core information) <i>(A) Collection of personal information (including images/sound) for policing purposes, including intelligence purposes</i> On balance, the benefits of the preferred options are expected to outweigh the costs. General intelligence (not specifically related to an actual or likely investigation) including personal information is collected from wide-ranging frontline interactions (including via recording images and sound). This contributes to tasking and operational awareness for frontline Police, supports the development of well-targeted interventions, can inform and direct crime prevention initiatives, nationally, regionally and in partnership with

communities, assists with the identification of suspects, and supports trust and confidence in Police.

(B) Expanding existing temporary closure powers and introducing area closure enforcement powers for Police

The preferred option (Option 5) provides the most benefit for Police, with the ability to temporarily close an area under an exhaustive list of circumstances (including disorder events, crime scenes, and anti-social road user activity). This option will resolve the identified gaps in the ASRU Bill, which means Police will be equipped with the necessary tools to escalate their enforcement against people who do not comply with directions to leave temporarily closed areas. These proposals may infringe some existing human rights, as they go beyond the proposals in the ASRU Bill, where the Attorney-General concluded that the proposed area closure power is consistent with NZBORA. However, given the public safety objectives underpinning the proposals, any limitations are likely to be justified.

Implementation

(A) Collection of personal information (including images/sound) for policing purposes, including intelligence purposes

As the preferred options will largely restore Police to the previous state, implementation will largely centre on developing operational guidance (especially in relation to children and young persons) to support good decision making from the frontline. As part of a medium-longer-term strategy, Police is also establishing a project team to consider what further opportunities there may be to enhance our information management systems and processes.

(B) Expanding existing temporary closure powers and introducing area closure enforcement powers for Police

Police will work with the Ministry of Transport, and the Parliamentary Counsel Office to ensure there is alignment between this work and the new area closure infringement being progressed in the ASRU Bill.

The Commissioner of Police will be responsible for ensuring that there is appropriate internal guidance for the deployment of the proposed powers. Police will deliver guidance and/or training for impacted staff across Police to implement the desired option. The technological solution to the end-of-life Police Infringement Processing System will need to be completed before it will be possible to issue the new infringements.

The preferred option provides Police with necessary tools and an escalation pathway to respond to people who do not comply with a direction to leave a temporarily closed areas where there is a compelling public safety reason for doing so.

The infringement offence in the preferred option is contingent on investing in the development of a new infringement processing system to replace the end-of-life Police Infringement Processing System. This was subject to a previous Cabinet decision [CAB-25-MIN-0205 refers]. **s. 9(2)(f)(iv) OIA**

Limitations and Constraints on Analysis

(A) Collection of personal information (including images/sound) for policing purposes, including intelligence purposes

Due to the pace at which policy approvals are being sought, there has been no time for public consultation to test the proposals and incorporate feedback. There is also no quantifiable evidence that the expected benefits from the preferred options will be realised, and there could be risk of unintended consequences.

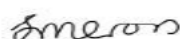
Police has been operating for the past few years under the more constrained settings for recording images in public (ie that any photographs taken for intelligence purposes needed to be related to an actual or likely investigation). The opportunity costs for this are unable to be quantified. Police is also concerned with the uncertainty raised by a recent Supreme Court Judgment around the collection of personal information for general intelligence purposes (ie where there may not be a specifically known use in relation to an investigation or one of Police's other functions). While we have not seen this risk realised to date (largely due to the recency of that judgment) an approach where our authority is tested on a case-by-case basis is not operationally feasible or sustainable. We also need to ensure a fit-for-purpose approach that recognises the broad Police functions and lawful purposes for which we undertake these activities.

(B) Expanding existing temporary closure powers and introducing area closure enforcement powers for Police

The proposed amendments will expand amendments to the Policing Act that are being progressed through the ASRU Bill and will also introduce new powers. This will ensure Police has the necessary powers to enable effective enforcement of the area closure amendments. As the ASRU Bill and the new Police area closure powers and infringements have not yet been enacted, the need for additional arrest powers, or a power to detain has been informed by Police's experience with existing closure powers, including the legal risks that currently exist.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible manager signature:



Jenny Cross
Policy Manager, Police
11 September 2025

Quality Assurance Statement

Reviewing Agency:

QA rating: Partially meets

Panel Comment:

A joint Police and Ministry of Justice Regulatory Impact Assessment quality assurance panel (the Panel) has reviewed the Regulatory Impact Statement (RIS) Amendments to the Policing Act 2008. The Panel considers that the information and analysis summarised in the RIS partially meets the Quality Assurance criteria. While the RIS is clear and limitations are articulated, it is constrained by limited consultation and supporting evidence.

While consultation was limited, the concerns raised by the Ministry of Justice and office of the Privacy Commissioner and other agencies are clearly identified. In particular, whether there are sufficient clear and transparent protections to ensure that Police's collection, retention, and use of personal information is proportionate to the actual policing value of that information. Also, the proposed modifications to four Information Privacy Principles and implications for the oversight of the Privacy Commissioner. It is likely that similar concerns about human rights, privacy implications and protections for children and young people would have been raised through wider public consultation.

There is limited information about the size and scale of the information gathering problem and the proportionality of the proposed solutions. Police is of the view that the proposals return the Police to what it considered the existing position. However, there has been a relatively short timeframe since the Supreme Court judgment was released, and limited events to gauge the impact on police decision-making and law enforcement. Police's preference is to clarify its ability to undertake general intelligence gathering in legislation with operational guidance and monitoring to ensure the powers are used appropriately. Similarly, Police is seeking to expand existing temporary road closure powers to all public and private areas accessible by vehicle and introduce powers to enforce closure, which will be supported by an escalated pathway of enforcement/penalties for non-compliance to ensure the enforcement powers are used appropriately.

Section A: Collection of personal information for general intelligence purposes

Section 1A: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

New Zealand Police operating environment

1. New Zealand Police has a vision for New Zealand to be the safest country. Police's mission is to prevent crime and harm, so that everyone can be safe while going about their daily lives, without fear of harm or victimisation.
2. Police operates in a challenging and complex environment. Police serves a growing and increasingly diverse population, in an ever-changing social and criminal context that reflects social, health and economic pressures, both domestic and global. At one end of the spectrum, policing services have been increasingly expected to address local social, health, and community wellbeing needs, while at the other, crime is becoming more sophisticated, organised, and internationally connected.
3. Police receives our formal legislative mandate from the Policing Act 2008, which states that 'principled, effective and efficient policing services are a cornerstone of a free and democratic society under the rule of law, and effective policing relies on a wide measure of public support and confidence.'
4. Policing functions are set out in a non-exhaustive list in section 9 of the Policing Act, and include keeping the peace, maintaining public safety, law enforcement, crime prevention, community support and reassurance, national security, participation in policing activities outside New Zealand, and emergency management.
5. There are many activities that underpin the ability to deliver these functions and as well as Police's wider common law duties. All police duties and functions rely on information gathered through the interaction with the community as part of general policing, and its effective collection and use. This is a fundamental activity underpinning the functions of policing.

Police is authorised to collect information for many lawful purposes

6. Numerous statutes inform the collection, use, storage, and deletion of photographs and other personal information, including: the Policing Act, the Privacy Act 2020, the Search and Surveillance Act 2012, the Public Records Act 2005, the Evidence Act 2006, and the New Zealand Bill of Rights Act 1990.
7. Police has a **statutory authority** to take photographs in certain circumstances:
 - Sections 32 and 33 of the Policing Act 2008 enable photographs to be taken of a person:
 - in lawful custody of Police if that person is detained for committing an offence (section 32) or

- detained by Police at any place where a constable has good cause to suspect a person of committing an offence and who intends to bring proceedings against that person by way of summons (section 33), and
 - in both circumstances, this information can be used now or in the future by Police for any lawful purpose (though there are circumstances when the photograph must be destroyed, including if a decision is made not to prosecute or there is no conviction). With respect to children and young people, this information can only be retained if the Youth Court makes an order under section 283 of the Oranga Tamariki Act 1989 (which are the responses to proven charges).
- The Search and Surveillance Act 2012 enables the taking of photographs, including of children. For example, an officer may, without warrant:
 - record what they observe or hear when lawfully in private premises (section 47(1))
 - take photographs, sound and video recordings, and drawings of the place, vehicle or other thing searched when exercising a search power, if relevant to the purpose of the entry and search (section 110(j))
 - take photographs, sound and video recordings, and drawings when exercising a power to search a person, if relevant to the purpose of the search) (section 125(1)(n)).
8. Where there is no specific **statutory authority**, there may still be a lawful basis, if the taking of this information (such as photographs, recordings or drawings) is consistent with the relevant Privacy Act information privacy principles, such as the collection being for a lawful purpose connected to Police functions or activities, and the collection is necessary for that purpose.
9. Police also has common law authority to collect information, including the taking of photographs in public places, but only to the extent that those photographs are not considered a search i.e. whether there is a reasonable expectation of privacy in the circumstances. There are also further limitations that were outlined in the *Joint inquiry by the Independent Police Conduct Authority and the Privacy Commissioner into Police conduct when photographing members of the public* (the OPC/IPCA Joint Report) discussed below.

Children and young people have special protections

10. Children and young people have special protections in both the care and protection, and youth justice contexts through the Oranga Tamariki Act 1989, recognising their vulnerability and prioritising their interests. The Privacy Act 2020 also has additional protections for children and young people.¹
11. Police is not prohibited from collecting information on children and young people. However, these protections require Police to be especially cognisant of the age and capacity of these individuals when considering how we intend to collect information, as

¹ IPP 4 in the Privacy Act provides that an agency may collect personal information only by a means that, in the circumstances of the case (particularly in circumstances where personal information is being collected from children or young persons) is fair and does not intrude to an unreasonable extent upon the personal affairs of the individual.

well as the level of intrusiveness into their personal affairs – information must be collected and used in a way that is fair to them.

12. While children and young people’s interactions with the criminal justice system is governed by the Oranga Tamariki Act 1989, Police has statutory authority to photograph a child or young person in certain circumstances under the Policing Act and the Search and Surveillance Act, as noted above.

Collecting information for some intelligence purposes has been called into question

13. Police has operated on an understanding that these common law and statutory authorities allow Police to record images and collect information for any, or all, lawful purposes, including the purpose of general intelligence. This general intelligence underpins many of Police’s functions, noting that at the point in time that it is collected, that the value of the information to a particular function may be unknown. For example, information may be collected in circumstances where an officer suspects that property within a vehicle may have been stolen, but which no particular offence was being investigated at the time.
14. The courts and regulators have called into question Police’s authority to record images of people in public places, in a number of circumstances where Police has considered it was lawful to do so.
15. For example, officers had previously photographed individuals involved in activity deemed “suspicious” – such as where an individual may have been found in an industrial area during the early hours of the morning where there had been previous burglaries. Routine photographs have also been previously taken to collate information on gang members and their associates, to record unknown people who were associating with known offenders, and to record changes in the appearance of known offenders.
16. In 2022, the OPC/IPCA Joint Report found that taking photographs of members of the public can be a lawful collection of information during the execution of Police duties for intelligence purposes, but only where there is a reasonable link to a particular or likely criminal investigation. Similar signals came from the Court of Appeal’s judgment in *Tamiefuna v R* [2023] NZCA 163.
17. This position represented a significant narrowing of Police’s understanding of our lawful purposes in relation to photographing in public for intelligence purposes. For example, Police understanding was more aligned with a (future) minority Supreme Court judgment in *Tamiefuna v R* [2025] NZSC 40 (noting the majority judgment in this case is discussed further below).

Glazebrook J, noted at [246] that: “*At common law the police have all the powers necessary to perform the core duties and other secondary duties unless modified by statute. To recap, such powers include intelligence gathering and the retention and storage of the information gathered, which can come from a wide variety of sources of varying reliability and importance. The intelligence-gathering power includes the power to take photographs, as long as this is done in furtherance of police duties.*”

And at [248] that: “*the Court of Appeal did not consider that the Detective Sergeant’s actions in this case were within the common law powers of the police. This was taking far too narrow a view of police duties and powers and in particular does not take account of*

the intelligence-gathering function. The Court of Appeal approach would limit police activities to specific investigations of particular offences. To require such a siloed approach would inhibit the crime prevention and investigation duties of the police and reduce the efficacy of the intelligence-gathering function.”

18. In terms of recording images in public, expectations of privacy in public were previously considered to be low, as demonstrated by the statutory silence in the Search and Surveillance Act, and some case law.² Police also considered it had the same authority as members of the public who may take images in public places.
19. However, Police’s policy settings for recording images for intelligence purposes in public were consequently narrowed to comply with the clarified regulatory settings in the OPC/IPCA Joint Report.
20. The OPC/IPCA Joint Report also called into question Police’s understanding and use of the Search and Surveillance Act. Under section 47 of that Act, when an enforcement officer is lawfully in any private premises, they do not require a warrant to record what they observe or hear there (provided that the enforcement officer records only those matters that he or she could see or hear without the use of a surveillance device).
21. In these circumstances, Police may have noted down or photographed people in the premises, without a known specific investigation in mind – but rather for the purposes of general intelligence gathering. For example, if an officer was undertaking a search of premises for drug offending and could see gang-related paraphernalia within the premises, and the occupant(s) had not been previously identified as being associated with a gang – this information could be useful for understanding new gang associations and/or gang-related criminal activity.
22. However, in the OPC/IPCA Joint Report, it was noted that “while Police may observe (and record) items present on the property, that action must be consistent with the purposes for which the officer is lawfully on the premises.”³

The recent Supreme Court judgment has shifted previous understandings of reasonable expectations of privacy in public places and what constitutes a search

23. The recent Supreme Court majority judgment in *Tamiefuna v R* [2025] NZSC 40 has created a significant risk that Police may not be able to rely on previous common law authorities for taking photographs in public in as many circumstances as previously thought.

² In *Hamed v R*, Blanchard J observed that there was no breach of s 21 of NZBORA in setting up a camera which recorded only what took place on a public road, “where there could be no reasonable expectation of privacy” [at 205]. His Honour observed: “People in the community do not expect to be free from the observation of others, including law enforcement officers, in open public spaces such as a roadway or other community-owned land like a park, nor would any such expectation be objectively reasonable. The position may not be the same, however, if the video surveillance of the public space involves the use of equipment which captures images not able to be seen by the naked eye, such as the use of infra-red imaging.” His Honour went on to observe that it made no difference if this observation was done covertly; “[the] important matter is whether the subject of the surveillance was a place within public view” [at 168].

³ The OPC/IPCA Joint Report at [154].

24. The particular issue of concern to the Court in *Tamiefuna* was the collection of an image or other biometric data about a person, coupled with an identification of that person.⁴
25. Prior to *Tamiefuna*, a photograph or video of a person in public was not generally treated as a search under section 21 of the New Zealand Bill of Rights Act 1990 (everyone has the right to be secure against unreasonable search or seizure). People in public places essentially lacked a reasonable expectation of privacy from being photographed. The Supreme Court has changed this position. The Court rejected this as a case where the officer simply recorded what he saw and heard. It said merely observing (or listening) is qualitatively different to the more intrusive – in privacy terms – act of recording.
26. In the absence of explicit legislative recognition that it is lawful for Police to record visual images in public places, the Court considered whether taking the photo constituted a search, and whether that search was reasonable. Relevant to this was a finding that a “zone of privacy” may exist in public places. This represented a significant shift in the privacy case law, which had previously found that privacy expectations in public places was generally low.
27. Whether a Police action constitutes a “search” is no longer limited to the subject’s reasonable expectations of privacy at the time of the search, but the whole interaction with Police (including how Police approaches the subject, and their use of the information obtained afterwards). Collecting information for the purpose of retaining it as “intelligence” may now mean collecting it constitutes an unlawful and unreasonable search.
28. *Tamiefuna* also raised possible issues more generally with Police’s ability to collect and use personal information for any or all lawful purposes, including for the purpose of intelligence (for example, for an unknown or unspecified future policing purpose).
29. The majority judgment found that Police does not have a common law power to conduct warrantless searches for intelligence gathering purposes. Photographing people may be permissible for a law enforcement purpose, but it was found that there is no common law police power to photograph people for “intelligence gathering” purposes - that is, for “a generalised wish to secure personal information for a hypothetical (and unspecified) potential use.”
30. The taking of photographs for Police’s general intelligence function (unrelated to a specific investigation and/or for an unspecified future use) was not recognised by the Supreme Court as a lawful purpose. This means there is now a risk that other forms of personal information collection for general intelligence purposes may also be called into question.

⁴ Mr Tamiefuna was a passenger in a car stopped at a routine traffic stop late at night. As the driver did not have a licence, the passengers were required to exit the vehicle as the vehicle was subject to mandatory impoundment. As Mr Tamiefuna exited the vehicle, the officer took photographs of Mr Tamiefuna without his consent. The officer was aware that those in the vehicle had serious criminal histories, and he was suspicious that property from within the vehicle may have been stolen.

What is the policy problem or opportunity?

Collecting information for general intelligence purposes

31. As noted above, Police has operated on an understanding that common law authorities and statutory powers allowed Police to collect information for any or all lawful purposes, including for general intelligence (for example, for an unknown or unspecified future policing purpose). In more recent times, that understanding has been challenged in the courts and by regulators and has called into question Police's authority to collect information (including images) for *general* intelligence for a known or unknown future lawful use.
32. Across Police, on a day-to-day basis, the ability to collect and use information is fundamental to the delivery of Police duties and functions. Through its wide-ranging frontline interactions with the community, this information can be used, for example, to:
 - support tasking and operational awareness for frontline Police
 - inform tactical and strategic responses to crime
 - enable effective investigation and resolution of offences committed
 - assist with the planning and execution of public safety and crime measures.
33. Information collected for general purposes also supports Police's roles in social support and cohesion. This enables Police to contribute to a broad range of interventions, including family harm, mental health, care and protection, youth offending, homelessness, anti-social behaviour, and reassurance policing. Indeed, the Policing Act recognises the important and valuable roles of others in supporting Police to deliver these functions.⁵
34. In all of these cases, the *specific* use for that information may not be known at the time of collection, although it will be in some way relevant to Police's lawful functions and duties. For example, the taking of a photograph of a passenger (known to Police) who has exited a vehicle that contains suspicious property.

Recording images in public and in some private places

35. As discussed above, the courts and regulators have called into question Police's authority to record images of people in public places, in a number of circumstances where Police had considered it was lawful to do so.
36. As a result, Police now has guidelines that taking photographs of members of the public can be a lawful collection of information during the execution of Police duties for *intelligence purposes*, but only where there is a reasonable link to a *particular or likely* criminal investigation. This is a narrower interpretation of intelligence purposes, and results in fewer images being recorded.
37. The flow-on effects of not collecting this information cannot be known. For example, in the case of *Tamiefuna*, without the photograph (which the officer had taken during the vehicle stop), there was insufficient evidence to link him to the violent home invasion, which resulted in the charges being withdrawn.

⁵ Section 10 Policing Act 2008.

38. Furthermore, when the recording of an image (including any future retention and use) may reach the threshold for being considered a search – the absence of a recognition that it is lawful for that collection is relevant to that assessment of the reasonableness of that search.

Restricting the circumstances in which Police can collect information or record images could have significant operational impacts

39. The uncertainty about personal information collected for general intelligence purposes, or whether recording an image will amount to a search (reasonable or otherwise), will make it difficult for frontline staff to know if their actions are lawful. Staff may be reluctant to collect information or record images. This could happen if they are unclear whether there is a sufficiently recognised lawful purpose and so they may be in breach of IPP1 under the Privacy Act. There could also be concern about the possibility of their actions being subsequently considered a search and/or an unreasonable search by the courts.
40. These uncertainties restrict the circumstances in which Police can routinely undertake data collection, such as photographing a suspicious vehicle or person in a public space (for example if there was no actual or likely investigation envisaged). The flow-on effects risk limiting Police decision-making, impacting the successful resolution of offences (such as the circumstances in *Tamiefuna*) and reducing Police's ability to keep communities safe and address public safety and security needs.
41. It can be assumed that the public expects that Police is empowered to effectively perform their duties. Therefore, any limitations to these functions (without being able to collect the information) could reduce public trust and confidence, particularly if it may compromise Police's ability to prevent and resolve crime. On the other hand, it is important to ensure that there are adequate checks, safeguards, and oversight. Settings should strike the right balance between law enforcement/public safety interests, and individual privacy rights. This is critical for ensuring that Police maintains public trust and confidence in its policing practices.

The Information Privacy Principles may also raise some issues with recording images

42. As noted above, Police may record images under a number of different scenarios (see paragraphs 6 to 9). This could include taking photographs of people in public or taking photographs when executing a search warrant. It might also include different types of less targeted continuous recording (such as through Police drones and the Eagle helicopter, and in the future, body-worn cameras (BWC) and Police dash-cams).
43. In these continuous recording contexts, images primarily collected for officer safety and integrity purposes, may also be required for other policing purposes such as crime prevention or investigative purposes. A narrow view of the lawful purpose of that collection and the necessity of the collection (as required by IPP1) may impact on Police's lawful ability to record and retain those images. Additional issues may also arise from IPPs 2, 3, and 10.
44. There is a requirement under IPP2 for information to be collected directly from the individual concerned, subject to exceptions. It is not clear the extent to which the recording of a person amounts to direct collection from them, particularly in all the different circumstances the recording may be made.

45. IPP3 requires that an individual is made aware of several matters, including that the information is being collected and the purpose of collection, subject to exceptions. Again, the different circumstances of recording may raise compliance risk where the circumstances do not neatly fit within the current exemptions.
46. IPP10 provides that information obtained in connection with one purpose may not be used for another purpose, subject to exceptions, including that the other use is necessary to avoid prejudice to the maintenance of the law. A number of lawful policing purposes may apply at the time of recording or after (including recording for integrity purposes that may subsequently have some evidential value). As such, modification of this IPP may be required to give greater legal certainty of Police's ability to use images for the full breadth of policing purposes.
47. For example, a narrow view of the IPPs discussed above may limit the situations in which a BWC can be activated, requiring an officer to constantly turn their mind to whether their BWC should or could be activated. This might happen during fast moving or volatile situations and could undermine the staff safety and public accountability benefits of BWC technology. This would also leave Police out of step with counterparts in other jurisdictions.

There is an opportunity to provide greater clarity for Police and the public

48. Given the uncertainties and constraints generated through these judicial and regulatory responses, there is an opportunity for Parliament to confirm its intent that Police may collect information for *general* intelligence purposes as part of exercising its lawful functions and purposes, and that the recording of images is lawful in public and other private places that Police may lawfully be.

What objectives are sought in relation to the policy problem?

49. The principal objective of clarifying Police's ability to undertake general intelligence gathering and the recording of images is to ensure Police's ability to achieve its lawful functions and that the powers enabling Police to gather general intelligence are clear, fit-for-purpose and effectively support Police's broad functions and duties. As such, clarification is important to meet public expectations and maintain trust and confidence.

What consultation has been undertaken?

50. The Government intends to proceed with legislation at pace in 2025, with the intention for enactment to occur this Parliamentary term. This has not enabled time for any public consultation. It is likely there will be high public interest during the Select Committee process, and there will be an opportunity for the public to make public submissions on the proposals.
51. Agency consultation, including with the Office of the Privacy Commissioner, was undertaken.
52. The Ministry of Justice (Justice) supports Police's ability to collect personal information for intelligence purposes, and to record images and sound from public places, to the extent that those activities are necessary to support one of Police's existing functions. However, Justice is concerned that the proposals do not provide sufficient assurances that there will be clear and transparent protections to ensure that Police's collection,

retention, and use of personal information remains proportionate to the actual policing value of that information.

53. Justice and the Privacy Commissioner are particularly concerned about the modifications to four of the Information Privacy Principles and impacts on the oversight of the Privacy Commission. The Privacy Commissioner strongly opposes authorising Police to record and keep personal information for an unknown use and has serious concerns about the potential impacts that these changes will have on the privacy of all New Zealanders and by extension their democratic rights and freedoms. The Commissioner is concerned the proposals go much further than returning Police to its previous operating state.

54. s.9(2)(g) OIA

Concerns were also raised about the lack of public consultation.

Section 2A: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

55. For this RIS we have used the following overall criteria to assess the options.

Criterion	Objective / Consideration
Effectively contributes to safety	The extent to which the option will: • support the functions, duties and associated activities of the New Zealand Police • prevent, disrupt and address crime and other harms • contribute to the safety and security of the public • contribute to the safety of Police.
Public trust and confidence	Whether the option (positively) impacts the public's sense of trust and confidence in Police, including their sense of safety, and the ability for law and order to be enforced. The public's confidence that Police: • solves and prevents crime • is transparent • proportionately responds to risks • has appropriate oversight/accountability.
Practical to implement	The extent to which the option: • is operationally feasible • requires additional investment or capability improvement • is futureproof in design • is responsive and supports current and future operational requirements.
Consistency with relevant privacy and human rights obligations	The extent to which the option is consistent with domestic and international laws and obligations, including: • the Privacy Act 2020 • the United Nations Convention on the Rights of the Child (UNCRC) • constitutional principles (including consistency with rule of law, procedural fairness, the New Zealand Bill of Rights Act 1990 and Te Tiriti o Waitangi).

What scope will options be considered within?

56. The non-regulatory option is the status quo. The taking of photographs for *general* intelligence purposes not related to an actual or likely investigation is not enabled, and generalised personal information gathering, including for general intelligence purposes, may or may not be lawful depending on a case-by-case assessment of the circumstances.

What options are being considered?

57. Assessment of the options is being split into four categories.
- i. options about Police's functions and lawful purposes (Options One and Two)
 - ii. options about recording images in public and when lawfully in private places (Options Three, Four, and Five)
 - iii. options about the application of Information Privacy Principles (Options Six and Seven)
 - iv. options about how further safeguards should be provided (Options Eight and Nine).

(1) Options about Police's functions and lawful purposes

Option One – status quo – uncertainty around intelligence purposes

58. The status quo under **Option One** means that Police's 'intelligence purposes' may have a narrower interpretation applied (such as needing to be related to an actual or likely investigation) even if there is a more generalised intelligence value to the collection of some personal information or recorded image (because an unknown future use is not recognised as a lawful purpose for collection).
59. Connections to other policing functions are also likely to be similarly confined, as well as application to other personal information.
60. Future legal and regulatory responses could further restrict how Police collects other personal information.

Option Two – recognising general intelligence gathering (preferred)

61. **Option Two** will clarify that Police may gather, obtain, receive, or record information that may be used now or in the future for any lawful purpose, including for intelligence purposes. Such information may have a *known* or *unknown* future use that contributes to any lawful purpose, including intelligence purposes.
62. This would confirm the important role that information has for enabling Police to undertake its lawful functions and duties, even if its value is for an unknown future use. Such *general* intelligence gathering will be a lawful purpose when it is necessary to support one of the other Policing functions or duties.
63. The Privacy Act (and Information Privacy Principles) will apply. However, a wider interpretation of a lawful purpose (ie information related to functions or duties that may have an unknown future use), will affect how they apply.
64. Existing section 11 of the Policing Act makes it clear that this option does not confer any additional powers on Police.

(2) Options about recording images in public and when lawfully in private places

Option Three – Status Quo – less clarity about lawfulness of recording images

65. The status quo under **Option Three** does not provide clarity about the lawfulness for all the circumstances under which Police may record images and sound in public where

there is generally a lesser expectation of privacy. A similar lack of clarity arises when Police are lawfully in private places and are recording what they may otherwise see or hear.

Option Four – lawful to record images and sound in public (preferred)

66. **Option Four**, which is consistent with the lower expectations of privacy in public spaces, will reaffirm it is lawful for Police to record images in public through various means of collection. Such recording could happen via mobile phone cameras, BWCs, Police Eagle helicopter footage, and drones etc where it is connected to a lawful purpose, function, or associated activity. It may involve targeted recording (such as the taking of a photograph) or more continuous recording (in the case of BWCs or dashcams).
67. While this option will provide a lawful starting point for all such actions, they will still need to be carried out in a reasonable and fair manner in each circumstance.

Option Five: lawful to record when lawfully in private places (preferred)

68. **Option Five** will provide that Police may record anything they can otherwise see and/or hear while lawfully in any private place, including when exercising search warrants, where it is connected to a lawful purpose, function, or associated activity. For example, this option will enable BWCs to remain on when an officer is inside a residence, for example when executing a search warrant.

(3) Options about the application of Information Privacy Principals (IPPs)

69. This section considers how the Information Privacy Principals in the Privacy Act 2020 should apply if Options Two, Four and Five are progressed.

Option Six – Status Quo – IPPs apply to all options

70. Under **Option Six**, the IPPs will apply to all Options. These work together to provide a framework that governs how agencies can collect, store, use, and share personal information.

Option Seven – IPPs are modified for Options Four and Five (preferred)

71. Under **Option Seven**, modifications will be made to some of the IPPs in relation to the recording of images and sound under Options Four and Five.
72. This will include making it clear that, for the purposes of IPP1(b), the recording enabled under Option Four and Five shall be regarded as necessary for the discharge of Police functions and lawful purposes.
73. Necessary modifications to IPP2 and IPP3 will also be made to enable recording of images and sound even if not collected directly from the person, and to address the different circumstances of the recording that may not neatly meet the IPP3 exemptions.
74. A number of lawful policing purposes may apply at the time of recording or after (including recording for integrity purposes that may subsequently have some evidential value). Modification of IPP10 may be required to give greater legal certainty of Police's ability to use images for the full breadth of policing purposes.

(4) Options about how further safeguards should be provided

75. This section considers how any further safeguards should be provided.

Option Eight – Counterfactual – enhanced operational safeguards (preferred option)

76. Under **Option Eight**, internal controls and settings will be enhanced to manage personal information and to meet privacy obligations. A project team will be established to evaluate internal policy settings and internal monitoring practices, and to consider any opportunities for additional internal controls or safeguards. Subject to the modifications discussed under Option Seven, Police will still be required to meet obligations under the Privacy Act.

Option Nine – operational and legislative safeguards

77. Under **Option Nine**, there would be a continuum of operational and legislative safeguards applied to the different options, as well as to some of the activities Police already undertakes. This would be beyond the requirements already in the Privacy Act (noting proposed modifications under Option Seven that affect the proposals relating to recording images).

78. These could be provided in primary and secondary legislation, and could prescribe:

- thresholds and rules for collection in different circumstances, including distinguishing between different levels of activity (in terms of intrusiveness)
- special protections for the collection of information on vulnerable populations, such as children and young people
- record keeping and reporting requirements
- review and auditing processes
- enhanced oversight of Police activities by external bodies
- relationship with other legislation.

How do the options compare to the status quo/counterfactual?

(1) Options about Police's functions and lawful purposes

	Option One: Status Quo – uncertainty around intelligence purposes	Option Two: Recognising general intelligence gathering (preferred)
Effectively contributes to safety	0 <i>Police's ability to effectively contribute to safety, not only through the constraining effect that this uncertainty may have for frontline decision-making, but also by reducing opportunities to build insights from the operational intelligence. The status quo may also reduce the ability for Police to use the information to support our broader policing functions.</i>	+ <i>Maintains links to Police functions and duties, but enables the information to have a known or unknown future use that contributes to any lawful purpose, including intelligence purposes. Information gathering contributes to tasking and operational awareness for frontline Police, as well as tactical and strategic responses to help disrupt organised crime. Information can also be used to assist Police to plan and undertake public safety measures, and to contribute to responses to major national hazard events. Information can inform and direct crime prevention initiatives, nationally, regionally and in partnership with communities.</i>
Public trust and confidence	0 <i>The public expects Police to have access to the necessary information to deter, detect, and respond to crime, especially as the criminal and social harm environment changes. Any constraints on Police's ability to collect this information will impact law and order and public safety outcomes, impacting trust and confidence in Police.</i> <i>However, Police is aware there is public concern, as demonstrated through the OPC/IPCA joint review findings, around perceived intrusion on privacy, the limits of Police's collection powers, and how personal information is retained.</i>	0 <i>The public expects Police to have access to the necessary information to deter, detect, and respond to crime, especially as the criminal and social harm environment changes.</i> <i>However, there is likely to be public concern around perceived intrusion on privacy, the limits of Police's collection powers, and how personal information is retained.</i> <i>Public trust and confidence may be enhanced with appropriate safeguards for collection, retention and storage. However, social licence has not been tested through public consultation.</i>
Practical to implement	0 <i>No additional implementation impacts as this is current policing practice, however, uncertainty would remain.</i> <i>Police may consider updates to information management practices in line with the recommendations of the OPC/IPCA Joint Report.</i>	+ <i>Feasible to implement through legislative change and operational guidance as continues the status quo while removing uncertainty. Provides legislative clarity and flexibility, which will in turn enable clarification of operational guidance for frontline staff, enabling them to make appropriate assessments to support everyday decision making.</i>

Consistency with relevant privacy and human rights obligations	0 <i>The status quo is currently consistent with privacy and human rights obligations. The Privacy Act and all IPPs currently apply. 'Special protections' for children and young people will continue to apply, in line with the UNCRC and Oranga Tamariki Act.</i>	0 <i>Information gathering, whether it is used now or in the future, must be linked to a lawful policing function, and the Privacy Act and IPPs still apply. 'Special protections' for children and young people will continue to apply, in line with the UNCRC and Oranga Tamariki Act.</i>
Overall assessment	0	+

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

(2) Options about recording images in public and when lawfully in private places

	Option Three: Status Quo	Option Four: Recording images and sound in public (preferred)	Option Five: Recording images in private etc (preferred)
Effectively contributes to safety	0 <i>Police can record images in public, but this ability has become more limited following the outcomes of Tamiefuna and the OPC/IPCA Joint Report. This Report also narrowed the circumstances Police may record in private places when executing a warrant under the Search and Surveillance Act (s47).</i>	+	+
Public trust and confidence	0 <i>The public expects Police to have access to the necessary information (such as photographs or recordings) to deter, detect, and respond to crime, especially as the criminal and social harm environment changes. However, we are aware there is public concern, as demonstrated through the OPC/IPCA joint review findings, around taking of photographs (particularly of youths) and the perceived intrusion on privacy, and how such personal information is retained by Police. Status quo settings respond to these concerns.</i>	0 <i>The public expects Police to be enabled to appropriately to deter, detect and respond to crime. This option enables the creation of a better record of what Police can see, which may be instrumental to the solving of a crime. However, there is likely to be public concern around perceived intrusion of privacy, as an image is sensitive biometric data. This concern can be mitigated through appropriate safeguards for collection, retention and storage. Taking continuous recordings, such as through BWCs, supports Police accountability and integrity by allowing for a record of events.</i>	0 <i>This option has the same benefits and concerns as Option Four.</i>
Practical to implement	0 <i>No additional implementation impacts as this is current policing practice. In the absence of a clear authority, Police's ability to record information in public requires a case-by-case assessment by a</i>	+	+

	frontline officer of whether the circumstances may amount to a search, taking into account what will happen to the image (such as retention on Police systems) and then determining whether that search was reasonable (in accordance with NZBORA). This assessment is overly complex for a dynamic environment and may need to be undertaken by thousands of frontline staff multiple times across every shift.	Statutory clarification simplifies assessments for frontline officers around the circumstances in which images can be taken. Creates enduring legislation which will enable safe and practical use of new law enforcement technologies, such as body-worn cameras.	assessment for frontline officers, however guidance is feasible to implement through operational policy and increased access to updated training. This option creates more enduring legislation and enables safe and practical use of new law enforcement technologies, such as body-worn cameras.
Consistency with relevant privacy and human rights obligations	0 The status quo is currently consistent with privacy and human rights obligations. The Privacy Act and all IPPs currently apply. OPC and IPCA maintain an oversight role to ensure ongoing consistency with privacy and human rights obligations. 'Special protections' for children and young people apply, in line with the UNCRC and Oranga Tamariki Act.	0 Recognises lower expectations of privacy in public spaces. OPC and IPCA continue to maintain an oversight role to ensure ongoing consistency with privacy and human rights obligations. Recording of an image that amounts to a search must still be reasonable - but clarifies that taking recording the image is lawful. 'Special protections' for children and young people will continue to apply, in line with the UNCRC and Oranga Tamariki Act.	0 Similar to Option Four, however expectations of privacy will be greater in private places. Recording will only be of what an officer could otherwise see or hear, to create a better record. Recording of images that amounts to a search must still be reasonable. However, confirms that the recording is lawful.
Overall assessment	0	+	+

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

(3) Options about the application of Information Privacy Principles (IPPs)

	Option Six: Status Quo – IPPs apply to all Options	Option Seven: IPPs modified for Options Four & Five (preferred)
Effectively contributes to safety	0 <i>IPPs 1(b), 2, 3 and 10 have been identified as problematic in relation to the recording of images and sounds under Options Four and Five. For example, If Police is limited in the images it may record (including with BWC) this could undermine staff safety and public accountability benefits.</i>	+ <i>Modifying the application of IPPs 1(b), 2, 3 and 10 – as they relate to the taking of images and/or sounds (Options Four and Five) – makes it clear that the recording of this information is allowed, including where it involves continuous collection. These modifications ensure that Police can continue to record images and sound where necessary to support all of our policing functions and purposes. All other IPPs will continue to apply, ensuring that they provide reasonable protections and safeguards, especially in relation to retention, fair use, and method of collection.</i>
Public trust and confidence	0 <i>The IPPs work together to provide a framework that governs how agencies can collect, store, use, and share personal information. Application of the IPPs provides assurance to the public that their privacy rights are being upheld.</i> <i>Full oversight from OPC supports transparency and accountability mechanisms, maintaining public confidence that Police practices are subject to appropriate scrutiny and that Police is accountable for complying with privacy obligations.</i>	- <i>Modifying the application of some IPPs may lower public trust and confidence. There is a risk that the public may perceive the modifications as an exemption from privacy principles, possibly increasing concerns that Police are intruding on the public's privacy rights.</i> <i>The modifications to IPPs 1(b), 2, 3 and 10 will only be to the extent required to enable the recording of images, and Police will still be subject to the other IPPs. Concerns can be addressed proactively in any public communications to build public understandings.</i> <i>OPC and IPCA oversight mechanisms will remain in place to ensure Police transparency and accountability, though tempered by the modifications. This may support the public having confidence that Police practices are subject to appropriate scrutiny.</i>
Practical to implement	0 <i>As noted above, IPPs 1(b), 2, 3 and 10 have been identified as problematic – particularly in relation to continuous recording (such as BWC and dash-cams). Use of these could therefore become impractical and/or constrained.</i>	+ <i>Feasible to implement through legislative change.</i> <i>This proposal enables flexible, future proofed legislation by modifying the application of IPPs 1(b), 2, 3 and 10 so that they do not unnecessarily impede lawful policing functions (being the recording of images).</i>

Consistency with relevant privacy and human rights obligations	0 <i>The status quo is currently consistent with privacy and human rights obligations.</i> <i>The Privacy Act and all IPPs currently apply, including the clarified settings following the OPC/IPCA Joint Report.</i> <i>OPC and IPCA maintain an oversight role to ensure ongoing consistency with privacy and human rights obligations.</i>	0 <i>The proposal will maintain consistency with human rights obligations, including through operational policy guidance and settings. However, by modifying the application of IPPs 1(b), 2, 3, and 10, it may impact the extent of the safeguards imposed by some IPPs on policing practices.</i> <i>OPC and IPCA maintain an oversight role to ensure ongoing consistency with privacy and human rights obligations.</i>
Overall assessment	0	+

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

(4) Options about how further safeguards should be provided for Options Two, Three, and Four

	Option Eight – Counter-factual – enhanced operational safeguards (preferred)	Option Nine – further legislative and operational safeguards
Effectively contributes to safety	0 <i>Operational safeguards (including training and guidance) provide greater flexibility for Police to respond to the needs and requirements of the day, including as types of crime and behaviours change. This will better enable Police to respond and contribute to public safety. Guidelines align with requirements under the Privacy Act.</i>	- <i>There is a risk that legislative requirements could be overly prescriptive and/or have an unintentional constraining effect. This would be time-consuming to amend, and could mean staff may be less likely to collect information or record images. This would likely compromise any benefits associated with the option.</i> <i>Not comparable to other prescriptive requirements (e.g. those associated with identifying particulars in the Policing Act), due to the scale of activity. Legislative prescription would also reduce the ability to respond flexibly to developments.</i>
Public trust and confidence	0 <i>Internal policies and guidance will be made public for transparency. Police intends to maintain appropriate safeguards through existing internal and external accountability mechanisms, including internal governance and assurance, the IPCA, and the OPC.</i> <i>This option does not shift Police significantly from the position prior to the OPC/IPCA Joint Report in relation to the recording of images but clarifies that it is lawful for Police record images in public and when lawfully in private places for lawful purposes, which includes future or unknown uses.</i> <i>As noted elsewhere, Police will continue to identify and consider ways in which existing operational safeguards can be deepened, including ICT system changes (with appropriate investment).</i>	+ <i>It is possible this option could lower trust and confidence if Police cannot comply with the requirements of an authorising framework. However, greater oversight of Police may result in higher trust and confidence through statutory clarity and transparency on Police operations.</i>
Practical to implement	0 <i>This option is flexible and reactive to any unintended consequences. Operational guidance can be update more quickly and easily to respond to legal interpretations and operational outcomes.</i> <i>It maintains operational independence and is tailored to an understanding of Police front-line realities, operational practice and decision making, which is in line with Privacy Act and other requirements.</i>	- <i>There is a risk that requirements could be overly prescriptive with different tests applying to different circumstances for each function and complex reporting and review requirements – which could be impractical to implement (leading to non compliance), not provide enough flexibility in the complex operational environments Police works in, and could have unintended consequences. Compliance costs may be disproportionate to the risks being managed.</i>

	<i>The establishment of a regulation making power will enable a mechanism for providing for any required conditions, procedures and authorities related the recording of images/sounds.</i>	
Consistency with relevant privacy and human rights obligations	0 <i>Operational guidelines will give effect to Police’s privacy obligations, and can be developed and/or consulted on with OPC/Justice. This option strikes a better balance between operational requirements and privacy interests. Individuals can still make complaints to OPC and IPCA, as well as the Ombudsman. Special protections can be addressed through operational guidance.</i>	0 <i>Further legislative safeguards, for example via a bespoke authorising framework, would give greater specificity on how the Policing Act gives operational effectiveness to Privacy Act IPPs and human rights considerations.</i>
Overall assessment	0	-

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Preferred options

79. The preferred package of options that best addresses the identified problems, meets the policy objectives, and delivers the highest net benefits is a combination of:
- **Option Two** (recognising *general* intelligence gathering)
 - **Option Four** (lawful to record images and sound in public)
 - **Option Five** (lawful to record when lawfully in private places)
 - **Option Seven** (IPPs apply to Option Two with some modified for Options Four and Five)
 - **Option Eight** (enhanced operational safeguards).
80. This preferred package of options will enable Police to effectively deliver its policing functions, including to prevent, disrupt, and reduce crime, and to keep communities safe.

Information is fundamental to the policing task

81. **Option Two** (recognising general intelligence gathering) provides statutory recognition that as part of its wider policing functions, Police may lawfully collect information that can be used now, or in the future, for any lawful purpose, including for intelligence purposes, whether that information has a specific known or unknown use that contributes to any lawful purpose.
82. All police functions and duties rely on information gathered through the interaction with the community as part of general policing, and its effective collection and use. This is a fundamental activity underpinning the functions of policing, including Police's public safety and prevention functions. Information gathering contributes to tasking and operational awareness for frontline Police, as well as tactical and strategic responses to help disrupt organised crime. It is also used to assist Police to plan and undertake public safety measures, and to contribute to responses to major national hazard events. Information can also inform and direct crime prevention initiatives, nationally, regionally and in partnership with communities.
83. General intelligence that is collected from these wide-ranging frontline interactions, and that may record personal information, supports the development of well-targeted interventions and the identification of suspects for offences. Thus, police tasking, support functions, trust and confidence in Police, and effectiveness in community engagement, are all influenced by information Police may gather, and how Police's information holdings are maintained and used.
84. As the *Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019* recently observed, Police's "ability to collect and analyse information about risks in and against communities is critical to the prevention of crime".
85. The methods and channels by which Police collects personal information have changed as a result of technological developments. New technology capabilities are supporting policing practices here and internationally, and are creating new opportunities for more

effective policing. Some of this personal information may have an unknown specific intelligence use at the time of collection. Option Two will ensure that personal information gathered for such *general* intelligence purpose, including in the ways discussed in the following paragraph, will be lawful when related to Police's wider functions. This will provide the foundation for Police to deliver against wider policing objectives and functions, beyond the sole intent to investigate a particular criminal incident.

86. Technologies include use of body worn cameras, mobile phones, high-resolution cameras, drones, Police Eagle helicopter footage, Closed Circuit Television (CCTV) camera networks in urban and rural locations, Automatic Number Plate Recognition (ANPR), retail camera convergence platforms (for example, Auror and SaferCities), online open-source search tools, waste-water testing, and geospatial and geolocation tools. Separately, and in combination, these tools enhance Police's ability to gather information to support Police to deliver its policing functions and duties.
87. Information gathered for general intelligence purposes provides the foundation for Police to deliver against wider Policing objectives and functions, beyond the sole intent to investigate a particular criminal incident. However, this needs to be balanced against legitimate privacy rights. The Privacy Act IPPs will continue to apply.

Recording images in public and private – with modifications to IPPs

88. **Option Four** (lawful to record images in public) and **Option Five** (lawful to record when lawfully in private places) will provide recognition that such recording by Police is lawful.
89. Full use of body-worn cameras will be enabled without uncertainty as to whether the cameras should be turned off or on at any given time (including in times of high volatility). There could be many reasons for a camera to be on at any particular time, including for officer safety, and integrity, and during the course of interactions. In addition, the nature of an event may rapidly change (such as a routine traffic stop could move into a warrantless search for firearms or an assault on an officer). There are lower expectations of privacy in public places, and officers should be able to take an accurate record of what they can see. Similarly, dash cams will be able to be kept on.
90. Often, the information recorded is no more than what an officer can see and hear in these places. However, it is the quantity of information that can be recorded at any point in time that provides additional operational value. For example, the use of BWCs in other policing jurisdictions enables Police to collect information from end-to-end interactions with the public. This enhances both the staff safety, integrity and public accountability benefits of collecting this information.
91. **Option Seven** (IPPs 1(b), 2, 3, and 10 modified in relation to Option Four and Five recording of images), will address the issues discussed at paragraphs 4242 to 4747 above. IPP1(b) will be modified to the extent needed to provide that the recording shall be regarded as necessary for the discharge of Police functions and lawful. IPP2 will be modified so that the recording does not need to be obtained directly from that person. IPP3 would be modified so that Police would not need to directly notify a person of why the image was recorded (for example when the recording is done at a distance), where collection is related to a lawful purpose or associated policing function or activity. IPP10 will be modified to give greater legal certainty of Police's ability to use images for the full breadth of policing purposes.

92. However, there will be an increased impact on people's privacy, and a risk of over collection and over-retention. Police guidelines and policies about retention and deletion will be critical for managing these risks.

Further safeguards

93. Since its formation, Police has been managing the collection, use and retention of personal information, given its centrality to the Police role and the delivery of its policing functions. Times have moved on from pen and paper collection of information, and today, and in the future, technology is fundamentally shaping how information is collected, used and retained. There is a corresponding increasing risk that the use of this technology may also result in unreasonable intrusions into personal privacy.
94. Under **Option Eight** (enhanced operational safeguards) Police will use existing and further developed internal controls, operational monitoring and external oversight mechanisms to support the preferred options and to maintain privacy obligations.
95. Existing safeguards will continue to apply, including the need to comply with the Privacy Act (except where the application of specific IPPs is modified in relation to recording images and sound) and those provided by Police's guidance and policies that implement these principles.
96. A regulation making power will provide a mechanism for providing for any required conditions, procedures and authorities related the recording of images/sounds under Options Four and Five.
97. Police will also need to consider strengthening existing operational safeguards, published guidance and external assurance, particularly as it relates to the wider general intelligence information that will continue to be collected and the additional recordings that will be lawful to be taken.
98. In particular Police will seek to:
- improve information management systems and internal controls
 - enhance systems capability and the means of controlling collection and confining authorised use of personal information to lawful purposes
 - enable improved monitoring, assurance and transparency through:
 - progressing *operational monitoring* of information management practices and policies across the organisation through existing internal governance and assurance mechanisms, and publish guidance and policies to provide assurance and transparency
 - maintaining *external oversight* by both the IPCA and OPC who can scrutinise Police practices and ensure accountability.
99. Under this option, as part of the development of appropriate internal safeguards, Police will consider future capability improvements in information management infrastructure, networks and ICT systems, to maintain probity and enhance control mechanisms for the collection and use of personal information. Police will consult with the OPC and the Ministry of Justice During the development of these safeguards.

100. As discussed further in the Implementation section, further information management investment will assist with strengthening these safeguard, ensuring Police is meeting its current requirements, and maintaining public trust and confidence. Whether any investment required will be met through existing baseline, or through a Budget bid, would be addressed through any necessary assessment.

NZBORA implications

101. The preferred options may engage the New Zealand Bill of Rights Act 1990 (NZBORA) including section 14 (freedom of expression)⁶ and section 21 (unreasonable search and seizure)⁷. Any limitations may still be reasonable and demonstrably justified.
102. Option Two (recognising Police's *general* intelligence gathering) will maintain Police's capacity to meet Police's statutory functions, core policing goals, support the frontline and enhance Police's ability to maintain public safety and security.
103. Options Four and Five confirm it is not unlawful for Police to record images in public and in private places they may lawfully be. This will reaffirm that it is not reasonable to expect that activities that occur in public or that can be seen by a police officer who is lawfully present are private. Collecting or recording such information should not be considered a search.
104. However, while this provides a different starting point for a court to assess the lawfulness/reasonableness of Police activities, courts would still be able to assess whether what happened in the circumstances was a search and/or unreasonable. Similar to other searches that are conducted pursuant to a lawfully issued warrant which may still breach section 21 – the recording under these options could still constitute an unreasonable search and seizure if carried out unreasonably in the circumstances.

Population implications

105. The proposed amendments to the Policing Act relating to Police's authority to collect, use and retain information from public places, places Police is lawfully allowed to be, and that is publicly available online, may have specific implications for two population groups, namely Māori and children and young people. We discuss the potential population implications in more detail below.

Children and Young People

106. Criminal offending by children and young people has significant impacts not only on the young person themselves and their wellbeing, development, and ability to engage and participate fully in society, but also on their family, the wider community and victims of criminal behaviour.

⁶ This NZBORA right ensures that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form. Three core freedoms in this right include the right to (1) actively pursue information; (2) access information without interference; and (3) to share ideas and opinions freely.

⁷ This NZBORA right ensures everyone has the right to be secure against unreasonable search or seizure, whether of the person, property, or correspondence or otherwise. This right: (1) protects individuals from unjustified state intrusion, (2) applies broadly and covers physical searches, digital surveillance, property inspection, and data access, and (3) applies a reasonableness test so a search or seizure may be assessed as reasonable based on context, associated with the manner of the search or seizure and its proportionality.

107. It is recognised that most serious adult offenders have a prior history of offending dealt with by the Youth Court. Early identification of repeat offenders is important for intervention methods, wrap around support and crime prevention efforts.
108. Police is responsible for about 80 percent of the responses to children and young people who offend, through the use of Alternative Actions and other diversionary approaches set out in the Oranga Tamariki Act (1989) (OT Act). Alternative Actions keep the vast majority of young people out of the Youth Court and support the wider aim of the system to keep them out of the formal justice system.
109. Both early intervention and responding to offending by children and young people requires Police to address the behaviour as well as the environment of the child and young person. Better access to information recorded by Police both in public and private places that Police is lawfully allowed, on children and young people, their family and those environments, will assist Police to respond and reduce risk of reoffending. For example, Police attendance at family harm incidents might identify genuine care and protection concerns, and information collected about any child/ren or young person/s at an incident can be used to help inform appropriate cross-agency responses.
110. The preferred options are seeking to prescribe in legislation a greater ability for police to record images and/or sound and continuous recording for lawful purposes (even when the relevant specific future use may be unknown at the time) which will ultimately have implications for children and young people.
111. Police acknowledges that there are a range of risks associated with a greater ability to collect images, some of which were raised in the joint OPC/IPCA inquiry into Police conduct when photographing members of the public (OPC/IPCA review).
112. In particular we recognise this proposal may result in following risks:
- possible increased collection of images of children and young people
 - possible increased collection of images of children and young people who are disproportionately represented in the criminal justice system
 - possible overcollection, unintended profiling and long-term retention of data.
113. However, the preferred options are not intended to enable unrestricted data collection on children and young people. Police will maintain a number of protections to preclude unlawful collection of information of children and young people, as discussed below.
114. The preferred options prescribe specific collection parameters:
- images can only be collected when for a lawful purpose, function and associated activity – such as keeping the peace, maintaining public safety, law enforcement, crime prevention, and community support
 - can only be collected when lawfully in public or private places.
115. Police recognise that children and young people, especially those facing vulnerability, are entitled to special protections to ensure their interests are prioritised and the influence of offending behaviours on their life outcomes is reduced. These protections are outlined through New Zealand and international law and will continue to apply to this proposal. Specifically:

- The OT Act:
 - The OT Act sets the youth justice principles and seeks to protect and prevent children and young people interacting with the justice system for criminal offending. The OT Act guides all Police interactions with children and young people, even where other legislation provides authority for Police actions – for example, Police is still governed by the OT Act in the collection of data or DNA from children and young people.
 - This proposal will not alter the application of the OT Act. Police will continue to be governed by the principles and purposes of the OT Act in all of their interactions with children and young people. This includes the youth justice considerations of the well-being and best interests of the child or young person, public interest, the interests of any victim and the accountability of the child and young person.
 - Additionally, the Independent Children’s Monitor provides an oversight function that includes Police, notwithstanding the oversight role of the OPC and IPCA. Application of the OT Act is also subject to judicial oversight.
 - UNCRC -
 - UNCRC sets out specific children’s rights in international law. Rights of relevance to the law enforcement context are:
 - the right to the Government making sure the best interests of the child are taken into account when making decisions about the child
 - protection from discrimination
 - special measures to protect those that are in conflict with the law.
 - The principles of the UNCRC are already incorporated into New Zealand legislation through the OT Act. As the OT Act will continue to apply, so too will the provisions set out in the UNCRC.
116. As described above, the proposed options will modify the application of the Privacy Act IPPs 1(b), 2, 3 and 10.
117. The amendment of the application of these privacy principles may create the perception that Police are unchecked in their ability to record images and that children and young people may be unable to challenge information being collected or used by Police.
118. While the privacy principles application will be clarified, the OT Act still applies to information collected on children and young people. The OT Act includes information sharing provisions between agencies, which put limits on the disclosure of information obtained. Children, young people and their whānau retain agency over their information and can request this through already established processes such as the OIA.
119. All other privacy principles will continue to apply which will maintain fairness in the manner of collection, and to ensure that collection does not unreasonably intrude on the privacy of individuals, and that retention is necessary for a policing purpose.
120. As discussed above, the preferred options are not seeking to legislate additional protections for the collection, use and retention of images for children and young people because:

- the existing requirements of the OT Act, UNCRC and Privacy Act, continue to apply to children and young people,
 - children and young people are not the specific focus of the legislative change,
 - this creates a risk that information will be unable to be collected on (potential) offenders which will impact on Police's ability to reduce victimisation, prevent and address criminal offending by children and young people, and carry out policing functions,
 - the Policing Act does not explicitly reference special protections for children and young people in relation to other policing functions or duties,
 - legislating special protections will remove the ability for Police to consider the necessity of collecting and retaining this information on a case-by-case basis.
121. At present, Police give effect to their obligations to children and young people through compliance with legislation including the Policing Act, the Privacy Act, the OT Act and internal operational guidance and policies. This guidance, and associated training for frontline Police was updated following the recommendations of the OPC/IPCA review.
122. Police will continue to consider and give effect to its obligations through internal operational practices, policies and guidance.
123. Police will continue to ensure that requirements outlined in UNCRC, the OT Act principles of youth justice and the Privacy Act, where applicable, for the collection, use and retention of images of children and young people are maintained.
124. This will include consideration of reasonable safeguards on the collection, use and retention of youth information provided for through:
- operational guidance to Police staff on what additional considerations should be made specific to children and young people, including necessity and proportionality
 - communication on Police's position, guiding principles, objectives and intended actions.
125. Recent guidance has been published by the Privacy Commissioner on the collection, use and retention of photography and filming of children and young people. This guidance will inform Police's internal settings to mitigate any disproportionate impacts from this legislative change and place appropriate safeguards on the retention of children and young people's information.
126. Time pressure has meant engagement on the preferred options in terms of specific impacts for children and young people has been limited. Further engagement with the OPC, Mana Mokopuna - Childrens Commissioner, Ministry of Justice and Oranga Tamariki will be required as the preferred options are implemented.

Māori

127. Māori are over-represented in the criminal justice system and as victims of crime. They are also over-represented in their interactions with Police. As such, Māori may be disproportionately impacted by the operationalisation of the preferred options.

128. The proposal will reaffirm Police's authority to collect, use and retain information that may relate to Māori. While this reaffirmed authority may mean further identification of criminal offending by Māori, through further interactions with Police, the proposed changes will further assist Police in its crime prevention and community policing functions, which will deliver benefits to iwi, victims of crime, and the wider community.
129. It will also assist Police to tailor efforts, in partnership with Māori, to support broader work to build resilience against serious organised crime in communities, and prevention of such criminal harms. These crime prevention initiatives are regularly reviewed to improve practices, with and by Māori and can be better tailored by an enhanced Police and iwi understanding of community and regional risks.
130. Police will continue to consider and give effect to its obligations to Māori and the Treaty, including ways in which any disproportionate impacts to Māori can be appropriately mitigated, as well as data sovereignty issues. Police will manage these considerations in the operationalisation of the Bill, including through the development of internal operational practices, policies and guidance.

Consistency with the obligations under te Tiriti o Waitangi – the Treaty of Waitangi

131. Time pressures have meant that the consideration of proposals through a Treaty of Waitangi lens, as advised in the Cabinet Office Circular CO (19), and policy quality guidance from the Policy Project within the Department of the Prime Minister and Cabinet (DPMC), has been limited.
132. The Crown is obligated to give effect to the articles of the Treaty of Waitangi, and the Government has related responsibilities under international law, for example regarding non-discrimination obligations under the United Nations Declarations on the Rights of Indigenous Peoples. New Zealand Police also has an overarching value of commitment to Māori and the Treaty of Waitangi.
133. There are two ongoing Waitangi Tribunal inquiries that relate to the operation of the criminal justice system. These inquiries have not yet been finalised, but they have identified that te Tiriti o Waitangi obliges the Crown to respond to the overrepresentation of Māori in the criminal justice system⁸.
134. Article One of the Treaty relates to 'good government' meaning government conducted with due regard to the people it governs. Under this article, the Policy Project directs policy makers to consider the specific effect of proposals on different Māori groups and demonstrate that the policy meets the good faith obligations of the Crown. The limited consultation has constrained Police's ability to identify the specific effects of the proposed policy on Māori victims, offenders, and communities. There has been limited time to engage Māori in the development of the proposed proposals, despite data showing that Māori could be an impacted population, due to overrepresentation in the criminal justice system.
135. Article Two of the Treaty guarantees tino rangatiratanga and decision-making rights over resources and taonga. Given the limited time for consultation, Police is still working through understanding the implications of the proposal in regard to Article Two. Data sovereignty will be a relevant consideration. Through implementation, internal

⁸ WAI 2700 'The Mana Wāhine Kaupapa Inquiry' and WAI 3060 'Te Rau o Tika Justice System Kaupapa Inquiry.'

information controls and settings will be reviewed to identify opportunities to enhance management of personal information and ensure Police continues to meet privacy obligations.

136. Article Three of the Treaty guarantees Māori equal rights as subjects of the Crown. The proposed policy will impose the same rights and obligations on all citizens, including Māori and non-Māori citizens. However, Māori are already overrepresented in the criminal justice system, which means the proposals may result in further disproportionate representation for Māori, particularly if the information is used for evidential purposes. This could have negative implications for trust and confidence in the criminal justice system, especially, but not exclusively, among Māori.
137. Conversely, the preferred options may also disproportionately impact Māori in a positive way. Māori are more likely than the New Zealander average to be victims of crime. Pursuing the options could result in greater prevention, prosecution and resolution of crime on behalf of the Crown, victims and the wider public – which may impact Māori positively given the higher rates of Māori victimisation.
138. However, as noted, Māori have not been consulted to provide their perspective on this issue. The timeframes have not enabled consultation with any population groups, including Māori and it could therefore be argued that the Crown has failed to recognise its obligations to protect the rights and privileges of Māori, therefore potentially being inconsistent with the Crown's obligations under the Treaty, as well as negatively impacting Police's ability to uphold the commitment to Māori and the Treaty of Waitangi. However, consideration of issues and mitigations specific to Māori, including around data sovereignty, will be considered through implementation and development of any subsequent policies and/or practises.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

139. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups <i>(identify).</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
The public, particularly people in public spaces	Ongoing impacts to the public, including expectations of privacy and risks of over-collection - but the individual impacts will be ad hoc and	Low Lower expectations of privacy in public. Knowledge of Police ability to record and use information available online or in	Low Qualitative assessment, impacts may vary.

	mitigated by retention settings. Prior to the <i>Tamiefuna</i> judgment, there was a low expectation of privacy in public places, which is also illustrated by the lack of provision for warranting requirements for public surveillance in the Search and Surveillance Act.	public places, may confine certain activities, or moderate behaviours.	
Police	Updated training and guidance required (funded out of baseline). Police will continue to consider what system enhancements might best support our information management practices – subject to the necessary investment for this option.	Medium The scope of guidance and Police instructions development would be minimal, as polices and instructions are already developed and revised systematically as a business as usual obligation of Police. Future ICT development cost and data controls and capability investment may be material, and will need to be considered in future budget cycles.	Medium OpEx and CapEx operations costs would need to be established in Police operational business planning, for the preferred option(s) indicated in this RIS, and also related to other ICT system investments for privacy and information management needs.
Frontline safety	Maintenance of the collection and use of information for operational intelligence – likely to support situational awareness and tasking, and safety for the frontline, but may come with enhanced expectations and costs (for example, around strengthening existing information management systems and processes).	Low With better informed operational intelligence coming from information available in Police – this may raise expectations for mitigation of frontline risks in the field and for certain operations.	Low Causal impact on frontline safety will be incremental.

Victims of crime and communities	- no net cost	- no net cost	- no net cost
Total monetised costs		Low / Medium	Low
Non-monetised costs		Low / Medium	Low
Additional benefits of the preferred option compared to taking no action			
The public	Ongoing - greater certainty about Police powers; benefits from Police having clear authority to undertake collection for lawful purposes functions and associated activities. Greater public confidence in policing as a result of being able to prevent and respond to public and social harms more effectively.	High Net improved benefit considerable for both public safety and security, and crime prevention.	Medium Public trust supported by transparency of operation policies and guidance. Future investment in ICT systems and processes will further enhance public trust and confidence.
Police	Ongoing - greater certainty about powers; assists with more effective undertaking of policing functions and duties.	High Would manifestly support the lawful purposes, functions, and associated duties of Police.	Low Estimates of impact on particular functions and activities need further quantification with qualitative examples.
Victims of crime and communities	Better ability to resolve criminal investigation, disrupt crime and undertake crime prevention. Harms to victims and communities may be reduced though a chilling of criminal behaviours in public places, because of more effective recording of criminal behaviours in public places.	Medium Incremental improvements in resolution of criminal investigations, crime disruption and crime prevention can significantly reduce societal community and individual harms.	Low Estimates of impacts and activities need further development quantitatively.

Frontline safety	Effective information recording and use may support frontline safety through better operation intelligence, and risk mitigation for those on the front-line.	Medium Reduced harm to both staff and offenders (i.e. relating to operational risk insights generated from information gathered).	Low Operational impacts have been assessed through qualitative examples.
Total monetised benefits		Medium	Low
Non-monetised benefits		Medium	Low

140. There are low direct monetary costs associated with the proposal. Those Police costs with the exception of future wider ICT systems investments that may be driven outside of the proposal RIS preferred option reforms.
141. Police is actively working on improvements to information management and controls and will continue to consider future improvement of its information management systems, and what investment may be required to support any future system-level changes and ICT-based information management controls, for both the preferred RIS and other Policing and privacy obligation benefits.
142. This is discussed further in the following section.

Section 3A: Delivering an option

How will the proposal be implemented?

143. The preferred options will require legislative amendments to the Policing Act 2008.
144. Police will be responsible for the implementation and ongoing operationalisation of these changes.
145. To implement the preferred options, Police will:
- review and make necessary changes to relevant operational policies and guidance, including relating to vulnerable populations, such as children and young people
 - provide communications and, if required, training to Police employees.
146. As part of the implementation work going forward, Police will consult with OPC to inform the development of operational safeguards, including the development of operational policy settings. Police proposes to meet the costs of implementing these changes through baseline.
147. However, alongside the development and progression of the Bill, Police will consider opportunities to enhance information management systems and processes to ensure they remain fit-for-purpose. This work is likely to be significant and will likely require a business case to be developed, for consideration in a future Budget cycle.
148. Police will progress enhancements to data management controls and assurance processes in parallel with the development and progression of the Bill and will continue following commencement of the legislation. These enhancements will be essential to building and maintaining public trust and confidence in Police's information management practices and treatment of personal information and helping ensure compliance with relevant Privacy Act obligations and principles.

Implementation risks

149. This proposal is not seeking to legislate any additional protections for the collection, use, and retention of personal information on children and young people. The requirements for children and young people outlined in UNCRC, the Oranga Tamariki principles of youth justice, and the Privacy Act requirements, as specified, will continue to apply. Police will seek to ensure operational policy and guidance is aligned with our legislative obligations. This will include reasonable safeguards on the manner of collection, use, and retention of youth information through ongoing adherence to IPP 4.
150. Police will also develop internal guidance to address any additional considerations that may be required.
151. Future ICT system investment, to improve information management capabilities, will need to consider wider privacy and Policing operational obligations beyond the issues raised by the preferred option(s) considered in this RIS.

How will the proposal be monitored, evaluated, and reviewed?

Police operational monitoring

152. Police will continue to monitor information management practices and policies across the organisation through existing internal governance and assurance mechanisms.

External oversight

153. Both the IPCA and OPC provide external oversight and scrutiny of Police practices. This scrutiny ensures that authorisation frameworks are adhered to, including consistency with operational policy statements and sector codes, and various IPP and Privacy Act obligations. Both organisations also provide mechanisms for members of the public to make complaints. While the proposals are seeking to clarify the application of some of the IPPs for any breach analysis, there is no intention to limit the ability for complaints to be lodged.
154. The IPCA is able to conduct independent investigations into critical incidents and complaints. The IPCA is also able to conduct thematic reviews, which focus on both broader issues and general themes of concern. These thematic reviews provide actionable recommendations to Police for improvements in policy or practice. The OPCA/IPCA Joint Report is an example of this.
155. Under section 123 of the Privacy Act, OPC is able to issue Compliance Notices to agencies they consider are in breach of the Privacy Act or an IPP, or have intruded on the privacy of an individual under other legislation. An agency that is issued with a Compliance Notice must take steps to comply with the notice. An example of this includes, in December 2021, OPC issuing Police with a Compliance Notice, relating to the systemic retention of identifying particulars of individuals while in Police custody, and photographs of members of the public who have not been detained. The notice outlined the unlawfulness of Police taking photographs and fingerprints from young people for intelligence or investigation purposes.
156. These existing external review mechanisms will continue to provide external oversight of Police practices. However, modifying the application of some of the IPPs related to recording images will have some impact on this oversight in terms of any breach analysis.

Evaluation of expected benefits

157. Police expects that the key benefit realisation will be providing certainty to our staff around lawful information collection activities, and the benefits that the collection of this operational intelligence has for enabling Police to deliver against its broad policing functions.
158. Police also expects that as a clear statutory authority is established, this will enable Police to more fully realise the benefits of using new and emerging technologies.

Statutory and regulatory review

159. Police intends to undertake further legislative review of the Policing Act, where further changes to Police's legislative settings can be considered.

Section B: Expanding existing temporary closure powers and introducing area closure enforcement powers for Police

Section 1B: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

In limited circumstances, Police can exercise road closure powers under section 35 of the Policing Act

160. Police has limited road closure powers under section 35 of the Policing Act 2008⁹, in circumstances where a constable has reasonable cause to believe any of the following grounds outlined below in Table One are met.

Table One: Grounds for invoking road closure powers

Section 35 grounds	Examples ¹⁰
Public disorder exists or is imminent at or near that place.	Unlawful assemblies, gang confrontations and serious public disorder.
Danger to a member of the public exists or may reasonably be expected at or near that place.	Armed offender incidents, severe weather events, and dangerous goods accidents, such as LPG or petrol spills.
An offence punishable by 10 or more years' imprisonment has been committed or discovered at or near that place.	Crimes such as homicide, aggravated robbery, and rape.

161. The section 35 power was originally in section 342A of the Local Government Act 1974, and is supported by common-law duties Police has to preserve order and keep the peace, protect life and property, and detect and bring offenders to justice.¹¹

There are currently no enforcement powers under section 35 of the Policing Act

162. At present, there are no specific associated powers to enforce section 35 road closure directions, and to respond to non-compliance once a road closure is put in place. In essence, Police relies on voluntary compliance but may consider arresting people for obstruction under section 23 of the Summary Offences Act.¹²

163. In other circumstances where Police is exercising powers on roads, Police relies on the Land Transport Act 1998, or other relevant legislation as the statutory authority. But if Police takes action to enforce road closure provisions under the Policing Act, there is no

⁹ Section 35 defines a road as having the same meaning given in section 315(1) of the Local Government Act 1974 except that it includes a motorway within the meaning of section 2 of the Transit New Zealand Act 1989; a private road within the meaning of section 315(1) of the Local Government Act 1974; a private way within the meaning of section 315(1) of the Local Government Act 1974.

¹⁰ Police Manual: Command and control - Part 4 Police operations and emergency management.

¹¹ Cabinet Paper: Police Act Review – Paper 5: Support for Effective Policing [POL Min (07) 22/7 refers].

¹² Obstruction is a common term used to describe the offence of Resisting Police, prison, or traffic officer, under section 23 of the Summary Offences Act 1981.

ability to rely on the powers under other regimes, and any enforcement action could be found to be unlawful¹³.

The Government is currently progressing the Anti-Social Road Use Legislation Amendment [ASRU] Bill

164. In May 2025, the Government announced its intent to introduce a Bill targeting anti-social road users.¹⁴

165. The Anti-Social Road Use Legislation Amendment [ASRU] Bill, which was introduced on 28 July 2025, and referred to the Justice Select Committee on 12 August 2025 seeks to amend section 35 of the Policing Act¹⁵ to expand the scope of existing road closure powers to also include all public and private areas accessible to the public by vehicle (e.g. parks, river catchments, beaches, reserves, golf courses, and car parks).

166. The ASRU Bill also seeks to expand the grounds for which Police can temporarily close to traffic all public and private areas to which the public has vehicle access where certain antisocial road use activity is occurring or is reasonably expected to occur. These expanded grounds, which are outlined in Table Two, ensure the new powers are proportionate and justifiable and consistent with NZBORA.

Table Two: Expanded grounds for closing public and private areas

Expanded grounds	Examples
An antisocial road use offence is being committed, or may reasonably be expected to be committed, at or near the place.	Street racing, drag racing, drifting or burnouts, or driving in an intimidating convoy.
A person is operating, or may reasonably be expected to operate, a motor vehicle at or near the place in a way that: - creates, or is likely to create, noise that, having regard to all the circumstances, is excessive; and - unreasonably interferes, or is likely to unreasonably interfere, with use and enjoyment of the place by the public or a section of the public; and - causes, or is likely to cause, substantial damage to, or destruction of, either or both of the place, or amenities or features in the place.	Dirt bike gatherings at public parks, a vehicle damaging a playing field, or gatherings of vehicles.
A group of two or more people is causing, or may reasonably be expected to cause, noise that complies with both of the following: - is created, or is likely to be created, by any means in or on a vehicle that is at or near the place; and - having regard to all the circumstances, it is excessive.	Siren battles.

¹³ *Wind v R* [2024] NZHC 1907, *Baylis v R* [2018] NZCA 271, *R v Bailey* [2017] NZCA 211.

¹⁴ www.beehive.govt.nz/release/tougher-penalties-boy-racers-and-intimidating-drivers.

¹⁵ Alongside these changes, further changes will be made to the Land Transport Act 1998 and Sentencing Act 2002.

167. Alongside expanding the areas that may be subject to temporary closure, the ASRU Bill proposes to amend the Policing Act to:

- establish an offence for failing to comply with a direction to leave, or not to enter a temporarily closed area (without reasonable excuse)
- establish an associated penalty (of \$1,000 infringement fee, or a fine of up to \$3,000¹⁶).

168. Police considers that the ASRU Bill does not enable frontline police to effectively enforce the proposed area closure powers in all circumstances, even with the proposed infringement offence.

What is the policy problem or opportunity?

Expanding the scope of the road closure powers to include all public and private areas

169. Under Standing Order 264¹⁷, the proposed amendments to the Policing Act in the ASRU Bill are limited to supporting the single broad policy of the Bill: *to deter anti-social road use behaviour that can negatively impact road user and community safety anti-social road user events and bystanders involved in these events*. This means that the amendments cannot apply to the broader road closure circumstances listed in section 35 of the Policing Act.

170. This means that Police would **not** be able to temporarily close to traffic all public and private areas to which the public has vehicle access under circumstances outlined in Table One – even if the existing grounds in section 35 exist (e.g. public disorder or danger to the public). Under the current proposal in the ASRU Bill, the new power to temporarily close areas will sit independently from the existing road closure powers in the Policing Act.

171. Section 35 currently limits Police powers of temporary closure to locations defined as a road, relying on the statutory definition in section 315(1) of the Local Government Act 1974. In contrast, the ASRU Bill introduces a broader and more practical definition of areas that Police may temporarily close where antisocial road use activity is occurring or reasonably expected to occur. We consider there is an opportunity to improve consistency and operational effectiveness by aligning the geographical scope of the section 35 power with the ASRU Bill's definition. This would enable Police to respond more effectively to close any public and private area accessible by vehicle, including beaches, golf courses, car parks, and river catchments, where there are grounds to do so.

172. The proposed Policing Amendment Bill seeks to address this by expanding existing temporary road closure powers to include all public and private areas accessible to the public by vehicle (e.g. parks, river catchments, beaches, reserves, golf courses, and car parks), for **all** existing road closure scenarios (alongside the new grounds being introduced by the ASRU Bill). This will enable Police to apply a consistent approach

¹⁶ A court fine (up to \$3,000) will only be imposed if a person who receives an infringement notice exercises their right to appeal.

¹⁷ [<https://www.parliament.nz/en/pb/parliamentary-rules/standing-orders-2023-by-chapter/chapter-5-legislative-procedures/>].

when responding to incidents that may require an area (that is not part of a road) to be closed in order to carry out their lawful functions. This includes fatal vehicle crashes, crime scenes, active shooters, natural disasters, or precarious situations where there is a danger to the public.

Addressing the lack of necessary powers to enforce road and area closures

173. As noted above, additional enforcement powers are needed to enable Police to effectively enforce any road or area closures.
174. Enforcement powers will ensure that Police can effectively respond to non-compliance to any lawful direction to leave, a temporarily closed road or area. The proposed amendments will provide specific powers to enforce road and area closures. These changes will include, but not be limited to, circumstances involving anti-social road use.
175. The legislative proposals will give Police the necessary powers to give effect to the policy intent of addressing public disorder or safety risks. The proposed amendments include:
- **expanding existing temporary road closure powers to include all public and private areas** accessible to the public by vehicle (e.g. parks, river catchments, beaches, reserves, golf courses, and car parks) for all existing road closure scenarios
 - **establishing an offence** for a person who, without reasonable excuse, fails to comply with a direction to leave, or not to enter a closed area, with an associated penalty of a \$1,000 infringement fee and a maximum \$3,000 court fine, for all existing road closure scenarios¹⁸
 - **providing a power to stop vehicles** and direct any vehicle and any person in or on the vehicle to leave the temporarily closed area (under the provisions of the Policing Act)¹⁹
 - **creating an offence and power to arrest without warrant** for failing to stop for Police for a person who:
 - fails to stop for Police as soon as practicable when required to do so by an enforcement officer for the purpose of directing any person in or on a vehicle to leave a temporarily closed area; and
 - knows or ought reasonably to know that the person exercising the power is an enforcement officer²⁰

¹⁸ This offence is identical to the one proposed in the ASRU Bill.

¹⁹ Police requires the ability to arrest those refusing to leave (e.g. because of the scale of activity in that area).

The Land Transport Act 1998 will continue to apply to roading functions outside the temporarily closed area (e.g. redirecting traffic from a temporarily closed road) and to relevant traffic offences (e.g. drivers not to exceed specified alcohol limits (section 11 Land Transport Act 1998)).

²⁰ Existing regimes with a fails to stop offence include: the Land Transport Act 1998 (sections 52A and 114); Search and Surveillance Act 2012 (section 177).

- **providing a power to obtain identifying particulars** (for the purpose of issuing an infringement for the offence described above)²¹
- **creating an offence and power to arrest without warrant** for a person failing to provide identifying particulars (for the purpose of issuing an infringement for the infringement offence described above)²²
- **providing a power to detain and move a person**, using such force as may be reasonably necessary, where a person, without reasonable excuse, fails to leave or enters a temporary closed area, for the purpose of:
 - removing that person from a closed area or preventing them from entering that area
 - issuing an infringement for failure to comply with a direction to leave or not enter a closed area.

176. Without some of these enforcement powers, we consider the area closure proposal being progressed in the ASRU Bill will not be enforceable. Police will not have the necessary powers to stop vehicles and direct individuals to leave a temporarily closed area or to obtain identifying particulars to issue the new infringement. Police will not have any powers to detain those who refuse to leave, even after being issued an infringement notice. In short, Police ability to close a road or area in response to anti-social road use will be hindered.

177. While we expect the majority of members of the public will comply with a direction to leave a closed area, under the current provisions in section 35 and the proposed amendment in the ASRU Bill, Police will not have the necessary policing powers to enforce compliance if a member of the public refuses to leave an area or refuses to provide their details if a police officer makes the decision to commence with issuing an infringement notice.

What objectives are sought in relation to the policy problem?

178. The policy objective is to ensure Police can exercise their lawful functions by:

- expanding the areas that can be closed for public safety purposes to include the power to temporarily close to traffic all public and private area to which the public has vehicle access
- providing Police with the necessary powers to effectively enforce road and area closures (including for anti-social road use)
- supporting compliance with road and area closures through the creation of graduated response for non-compliance.

179. The table below illustrates how the preferred package of powers enables Police to respond to different groups of people, depending on the nature of non-compliance (excluding Group B).

²¹ Existing regimes enabling Police to obtain or include identifying particulars or providing arrest powers for failure to provide details include: the Land Transport Act 1998 (sections 113 and 114); Sale and Supply of Alcohol Act 2012 (section 269); Local Government Act 2002 (section 245A); Psychoactive Substances Act 2013 (section 81); Summary Offences Act 1981 (sections 38(A)-(E) and 39(2)).

²² Ibid.

Table Three: Enabling enforcement powers and graduated responses

Group	Nature of non-compliance	Graduated response
Group A	Fail to stop for Police direction.	Offence and arrest power required for failing to stop for Police.
Group B	Leave when Police temporarily close the road or area.	Moved on – nothing further.
Group C	Issued an infringement for the new offence and leave.	Moved on – \$1,000 infringement to pay.
Group D	Refuse to provide details required to issue an infringement notice.	Arrest power required to move individual from the area. Offence – failure to provide details for infringement purposes.
Group E	Refuse to leave.	Power to detain required to move individual from the area. Power to detain required for enforcement purposes. [Note: the power to detain may be exercised before commencing with issuing an infringement notice, where this is necessary].

What consultation has been undertaken?

180. The Government intends to proceed with legislation at pace in 2025, which has not enabled time for any public consultation.
181. Initial agency consultation, including with the Ministry of Transport and Ministry of Justice was undertaken.
182. Some agencies expressed particular concerns about the intersect between the Police proposals and maintaining important youth and child protections. This question has been further addressed in the Police RIS, to enhance understanding and to confirm Police's intention to maintain those important protections.
183. Some agencies expressed concerns about the new arrest powers, power to detain and penalties with the temporary road closure reforms. Specifically, they have questioned whether power to detain for managing those who refuse to leave a closed road or area, even after being issued with an infringement notice, is required. Both agencies note the proposals are contrary to what Cabinet has previously agreed in the ASRU Bill, that an infringement notice is the appropriate enforcement response for this situation. The Attorney-General has determined the ASRU Bill is consistent with the NZBORA. On balance, Police require additional enforcement powers for a wider range of non-compliance. Broader agency and Ministerial consultation has been undertaken in the development of the Cabinet paper and this RIS. The select committee process will provide interested parties the opportunity to submit on the proposals.
184. The area closure provisions being progressed through the ASRU Bill have been subject to agency and Ministerial consultation. The ASRU Bill was introduced into the House on

29 July 2025, completed First Reading on 14 August 2025, and has been referred to the Justice Committee. The Justice Committee is due to report back to the House by December 2025.

185. The area closure provisions will be considered by the Justice Committee as part of its consideration of the ASRU Bill. It is likely that a Policing Amendment Bill will also be considered by the Justice Committee, so it will be important to ensure alignment between the provisions in both Bills as they progress through their respective Parliamentary processes.

Section 2B: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

186. For this Regulatory Impact Statement, we have used the following overall criteria to assess the options:

Criterion	Objective / Consideration
Reduces offending/increases public safety	The extent to which the option will: • support the functions, duties and associated activities of the New Zealand Police • prevent, disrupt and address crime and other harms • enables quick and effective enforcement action when there is non-compliance • contribute to the safety and security of the public • contribute to the safety of Police.
Increases the public's trust and confidence in Police's ability to manage area closure events	Whether the option (positively) impacts the public's sense of trust and confidence in Police, including their sense of safety, and the ability for law and order to be enforced. The public's confidence that Police: • prevents and discourages non-compliance • is transparent and accountable • proportionately responds to risks, including non-compliance of the direction to leave an area.
Is operationally and fiscally feasible	The extent to which the option: • is operationally feasible • is futureproof in design • is responsive and supports current and future operational requirements.
Achieves the policy intent	The extent to which the option supports Minister's intent for Police to be able to respond to the circumstances listed in section 35 of the Policing Act, including: • public disorder • a danger to a member of the public • an offence punishable by 10 or more years' imprisonment has been committed or discovered • ASRU behaviour.
Consistent with relevant human rights	The extent to which the option: • limits prescribed rights in the New Zealand Bill of Rights Act 1990 • is proportional/targeted to the offence.

What scope will options be considered within?

187. The existing road closure provision in section 35 of the Policing Act, and the proposed amendment that is being progressed in the ASRU Bill (proposed new section 35A) is the status quo. This is where Police may close a road under section 35 for public disorder,

danger to the public, or where offences with a maximum penalty of 10+ years imprisonment, or an area under proposed section 35A under ASRU activity (with enforcement limited to issuing an infringement notice where the individual willingly provides their identifying details).

What options are being considered?

188. Assessment of the other options considers the extent that Police is able to undertake enforcement action against a member of the public who does not comply with the direction to leave the closed area (Options Two, Three, and Four). All options are mutually exclusive.

Option One – Status Quo

No amendments are made to the scope of the road closure powers through the Policing Amendment Bill and no enforcement powers are provided for, other than the infringement offence provided for in the ASRU Bill

189. All changes to road closure provisions within the Policing Act being progressed through the ASRU Bill will be limited to:
- expanding the road closure power to include the power to temporarily close to traffic all public and private areas to which the public has vehicle access **but only in the additional circumstances prescribed in the ASRU Bill** (i.e. limited to situations involving anti-social behaviour)
 - the creation of a new offence for a person who, without reasonable excuse, fails to comply with a direction to leave an area temporarily closed by Police, with an associated penalty of a \$1,000 infringement fee or fine up to \$3,000 **but only in relation to anti-social road users.**
190. Having two separate provisions (one for anti-social road user incidents and another for other incidents) creates inconsistency in how Police respond to ASRU incidents compared with other incidents across the road closure provisions. This will create unnecessary uncertainty for frontline police. This could lead to legal challenges if frontline Police rely on the wrong provision when exercising a power. It is also not proportionate to the risks being managed – for example, limiting provisions to anti-social behaviour, and not extending to situations involving danger to the public.
191. Police will not be able to respond to, or enforce non-compliance with, road closure directions beyond an infringement for individuals within an area closed under proposed section 35A (where they willingly provide identifying details). Police will not have the necessary powers to enforce non-compliance with the area closure provisions being progressed through the ASRU Bill – including where individuals are issued with an infringement notice but still refuse to leave the closed area.
192. We note that the Attorney-General has considered the proposed additional areas closure power for ASRU incidents in the Policing Act are sufficiently constrained and justifiable, and are consistent with NZBORA.

193. The status quo option will mean that:

- Police has no lawful power to stop vehicles in the closed area and give directions for drivers to leave a temporarily closed area, and will rely on a vehicle to stop voluntarily, or for a criminal offence to occur that will warrant intervention.
- an infringement offence for not complying with a direction is limited to the ASRU area closure, and not the current road closure power in section 35.
- Police has no power to require particulars from a person for the purpose of issuing an infringement notice for failing to comply with the direction to leave a temporarily closed area. This would need to be provided voluntarily. Where individuals refuse to provide this information, there will be no ability to issue an infringement notice.
- the absence of arrest powers for failing to provide particulars, or a power to detain for failing to leave a closed area will not deter uncooperative behaviour, or enable Police to respond safely to large groups of non-compliant people.
- Police will have no power to detain and remove individuals who, after being issued with an infringement notice, still refuse to leave.
- There will be an inconsistency in how Police respond to ASRU incidents compared with other incidents under section 35. Police will need to differentiate when the two different provisions apply and any enforcement action that can be taken if there is no compliance.
- Police would need to consider charging a person with the general offence of obstruction (under section 23 of the Summary Offences Act 1981). In light of the new enforcement regime being proposed in the ASRU Bill, this leaves a gap that needs to be filled, and creates some uncertainty (and inconsistency) about whether any enforcement powers are intended to apply to section 35.

194. Should the recommended option not be progressed, and the status quo remains, Police recommends that there is a review of the ASRU Bill post-commencement to assess the effectiveness of the regime in the absence of these additional powers.

Option Two – Amendments to the Policing Act to provide for policing powers to enforce ASRU Bill road closure amendments [limited to ASRU only]

Amendments to enable enforcement of area closure for ASRU are progressed in the Policing Amendment Bill

195. Amendments to the Policing Act to enable the creation of powers to:

- **stop vehicles** and direct any vehicle and any person in or on the vehicle to leave the temporarily closed area (under the provisions of the Policing Act)
- **create an offence and power to arrest** without warrant for failing to stop for Police for a person who:
 - fails to stop for Police as soon as practicable when required to do so by an enforcement officer for the purpose of directing any person in or on a vehicle to leave a temporarily closed area; and
 - knows or ought reasonably to know that the person exercising the power is an enforcement officer
- **obtain identifying particulars** (for the purpose of issuing an infringement)

- **arrest** without warrant for a person failing to provide identifying particulars (for the purpose of issuing an infringement)
- **provide a power to detain and move a person**, using such force as may be reasonably necessary, where a person, without reasonable excuse, fails to leave or enters a temporary closed area, for the purpose of:
 - removing that person from a closed area or preventing them from entering that area
 - issuing an infringement for failure to comply with a direction to leave or not enter a closed area.

196. Police **will** be limited **to taking action and enforcing area closure provisions in response to anti-social road use** only.

197. Police will **not** have a specific enforcement regime to enforce road closures for public disorder, danger to the public, or where offences with a maximum penalty of 10+ years imprisonment have been committed or discovered. Any action taken under these circumstances may be subject to legal challenge, as issuing an infringement for an ASRU area closure under proposed section 35A is the only available enforcement power.

Risks

198. The additional power to detain for failing to leave a temporarily closed area when directed to by an officer would be contrary to a previous Cabinet decision that an infringement is an effective deterrent for removing anti-social road users from a closed area. It may also risk inconsistency with NZBORA. The alternative, however, is that Police may be unable to remove anti-social road users within a closed area, even after an infringement notice is issued, where Police is unable to issue infringement notices, or where due to the scale of activity, it is impractical for infringement notices to be issued.

Option Three - Road closure amendments to the current section 35, and limited Police powers for proposed section 35A

Expansion of section 35 road closure powers to include areas and provision of necessary enforcement powers, and limited enforcement powers provided for ASRU changes

Changes to existing section 35 provisions

199. The proposed changes in section 35 are identical for Options Three and Four.

200. Option Three would provide for the **existing temporary road closure powers in the Policing Act to be expanded to include all public and private areas accessible to the public by vehicle** (for example, parks, river catchments, beaches, reserves, golf courses, and car parks), for all existing road closure scenarios.

201. Option Three would amend section 35 to create:

- an **offence** for a person who, without reasonable excuse, fails to comply with a direction to leave, or not to enter, a closed area, with an associated penalty of a \$1,000 infringement fee and a maximum \$3,000 court fine, for all existing road closure scenarios. This is an identical offence in the ASRU Bill

- a **power to stop vehicles** and direct any vehicle and any person in or on the vehicle to leave the temporarily closed area (under the provisions of the Policing Act)
- an **offence and power to arrest** without warrant for failing to stop for Police for a person who:
 - fails to stop for Police as soon as practicable when required to do so by an enforcement officer for the purpose of directing any person in or on a vehicle to leave a temporarily closed area; and
 - knows or ought reasonably to know that the person exercising the power is an enforcement officer
- a **power to obtain identifying particulars** (for the purpose of issuing an infringement)
- an **offence and power to arrest** without warrant for a person failing to provide identifying particulars (for the purpose of issuing an infringement)
- a **power to detain and move a person**, using such force as may be reasonably necessary, where a person, without reasonable excuse, fails to leave or enters a temporary closed area, for the purpose of:
 - removing that person from a closed area or preventing them from entering that area
 - issuing an infringement for failure to comply with a direction to leave or not enter a closed area.

Limited enforcement powers are provided to support the new ASRU area closure provisions

202. This option proposes providing a limited number of powers to support enforcement of the new ASRU provisions in proposed section 35A, including the creation of:

- a **power to stop vehicles** and direct any vehicle and any person in or on the vehicle to leave the temporarily closed area (under the provisions of the Policing Act)
- an **offence and power to arrest** without warrant for failing to stop for Police for a person who:
 - fails to stop for Police as soon as practicable when required to do so by an enforcement officer for the purpose of directing any person in or on a vehicle to leave a temporarily closed area; and
 - knows or ought reasonably to know that the person exercising the power is an enforcement officer
- a **power to obtain identifying particulars** (for the purpose of issuing an infringement)
- an **offence and power to arrest** without warrant for a person failing to provide identifying particulars (for the purpose of issuing an infringement).

203. This option would amend section 35 of the Policing Act, along with new section 35A which is being created through the ASRU Bill. This would limit some of the proposed provisions in section 35A, to align with Cabinet's intent to create an infringement-based regime for non-compliance with a direction to leave a temporarily closed area. This

means there is no power to detain and move a person who does not comply with a direction to leave or enters a temporarily closed area.

Risks

204. The risk of progressing this option is that Police will have limited enforcement action when an area has been closed under circumstances listed in proposed section 35A. Police will have no power to detain bystanders for the purpose of removing non-compliant members of the public from a closed area, unless they have committed a separate offence.
205. With the proposed new powers and enforcement regime under section 35A, we consider that there will be an inconsistency in how Police respond to ASRU incidents compared with other incidents under section 35. Given the policy intent of both section 35 and proposed section 35A, we do not think this distinction is proportionate to the risks being managed.
206. Police will need to differentiate when section 35 and proposed section 35A applies, as non-ASRU circumstances listed in section 35 will carry greater enforcement powers. This may result in legal challenges to determine whether Police used the correct power for an event that could be considered as a disorder event (under proposed section 35) or an ASRU event (under proposed section 35A).

Option Four - Road closure amendments to the current section 35 and some parts of proposed section 35A, but with no arrest powers under proposed section 35A

207. Option Four would provide for the **existing temporary road closure powers in the Policing Act to be expanded to include all public and private areas accessible to the public by vehicle** (for example, parks, river catchments, beaches, reserves, golf courses, and car parks), for all existing road closure scenarios.
208. Option Four would amend section 35 to create:
- an **offence** for a person who, without reasonable excuse, fails to comply with a direction to leave, or not to enter a closed area, with an associated penalty of a \$1,000 infringement fee and a maximum \$3,000 court fine, for all existing road closure scenarios This is an identical offence in the ASRU Bill
 - a **power to stop vehicles** and direct any vehicle and any person in or on the vehicle to leave the temporarily closed area (under the provisions of the Policing Act)
 - create an **offence and power to arrest** without warrant for failing to stop for Police for a person who:
 - fails to stop for Police as soon as practicable when required to do so by an enforcement officer for the purpose of directing any person in or on a vehicle to leave a temporarily closed area; and
 - knows or ought reasonably to know that the person exercising the power is an enforcement officer
 - a **power to obtain identifying particulars** (for the purpose of issuing an infringement)

- an **offence and power to arrest without warrant** for a person failing to provide identifying particulars (for the purpose of issuing an infringement)
- a **power to detain and move a person**, using such force as may be reasonably necessary, where a person, without reasonable excuse, fails to leave or enters a temporary closed area, for the purpose of:
 - removing that person from a closed area or preventing them from entering that area
 - issuing an infringement for failure to comply with a direction to leave or not enter a closed area.

Limited powers are provided to support the new ASRU area closure provisions, but with no powers to arrest without warrant

209. This option proposes providing a limited number of powers to support enforcement of the new ASRU provisions in proposed section 35A, but does not include any powers to arrest. This option includes the creation of:

- a **power to stop vehicles** and direct any vehicle and any person in or on the vehicle to leave the temporarily closed area (under the provisions of the Policing Act)
- a **power to obtain identifying particulars** (for the purpose of issuing an infringement).

210. This option would amend section 35 of the Policing Act, along with new section 35A which is being created through the ASRU Bill. This would limit some of the proposed provisions in section 35A, to align with Cabinet's intent to create an infringement-based regime for non-compliance with a direction to leave a temporarily closed area.

Risks

211. The risk of progressing this option is that Police will have limited enforcement action when an area has been closed under circumstances listed in proposed section 35A. Police will rely on a vehicle to stop voluntarily, or for a criminal offence to occur that will warrant intervention. Police will have no power to detain bystanders if they commit an infringement offence under proposed section 35A, but do not provide their particulars when they are required to do so. Police will also be unable to remove non-compliant members of the public from a closed area, unless they have committed an offence.

212. With the proposed new powers and enforcement regime under section 35A, we consider that there will be an inconsistency in how Police respond to ASRU incidents compared with other incidents under section 35. Given the policy intent of both section 35 and proposed section 35A, we do not think this distinction is proportionate to the risks being managed.

213. Police will need to differentiate when the two different provisions apply, as non-ASRU circumstances listed in section 35 will carry greater enforcement powers. This may result in legal challenges to determine whether Police used the correct power for an

event that could be considered as a disorder event (under proposed section 35) or an ASRU event (under proposed section 35A).

Option Five - Progress amendments to provide broader closure powers and provide enforcement powers for Police in all closure scenarios (preferred)

Amendments to enable enforcement of all road and area closure directions are progressed in the Policing Amendment Bill

214. The proposed changes in section 35 are identical for Options Three and Four.

215. Option Five would:

- **expand existing temporary road closure powers** to include all public and private areas accessible to the public by vehicle (e.g. parks, river catchments, beaches, reserves, golf courses, and car parks), for all existing road closure scenarios and new scenarios in section 35A
- **create an offence** for a person who, without reasonable excuse, fails to comply with a direction to leave, or not to enter, a closed area, with an associated penalty of a \$1,000 infringement fee and a maximum \$3,000 court fine, for all existing road closure scenarios. This is an identical offence in the ASRU Bill
- **create a power to stop vehicles** and direct any vehicle and any person in or on the vehicle to leave the temporarily closed area (under the provisions of the Policing Act)
- **create an offence and power to arrest** without warrant, with an associated maximum penalty of 3 months' imprisonment or a \$2,000 fine for a person who:
 - fails to stop for Police as soon as practicable when required to do so by an enforcement officer for the purpose of directing any person in or on a vehicle to leave a temporarily closed area; and
 - knows or ought reasonably to know that the person exercising the power is an enforcement officer
- **create a power to obtain identifying particulars** (for the purpose of issuing an infringement for the infringement offence above)
- **create an offence and power to arrest** for a person **failing to provide identifying particulars** (for the purpose of issuing an infringement) with an associated maximum penalty of 3 months' imprisonment or a \$2,000 fine
- **provide a power to detain and move a person**, using such force as may be reasonably necessary, where a person, without reasonable excuse, fails to leave or enters a temporary closed area, for the purpose of:
 - removing that person from a closed area or preventing them from entering that area
 - issuing an infringement for failure to comply with a direction to leave or not enter a closed area.

216. The table below provides a summary of proposed powers attached to each option.

Table Four: Summary of proposed powers attached to each option

Power	Option 1 [Status quo]	Option 2	Option 3	Option 4	Option 5 [Preferred]
Expand road closure power to all public and private areas					
Infringement for failing to comply with the direction to leave, or not to enter a closed area					
Power to stop vehicles					
Offence and power to arrest for failing to stop					
Power to obtain identifying particulars					
Offence and power to arrest for failing to provide identifying particulars					
Power to detain for failing to comply with direction to leave, or not enter area					

Key	
Fully included in both provisions	
Only included under the ASRU circumstances proposed under the ASRU Bill)	
Excludes ASRU circumstances (proposed in the ASRU Bill)	
Not included in either provisions	

How do the options compare to the status quo?

	Option One: <i>Status Quo</i>	Option Two: Area closure amendments to enable ASRU provisions only	Option Three: Road closure amendments to the current section 35, and limited Police powers for proposed section 35A	Option Four: Road closure amendments to the current section 35 and some parts of proposed section 35A, but with no arrest powers under proposed section 35A	Option Five: Closure amendments to enable broad closure enforcement powers [preferred]
Reduces offending/increases public safety	0 <i>Police will rely on people to voluntarily leave closed roads and areas, and if an infringement process is initiated, rely on a person to voluntarily provide their particulars.</i>	+ <i>Provides Police with an opportunity to intervene for ASRU scenarios and to create an offence to address non-compliance. However, will not apply to existing temporary road closure scenarios.</i>	+ <i>Enables Police to close areas as well as roads where relevant circumstances apply. Provides sufficient powers to enforce broader area closures but may not address ongoing non-compliance when an area is closed under proposed section 35A (i.e. failing to leave).</i>	+ <i>Enables Police to close areas as well as roads where relevant circumstances apply. Provides sufficient powers to enforce broader area closures but may not address ongoing non-compliance when an area is closed under proposed section 35A (i.e. failing to stop, failing to provide particulars, and failing to leave).</i>	++ <i>Provides Police with an opportunity to intervene for a range of prescribed scenarios where public safety issues exist. Enables Police to have sufficient tools to address all forms of non-compliance.</i>
Increases the public's trust confidence in Polices ability to manage road closure events	0 <i>Police has no means to effectively enforce road/area closure powers, which may negatively impact the public's trust and confidence and create unnecessary safety risks.</i>	+ <i>Police is able to take action against non-compliance through a graduated enforcement model, but only for the prescribed ASRU scenarios.</i>	+ <i>Police is able to take action against non-compliance through a graduated enforcement model. For ASRU scenarios, this is limited to the</i>	+ <i>Police is able to take action against non-compliance through a graduated enforcement model in section 35 circumstances. For</i>	++ <i>Police is able to take action against non-compliance through a graduated enforcement model.</i>

			ability to issue an infringement notice for non-compliance, noting there is no enforcement options for continued non-compliance. Provides Police with necessary powers to require identifying particulars in order to issue infringement notices for non-compliance, but not failing to stop or failing to leave.	ASRU scenarios, this is limited to the ability to issue an infringement notice for non-compliance, noting there is no enforcement options for continued non-compliance (including where the individual refuses to provide the necessary identifying information to enable an infringement notice to be issued).	
Is operationally and fiscally feasible	0 <i>Police will be able to temporarily close roads/areas but will be unable to enforce compliance.</i>	0 <i>Provides additional enforcement tools for operational staff but is limited to ASRU activities. Inconsistent provisions can create uncertainty for staff and legal risks.</i>	+ <i>Provides additional enforcement tools for operational staff, but there is inconsistency in the powers available to enforce closures under the different scenarios.</i>	+ <i>Provides additional enforcement tools for operational staff, but there is inconsistency in the powers available to enforce closures under the different scenarios.</i>	++ <i>Provides operational staff with additional tools to take graduated enforcement action when there is non-compliance. Provides a consistent approach across all scenarios.</i>
Achieves the policy intent	0 <i>Police will be unable to meet Ministers' intent to respond to anti-social road user gatherings. It will also not deliver a consistent temporary closure framework, which could lead to practical difficulties and potential legal challenges.</i>	+ <i>Addresses the lack of powers required to support effective enforcement of the ASRU scenarios, but will not apply to all other road closure circumstances. The power to detain for failing to leave a temporarily closed area</i>	+ <i>Addresses enforcement gaps for non-ASRU activities, but some gaps remain for ASRU activities. Retains the infringement offence in proposed section 35A for failing to leave a temporarily closed</i>	+ <i>Addresses enforcement gaps for non-ASRU activities, but some gaps remain for ASRU activities. Retains the infringement offence in proposed section 35A for failing to leave</i>	+ <i>Addresses the enforcement gaps for ASRU and the existing temporary road closure power when there is non-compliance. However, it does not align to Cabinet's intent of the ASRU Bill (i.e.</i>

		<i>when directed to by an officer is contrary to a previous Cabinet decision that an infringement is an effective deterrent.</i>	<i>area when directed to by an officer, which Cabinet considers will act as an effective deterrent to support enforcement. However, should non-compliance be identified as an issue post-commencement, further legislative change may be required to enable any issues to be addressed.</i>	<i>a temporarily closed area when directed to by an officer, which Cabinet considers will act as an effective deterrent to support enforcement. However, should non-compliance be identified as an issue post-commencement, further legislative change may be required to enable any issues to be addressed.</i>	<i>infringement offence only).</i>
Consistent with relevant human rights	0 <i>Police will be able to limit access to closed roads/areas under prescribed circumstances, but will be unable to enforce compliance. The proposed area closure power in the ASRU Bill has been assessed as consistent with NZBORA.</i>	- <i>Police will be able to take enforcement action in limited circumstances against people who would be otherwise free to access, move, and assemble in an area that has been closed. Infringement offences may not be sufficiently serious to justify a power to arrest, and may appear to be incompatible with the rights of arrested persons and the usual protections arising from the supervision of the courts.</i>	- <i>Police will be able to take enforcement action in limited circumstances against people who would be otherwise free to access, move, and assemble in an area that has been closed. Infringement offences may not be sufficiently serious to justify a power to detain, and may appear to be incompatible with the rights of arrested persons and the usual protections arising</i>	0 <i>Police will be able to take enforcement action in limited circumstances against people who would be otherwise free to access, move, and assemble in an area that has been closed. Although there are infringement offences for failing to comply with a direction to leave an area, there is no power to detain attached to these.</i>	-- <i>Police will be able to take enforcement action against people who would be otherwise free to access, move, and assemble in an area that has been closed. However, this will depend on the duration of any closure. Infringement offences may not sufficiently be serious to justify a power to arrest, and may appear to be incompatible with the rights of arrested persons and the usual protections arising from</i>

		<i>However, other legislative regimes (such as the Land Transport Act) do provide arrest powers for infringement offences.</i>	<i>from the supervision of the courts. However, other legislative regimes (such as the Land Transport Act) do provide arrest powers for infringement offences</i>		<i>the supervision of the courts.</i>
Overall assessment	0 <i>The direction to leave a road or area, and the proposed infringement offence for ASRU will be effectively unenforceable. Police will rely on people who commit an infringement to voluntarily provide their particulars, or for any non-compliant behaviour to escalate to a criminal offence threshold before being able to undertake a proportionate enforcement approach.</i>	+ <i>Addresses the enforcement gaps that have been identified in the ASRU Bill but does not address the gaps in the existing section 35 road closure provisions.</i>	+ <i>Addresses some identified gaps, but Police will still rely on a person to voluntarily leave an area for ASRU activities (including following being issued with an infringement notice).</i>	+ <i>Addresses some identified gaps, but for ASRU activities, Police will still rely on a person to voluntarily provide their particulars if they commit an infringement offence, or leave an area (including following being issued with an infringement notice).</i>	++ <i>Provides a consistent legislative framework for Police to temporarily close a road, but will place limits on some rights.</i>

Key for qualitative judgements:

++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
--	much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

217. Option Five is the preferred option. It will apply to all members of the public who fail to comply with a road or area closure direction and will apply to all instances in which Police will lawfully be able to temporarily close an area for public safety reasons.
218. Option Five will enable Police staff to have a consistent understanding of the law and enforce accordingly. It will ensure that there are sufficient powers to enforce compliance, including among anti-social road users. We consider it is desirable and appropriate to have an enforcement regime similar to proposed section 35A, otherwise there will be an inconsistency in how Police respond to ASRU incidents compared with other incidents under section 35.
219. Option Five will best achieve the policy intent of ensuring public safety, by enabling Police to remove non-compliant members of the public from a temporarily closed road or area, where there are unlawful assemblies, gang confrontations, armed offender incidents, dangerous goods incidents, a crime scene etc. It will also provide a graduated model of enforcement/penalties for continuous non-compliance.
220. Option Five will give Police the opportunity to exercise alternative powers that avoid bringing people into the criminal justice system (for example, by filing a charge for resisting Police). Police may consider detaining a person without warrant, if without reasonable excuse, they fail to leave the temporarily closed area and this is the safest and most effective option under the circumstances.
221. We consider this option will enhance Police's ability to achieve its lawful functions, specifically keeping the peace, maintaining public safety, law enforcement, crime prevention, and community support and reassurance. This benefits the public's perception of trust and confidence in Police.
222. However, we note that the power to detain for failing to leave a temporarily closed area when directed to by an officer is contrary to a previous Cabinet decision that an infringement is an effective deterrent. Nevertheless, we think that Option Five will enable the policy intent of managing the social disorder and public safety risks associated with anti-social road users to be more fully realised.
223. Option Five will engage several rights and freedoms in NZBORA, including:
- **Section 16** – Freedom of peaceful assembly - The proposal to expand the definition of a closed road to include other areas will restrict or require the movement of members of the public (including landowners) while the closure is in place. Additionally, some people in vehicles may be required to stop the vehicle they are in for the purpose of a constable directing them to leave a temporarily closed area. Police will need to consider any of the prescribed circumstances require an area to be closed, and the size of an area that is closed is kept to a minimum.
 - **Section 18** – Freedom of movement - The proposal to expand the definition of a closed road to include other areas will restrict or require the movement of members of the public (including landowners) while the closure is in place. Additionally, some people in vehicles may be required to stop the vehicle they are in for the purpose of a constable directing them to leave a temporarily closed area.

- **Section 22** – Liberty of the person²³ - The proposal includes some additional warrantless powers to arrest a person who fails to stop their vehicle, fails to provide their particulars when required, or fails to leave a closed area. Police need to ensure the circumstances before them enable the lawful exercise of these arrest powers.

224. We acknowledge the package of amendments will limit these rights to some extent, but consider any limitations to be justified under the circumstances. Reasons for this are outlined below.

- There is a finite number of circumstances that a police officer must believe, on reasonable grounds, before they can exercise the temporary power to close an area, and this threshold is high (unlawful assemblies, gang confrontations, armed offender incidents, dangerous goods incidents, a crime scene etc)²⁴.
- Police officers have training and experience in the maintenance of public order through their ordinary duties. They are expected to be sensitive to the rights and freedoms they are limiting and use them only where it is necessary and do so in a manner that is consistent with reasonable limitation of the freedoms.
- The Commissioner of Police is responsible for providing appropriate internal guidance for the deployment of these powers.
- In the absence of a power to stop a vehicle for the purpose of directing it from a temporarily closed area, drivers can otherwise ignore requests to stop their vehicle or move their vehicle out of the closed area, despite the public safety risks.
- In the absence of offences and the ability to enforce them, there are no legal consequences for failing to comply.
- If a person who has committed an offence fails to provide their identifying details, Police has no ability to issue the infringement notice.
- The requirement for a person to provide particulars and an arrest power for non-compliance is an established process in existing legislation²⁵.
- An arrest power and power to detain for non-compliance gives Police the flexibility to remove a person from unsafe areas, for example, because of the scale of activity (such as large gatherings of anti-social road users).
- Reasonable force must be used for any arrest power or power to detain, and this will depend on the level of resistance from the arrested person.

225. The proposed amendments in Option Five still ensure there is a reasonable opportunity for any person in a temporary closed area to leave once a constable has directed them to do so, by taking steps to leave.

²³ This NZBORA right ensures everyone has the right not be arbitrarily arrested or detained.

²⁴ The scenarios are prescribed in section 35 of the current Policing Act, and the proposed section 35A amendment that is proposed in the ASRU Bill amendments are unchanged.

²⁵ Existing regimes enabling Police to obtain or include identifying particulars and/or providing arrest powers for failure to provide details include: the Land Transport Act 1998 (section 113, section 114); Sale and Supply of Alcohol Act 2012 (section 269); Local Government Act 2002 (section 245A); Psychoactive Substances Act 2013 (section 81); Summary Offences Act 1981 (section 38(A) - (E), section 39(2)).

Population implications

226. The proposed amendments to the Policing Act relating to the road closure powers, may have specific implications for children and young people. We discuss the potential population implications in more detail below.
227. There are financial consequences if a person chooses not to comply with this direction, in the form of an infringement fee of \$1,000. Alternatively, a court fine of up-to \$3,000 could be imposed if a person exercises their right to appeal, and this is not upheld by the courts. A person may also be subject to further financial penalties if they commit a criminal offence as part of non-compliance (e.g. resisting Police).
228. Costs to Police or other agencies have not been calculated. There will be some initial implementation costs, but ongoing operational cost will be met from within existing baseline funding. Further information is detailed in Section 3B.

Children and Young People

229. The road closure proposals within this paper, particularly the additional enforcement powers when used, will likely disproportionately affect young males, who are more likely to participate in ASRU activities. In 2023, about 36 percent of people charged with one of the road safety offences covered in this paper were under 25, and 83% were male. Māori children and young people are more likely to be proceeded against in comparison to the total population²⁶.
230. Police is responsible for about 80% of the responses to children and young people who offend, through the use of Alternative Actions and other diversionary approaches. Alternative Actions keep the vast majority of young people out of the Youth Court and support the wider aim of the system is to keep them out of the formal justice system.
231. Police recognises that the vulnerability of children and young people entitle them to special protections to ensure their interests are prioritised and the influence of offending behaviours on their life outcomes is reduced. These protections are outlined through New Zealand and international law, specifically the:
- Oranga Tamariki Act (1989) which sets the principles of youth criminal justice and seeks to protect and prevent children and young people interacting with the justice system for criminal offending.
 - United Nations Conventions on the Rights of the Child (UNCRC) which sets out specific children's rights in international law. Rights of relevance to the law enforcement context are:
 - the right to the Government making sure the best interests of the child are taken into account when making decisions about the child
 - protection from discrimination
 - special measures to protect those that are in conflict with the law.

²⁶ Ministry of Justice. 2024. Youth Justice Indicators Summary Report: December 2024.

232. Police's operational settings will remain consistent with these legal obligations including the use of least restrictive responses and addressing the underlying causes of any offending behaviour where possible. This is discussed further below.
233. Police already gives effect to its obligations through internal operational practices, policies and guidance. Police will continue to ensure that requirements outlined in UNCRC, are reflected in the Oranga Tamariki principles of youth justice and the Privacy Act.
234. We acknowledge that the significant financial burden imposed by the proposed infringement offence may be difficult for some young people and have a cascading impact on their families. We consider this is a broader policy issue that is not - related to this proposal. Police intends to adopt a graduated response to these closure powers. Police will provide individuals with sufficient opportunity to leave any temporarily closed area before infringement notices are issued or arrests are made.
235. Time pressure has meant engagement on the preferred options in terms of specific impacts for children and young people has been limited. Further engagement with the Office of the Privacy Commissioner, Children's Commissioner, Ministry of Justice and Oranga Tamariki will be required as the preferred options are implemented.

Disabled People

236. Disabled people may be disproportionately affected by expanding existing temporary area closures if they rely on specific routes, accessible infrastructure, or support services that may subsequently become unavailable due to an area closure. A disabled person may be unable to comply with a direction to leave a closed area due to a mobility, cognitive, or communication impairment. The intention to include a 'without reasonable excuse' provision in the requirements to leave an area will support these considerations in operational guidance and practice.

Māori

237. Māori are disproportionately impacted by the criminal justice system, in part due to the higher rate of Police proceedings initiated against Māori individuals. Police will need to be mindful of this if the preferred proposal is implemented. In this context, Police will continue to consider and give effect to its obligations to Māori and the Treaty, including ways in which any disproportionate impacts to Māori can be appropriately mitigated.

Consistency with the obligations under Te Tiriti o Waitangi – the Treaty of Waitangi

238. Time pressures have meant that the consideration of proposals through a Treaty of Waitangi lens, as advised in the Cabinet Office Circular CO (19) 5, and policy quality guidance from the DPMC Policy Project, has been limited.
239. Police is committed to being responsive to Māori as tangata whenua and understands the value and importance of the Māori Crown relationship and honouring the Treaty of Waitangi as New Zealand's founding document. Police continue to work to understand how as an organisation, we can be a more proactive and an inclusive partner for Iwi Māori.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

240. Yes.

What are the marginal costs and benefits of the preferred option in the Cabinet paper?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Offenders	Infringement fees for people who commit the proposed infringement offence. Some offenders may enter the criminal justice system through additional offences (such as failing to provide particulars, or failing to stop, or failing to leave after being issued with an infringement notice, or fine defaulting).	Low to Medium - \$1,000 infringement fee or fine up to \$3,000. Offenders may be subject to further financial penalties for other offences.	Medium
Police	One-off costs – implementation and training costs	Low	Medium
Ministry of Justice (including courts)	One off costs – implementation and training costs Ongoing costs – impacts of court resource	Low	Medium
Members of the public	Movement may be restricted by temporary closure of a road or area. However, there will public safety benefits.	Low –High Depending on the need to access the temporarily closed area (e.g. recreational users, commuters), and the size and duration of the closure.	Low

Property owners	Movement may be restricted by temporary closure of an area. However, there will be public safety benefits.	Low-High Depending on the need to access the temporarily closed area (e.g. recreational users, commuters), and the size and duration of the closure	Low
Total monetised costs	N/A	N/A	N/A
Non-monetised costs		<i>(High, medium or low)</i>	
Additional benefits of the preferred option compared to taking no action			
Investigating and prosecuting agencies (NZ Police and Crown Law Office)	Ongoing benefits – able to use the law more effectively.	Medium	Medium
Members of the public	Effective enforcement action may prevent risks to public safety.	Low-Medium	Low
Total monetised benefits		Low	Low
Non-monetised benefits		Medium	Low

Section 3B: Delivering an option

How will the proposal be implemented?

Replacement Police infringement system

241. The Police Infringement Processing System (PIPS) is a stand-alone IT system designed to process traffic infringement offences. PIPS is end-of-life technology with several high risks in terms of technology and legislative compliance.
242. The system cannot be amended to support any changes to existing infringements, nor does it have the capacity to be amended to support the enforcement of any new infringement types. Police is aware of a considerable number of new infringements currently in policy development, including the new proposed area closure infringement offence in the ASRU Bill and the proposed infringement offence being considered in proposed section 35A.
243. As indicated through the ASRU policy approvals process, the ability to issue an infringement notice for the new road closure offence is contingent on investing in the development of a new infringement processing system, which was subject to a previous Cabinet decision [CAB-25-MIN-0205 refers]. s. 9(2)(f)(iv) OIA

Police

244. The implementation of these proposals will impact a number of different workgroups within Police, at both the national and district level. This includes, but is not limited to:
- Frontline police
 - Royal New Zealand Police College (training)
 - Police Infringement Bureau (processing infringements)
 - Police Prosecution Service (managing court appearances and any appeals)
 - Police Instructions (operational guidance)
 - Legal (legal advice)
 - File Management Centre (appeals and information requests)
 - Strategic Communications (media queries)
 - Ministerial Services (information requests)
 - Data (information requests)
 - Assurance (reviews)
 - Policy (policy design, and reviews).
245. Adequate training will be critical for ensuring the successful implementation of the proposals, and to reduce the possibility of legal challenges.

Ministry of Justice (including courts)

246. Infringement fees not paid within the relevant timeframes are filed in court as fines for collection by the Ministry of Justice (Justice). s. 9(2)(f)(iv) OIA

247. People issued with the new infringement have a right to appeal. This means that judicial officers will need to be rostered, and registry staff will be needed, to administer any appeal hearings. If a court-issued fine is imposed, the Ministry of Justice Collections Service will be responsible for collecting this. s. 9(2)(f)(iv) OIA

How will the proposal be monitored, evaluated, and reviewed?

Police operational monitoring

248. Police will seek to monitor the number of area closure offences and will seek to engage with frontline staff about the effectiveness of the new provisions.

External oversight

249. A person who receives an infringement notice can appeal to the District Court. Additionally, any other power Police exercises may be subject to legal challenge.
250. Complaints can also be made directly to the IPCA and the OPC, who provide external oversight and scrutiny of Police practices and adherence with legal requirements.

Evaluation of expected benefits

251. Police will monitor enforcement activity, and community feedback over time. Relevant data, including the number of infringements issued for non-compliance of a direction to leave an area, and operational insights over time will help assess whether the law is having its intended impact.

Statutory and regulatory review

252. Police intends to undertake regular reviews of the Policing Act, which provides opportunities to ensure that the new provisions are working as intended.