

Reference: 20190286



TE TAI ŌHANGA  
THE TREASURY

21 June 2019

s9(2)(a)

Dear s9(2)(a)

Thank you for your Official Information Act request, received on 23 May 2019. You requested:

*“...the following documents listed on The Treasury website as March 2019 titles of advice provided to the Minister of Finance:*

<b>Document Date</b>	<b>Title</b>
18 March 2019	<i>Treasury Report T2019/156: Advice on establishing NZGIF in primary legislation</i>
18 March 2019	<i>Treasury Report T2019/775: Distressed Institution: Escalation Processes</i>
19 March 2019	<i>Treasury Report T2019/809: Establishing an Independent Fiscal Institution – Cabinet Paper for consultation</i>
22 March 2019	<i>Aide Memoire T2019/838: Amendments to the Arms Act 1983</i>

## Information Being Released

Please find enclosed the following documents:

<b>Item</b>	<b>Date</b>	<b>Document Description</b>	<b>Decision</b>
1.	18 March 2019	Treasury Report T2019/156: Advice on establishing NZGIF in primary legislation	Release in part
2.	22 March 2019	Aide Memoire T2019/838: Amendments to the Arms Act 1983	Release in part

I have decided to release the documents listed above, subject to information being withheld under one or more of the following sections of the Official Information Act, as applicable:

1 The Terrace  
PO Box 3724  
Wellington 6140  
New Zealand  
tel. +64-4-472-2733

<https://treasury.govt.nz>

- personal contact details of officials, under section 9(2)(a) – to protect the privacy of natural persons, including that of deceased natural persons, and
- direct dial phone numbers of officials, under section 9(2)(k) – to prevent the disclosure of information for improper gain or improper advantage.

Direct dial phone numbers of officials have been redacted under section 9(2)(k) in order to reduce the possibility of staff being exposed to phishing and other scams. This is because information released under the OIA may end up in the public domain, for example, on websites including Treasury’s website.

**Information to be Withheld**

I have decided to withhold in full the documents listed in the table below under the following sections of the Official Information Act, as applicable:

- advice still under consideration, section 9(2)(f)(iv) – to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers and officials, and
- under section 9(2)(j) – enable a Minister of the Crown or any department or organisation holding the information to carry on, without prejudice or disadvantage, negotiations

Item	Date	Document Description	Decision
3.	18 March 2019	Treasury Report T2019/775: Distressed Institution: Escalation Processes	Withhold in full under 9(2)(j) and 9(2)(f)(iv)
4.	19 March 2019	Treasury Report T2019/809: Establishing an Independent Fiscal Institution – Cabinet Paper for consultation	Withhold in full under 9(2)(f)(iv)

In making my decision, I have considered the public interest considerations in section 9(1) of the Official Information Act.

Please note that this letter (with your personal details removed) and enclosed documents may be published on the Treasury website.

This reply addresses the information you requested. You have the right to ask the Ombudsman to investigate and review my decision.

Yours sincerely

Jeremy Salmond  
**Treasury Solicitor and Manager**

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**Treasury Report:** Treasury Report: Advice on establishing NZGIF in primary legislation

<b>Date:</b>	18 March 2019	<b>Report No:</b>	T2019/156
		<b>File Number:</b>	CM-3-6-4-3-5

**Action Sought**

	<b>Action Sought</b>	<b>Deadline</b>
Minister of Finance (Hon Grant Robertson)	agree that primary legislation for NZGIF will not be pursued.	29 March 2019
Associate Minister of Finance (Hon James Shaw)	agree that primary legislation for NZGIF will not be pursued.	29 March 2019

**Contact for Telephone Discussion (if required)**

<b>Name</b>	<b>Position</b>	<b>Telephone</b>		<b>1st Contact</b>
Geraldine Treacher	Project Lead – Green Investment Finance	s9(2)(k)	s9(2)(a)	✓
Craig Weise	Establishment Director – Green Investment Finance	s9(2)(k)	s9(2)(a)	

**Actions for the Minister's Office Staff (if required)**

Indicate whether a discussion is sought.

Return the signed report to Treasury.

Note any feedback on the quality of the report

**Enclosure:** No

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**Treasury Report: Treasury Report: Advice on establishing NZGIF in primary legislation**

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**Executive Summary**

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This advice to Shareholding Ministers on whether NZGIF should have legislation follows the Cabinet agreement that officials should report back on this matter. NZGIF is currently being established as a Schedule 4A Company.

It is now clear that within chosen policy parameters it will be difficult to provide a strong rationale for legislation since the Schedule 4A framework is suitable for the establishment of NZGIF and there are not specific additional institutional requirements.

Initial advice that there may be merit in primary legislation was driven by a concern, within the context of the long term nature of the transition to a low emissions economy, that NZGIF might be wound down or have its purpose amended before it is able to fully demonstrate success. Nevertheless, advice noted that primary legislation would not prevent future governments from dissolving or amending NZGIF, as they see fit.

An alternative set of actions available to NZGIF to mitigate the risk of it being wound down, or having its purpose amended, can be taken in the course of ordinary business, and include: engagement with a full range of stakeholders to reinforce NZGIF's wide appeal; ensuring that the Climate Change Commission, once established, understands NZGIF's purpose so that it is accounted for in future independent advice; and focussing any concerns about NZGIF towards the review planned for 2023.

The positive reception NZGIF has received to date suggests these and other mitigates will bolster NZGIF's wide appeal and help to ensure any future decisions on it reflect a consideration of all aspects of its purpose, objectives, progress and wider context.

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**Recommended Action**

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We recommend that you:

- a **note** that given the policy parameters agreed by Cabinet it is not possible to meet the requirement of the Cabinet Office's Legislation Guidelines that legislation only be used when necessary.
- b **note** that there are a number of engagement options that can help to ensure that future decisions with respect to NZGIF reflect a wider understanding of the organisation.
- c **agree** that primary legislation for NZGIF will not be pursued at present.

*Agree/disagree*  
Associate Minister of Finance

*Agree/disagree*  
Minister of Finance

Craig Weise  
**NZGIF Establishment Director**

Hon Grant Robertson  
**Minister of Finance**

Hon James Shaw  
**Associate Minister of Finance**

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**Treasury Report: Treasury Report: Advice on establishing NZGIF in primary legislation**

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**Purpose of Report**

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1. This report provides advice on whether NZGIF should have its own legislation. When Cabinet considered establishing NZGIF they agreed that it would be established as a company under Schedule 4A of the Public Finance Act 1989, but that officials would report back to Shareholding Ministers on whether or not NZGIF should be provided for in primary legislation (CAB-18-MIN-5062 refers).

**Background**

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*Advice to date*

2. Based on existing models for entities to be owned by the Crown, Treasury recommended that NZGIF be established as a new independent 100% Crown owned company listed in Schedule 4A of the Public Finance Act. This provides a range of institutional features that are suitable to and beneficial for NZGIF (T2018/1750 refers).
3. NZGIF's incorporation is anticipated for April and the required Order in Council establishing NZGIF as a Schedule 4A company will come shortly afterwards.
4. Officials noted in the July advice on the institutional form for NZGIF (T2018/1750 refers) that longevity and durability of the entity will be important for three reasons:
  - It will take time for NZGIF to scale-up, which means that both early demonstrations of success and the development of an effective investment pipeline will not be immediate.
  - The transition to the low emission economy is expected to take at least three decades and new financing barriers and opportunities for NZGIF to invest are likely to emerge driven by the legislative framework being introduced.
  - NZGIF investments are likely to require long time horizons because low emissions investments are often capital intensive with long payback periods.
5. The initial advice that there may be some benefit in enshrining NZGIF in primary legislation was driven by concerns, within the context of the long term nature of the transition to a low emissions economy, that NZGIF might be wound down or have its purpose amended before it has had the opportunity to fully demonstrate success.
6. An additional concern was that the market's willingness to invest with NZGIF could be reduced if it were concerned about NZGIF's institutional longevity.
7. As with any other Schedule 4A company, the relevant Shareholding Ministers of any future government could potentially decide to wind down or amend NZGIF's scope. Similarly, if NZGIF were enshrined in primary legislation, future Parliaments will always have the power to revoke or amend the relevant legislation. However, the process for the introduction of primary legislation and then for any subsequent amendments introduces additional public scrutiny and debate.

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8. In order not to delay NZGIF being operationalised it was proposed that it be established as a Schedule 4A company, with consideration of the merits of primary legislation being taken forward separately.

*The Legislation Guidelines (2018)*

9. The *Legislation Guidelines* (2018 edition), which have been endorsed by Cabinet, are the key point of reference for assessing whether draft legislation conforms to accepted legal and constitutional principles (Cabinet Office Circular 18 (1)).
10. Chapter 20.2 states that: "Legislation should be used to create a new public body only when it is necessary in order to ensure that the body possesses the necessary powers, authority, and appropriate governance arrangements".
11. The Legislative Design and Advisory Committee (LDAC) who are responsible for the *Legislation Guidelines* have the opportunity to comment on the proposed Bill and to make submissions to select committee.
12. Specific legislation is not necessary to establish a Schedule 4A company. This is because there is a well-established process for Schedule 4A company establishment (i.e. by Order in Council) and a well-established framework through provisions in the Public Finance and the Crown entities Act that set out the function, powers, accountability and reporting obligations which apply.
13. See Annex A for a discussion of other entities with specific statutory powers.

**Analysis**

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*Applying the Legislation Guidelines to NZGIF*

14. Our internal legal advice is that it would be difficult to justify legislation based on the agreed policy parameters for NZGIF, as set out in the NZGIF establishment cabinet paper (DEV-18-SUB-0257). This is because:
  - a. Specific legislation is not necessary to establish a Schedule 4A company. Schedule 4A companies are established by Order in Council under the Public Finance Act.
  - b. As a Schedule 4A company, NZGIF would be subject to the same legislative framework as other Schedule 4A companies (i.e. the well-established powers, authority and governance arrangements which are already set out in the Public Finance Act and Crown Entities Act).
  - c. To justify specific legislation, there would need to be additional NZGIF specific institutional requirements (i.e. functions, powers, governance arrangements or other arrangements) which mean that from a policy perspective the NZGIF should differ from other Schedule 4A companies. To comply with the Guidelines, it would be necessary for these NZGIF specific powers, authority, governance or other arrangements to be implemented only by way of legislation.
15. When preparing Cabinet papers seeking approval to introduce Bills, Ministers and officials are required to state whether any aspects of a Bill depart from the principles in the Guidelines and to justify any departure. Government bills may be reviewed against the Guidelines after their introduction and if the review raises issues of inconsistency the LDAC may make a submission to the relevant Select Committee.

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*NZGIF reception and maintaining support*

16. Since the institutional form advice was prepared in July 2018 (T2018/1750 refers) NZGIF has had a positive reception from a wide range of places including:
- the Productivity Commission supporting the GIF concept, subject to a range of considerations which have been addressed
  - the GIF launch on December 5<sup>th</sup> receiving neutral to positive media coverage
  - the approach taken to NZGIF was not negatively received by the opposition
  - the Australasian Investor Group on Climate Change welcoming the launch<sup>1</sup> and noting the role that NZGIF could play in helping New Zealand's financial market respond to climate change risks and opportunities<sup>2</sup>
  - engagement to date indicates that investors are not expressly concerned about a Schedule 4A company being unstable and
  - the involvement of Sir Rob Fenwick as ambassador involving a widely recognised and respected businessman and investor with the company.
17. In addition, there are a number of ways in which NZGIF's position can be strengthened during its initial phases, which will help to ensure that any decisions taken with respect to NZGIF reflect a consideration of all aspects of its purpose, objectives, progress and wider context. These include:
- Engagement and transparency* – faith in the investment expertise and commerciality of NZGIF is likely to be key to its wide appeal, along with buy-in from investors and businesses. In addition to the stakeholder engagement plan that NZGIF is continuing to develop as it gears up, further appropriate opportunities could be explored for engagement with the full range of interested decision makers. This includes political engagement where appropriate.
  - Wider climate change framework* – NZGIF sits within a suite of changes being introduced to ensure that action on climate change has the long term planning and accountability required. Ensuring that the Climate Change Commission understands the purpose, operation and impact of NZGIF will help it to reflect on the role of NZGIF as a part of wider independent advice on plans and strategies for meeting emissions budgets.
  - 2023 review* – Ministers agreed that a formal review of NZGIF would be commenced no later than June 2023. Mid-2023 was viewed as a reasonable point at which to take a view on the effectiveness of NZGIF and whether its mission and objectives continue to be relevant. NZGIF will have had opportunity to ramp up operations, build and realise a pipeline of investment and evolve its strategy in response to live operations. Giving the 2023 review plan more prominence may help to focus stakeholder feedback towards a planned, robust and independent process of review. This could be achieved through inclusion in NZGIF's governance documents and wider engagement and communications.

<sup>1</sup> <https://igcc.org.au/investors-welcome-the-new-zealand-green-investment-finance-fund/>

<sup>2</sup> <https://igcc.org.au/wp-content/uploads/2016/04/IGCC-NZ-report-final.pdf>

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18. As officials it is difficult to say absolutely whether these steps will be sufficient in the short term to prevent early curtailment of NZGIF, however our best assessment is that the risk would be low and that this approach may in fact be more effective and less resource intensive than legislation at present. Demonstration of success will ultimately be the best way to ensure NZGIF's ongoing operations and there will continue to be some residual risk until sufficient time has elapsed for NZGIF to prove itself in the market.
19. It should be noted that there will always been unknowns in the wider environment, such as unanticipated economic or fiscal conditions, which might also affect decision making.
20. There are a few policy scenarios that might require primary legislation. They are underdeveloped and we would not recommend them at this stage, however we have included them at Annex B for information.

*Legislative process and risks*

21. No bid was made for NZGIF within the 2019 legislative programme, although it was noted that officials are preparing advice, as per Cabinet's decision (DEV-18-SUB-0257). This means that it if were decided to pursue primary legislation then this would be reliant on either joining a suitable legislative vehicle (potentially the Climate Change Bill) or finding a time within the legislative schedule (which is likely to be difficult).
22. Any decision to develop further policy proposals and implement them through primary legislation would need to be weighed against the possible impacts of legislating in parallel with company establishment. In particular:
  - The legislative process could enable debate on the strategic of approach of NZGIF as set out in (DEV-18-SUB-0257) which might result in a different orientation of mission, objectives and scope. This could result in delays to the speed at which NZGIF gears-up or have an impact on operations.
  - It is unclear what the impact would be on the already appointed board members and this would need to be worked through depending on the options chosen. There is a risk that this could prove a distraction to the board.
  - There is the possibility of creating confusion in the market.
23. If NZGIF was provided for in primary legislation, future Parliaments will, as with all legislation, have the power to revoke or amend the relevant legislation as they see fit.

*Consideration*

24. Considering the absence of a strong case for legislating within NZGIF's current policy parameters the Treasury does not recommend pursuing primary legislation at this time.
25. Taking steps to reinforce NZGIF's wide appeal is likely to be as effective and less resource intensive than primary legislation.

**Next Steps**

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26. Subject to Ministers' views we will continue with the establishment of NZGIF as a Schedule 4A company (namely final board appointments, supporting the new board in early decision making, preparation of the constitution and Letter of Expectations), and integrate the mitigations described at paragraph 17 into engagement plans.

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**Annex A: Other entities with specific statutory powers**

1. The establishment of the New Zealand Super Fund was provided for by the New Zealand Superannuation and Retirement Income Act 2001. There were a number of features of the policy design that drove the need for specific legislation.

2. This includes:

<b>NZSF policy feature</b>	<b>Relevance to NZGIF</b>
a. The specification in legislation of the assets that are the property of the fund, the capital contributions required by government and what capital withdrawals government can make.	This is not relevant to NZGIF, where upfront capital, establishment and operational costs have been provided for through the budget process.
b. A range of features to limit political influence over board appointments and removals.	There might be some advantages to these features, although in practice the additional independence obtained is likely to be difficult to justify considering the resource implications relative to the size of NZGIF. In addition, any implications would need to be worked through with respect to the already appointed board.
c. Legislated commercial objectives (implicitly excluding other social outcome objectives).	Legislation is not required to establish NZGIF with its intended mix of public policy and commercial objectives.

3. By comparison, NZVIF is a Crown Entity Company established without primary legislation and is of a similar scale to NZGIF (with \$245m funds under management when including the Seed-Co funds). Similarly, Crown Irrigation Investments Ltd was established as a Crown Entity Company.

4. Internationally, the UK Green Investment Bank (UK GIB) was part of the Enterprise and Regulatory Reform Act 2013 introduced following the global financial crisis to help stimulate business and growth. The UK Government stated that “the legislation will enshrine the Bank’s ‘green’ purpose, embed its operational independence and provide the Government with a specific power to fund the Bank.”<sup>3</sup>

5. UK Government officials have stated that whilst there were sufficient powers to establish the UK GIB under the UK’s Banking Act 2009, it was felt important to protect the UK GIB’s green purpose and operational independence with legislation. Also, the purpose of the UK Banking Act 2009 was to enable the takeover of failing banks following the global financial crisis and may not have been seen as a suitable vehicle for establishing the UK GIB.

6. Primary legislation did not prevent the decision to sell the UK GIB three years after it commenced operations and following a change of government. Statements made under the Liberal Democrat-Conservative administration indicated that options for bringing private capital and greater operational freedom were being considered.<sup>4</sup> The intention to sell UK GIB was then confirmed following the formation of the Conservative lead government in May 2015.

<sup>3</sup> See the relevant Bill summary published by the Department for Business Innovation and Skills: <https://webarchive.nationalarchives.gov.uk/20121126182721/http://discuss.bis.gov.uk/enterprise-bill/files/2012/05/12-853-enterprise-regulatory-reform-bill-green-investment-bank.pdf>

<sup>4</sup> See p.12:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/477493/BIS-15-630-future-of-the-uk-green-investment-bank.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/477493/BIS-15-630-future-of-the-uk-green-investment-bank.pdf)

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7. The rationale for the sale was focused on the need for greater access to capital than was possible within public sector controls.<sup>5</sup> The cost of continuing to fund UK GIB was cited by the NAO as a part of the rationale for the sale<sup>6</sup>, with the Public Accounts Committee subsequently arguing that removing GIB liabilities from the balance sheet was also a driving motivation.<sup>7</sup>
8. While it was evidenced that the UK GIB had achieved its objectives with respect to investment into offshore wind, this impact was less clear with respect to other sectors, and a decision was taken to not to re-orientate the fund towards other less developed renewables technologies or sectors (such as transport).
9. The UK National Audit Office (NAO) subsequently concluded that:  
“GIB quickly stimulated investment in the green economy, particularly in offshore wind where it was addressing market failures, and returns on the portfolio are forecast to exceed expectations. Its impact in other sectors is less certain, and in deciding to sell GIB the Department lacked clear criteria or evidence to show that the Bank had achieved its intended green impact.”<sup>8</sup>

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<sup>5</sup> See above, p.13

<sup>6</sup> See above

<sup>7</sup> <https://www.ft.com/content/ab7f3578-26da-11e8-b27e-cc62a39d57a0>

<sup>8</sup> See: <https://www.nao.org.uk/report/the-green-investment-bank/>

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**Annex B: Policy scenarios that might require primary legislation**

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1. There are a number of policy scenarios that might enhance the operation of NZGIF and could also require primary legislation, especially if combined. However, it should be noted that these are underdeveloped and depending on the option would require substantial new (currently un-resourced) work-streams.

2. They include:

<b>Scenario</b>	<b>Comment</b>
a. Ongoing capitalisation for NZGIF is provided, either directly from taxation or via another source, and defined in legislation.	This would be a substantial policy development as it would require a decision to further capitalise NZGIF.
b. Providing greater independence to the board through a specified skill set and an arms-length appointment process.	May be difficult to justify given the small size of NZGIF. May be complicated by existing board appointments being near completion.
c. Seek to enshrine the purpose, objectives and institutional form in legislation, on the basis that doing so befits the size and challenge of transitioning to a low emissions economy.	This approach is unlikely to stand on its own, given Legislation Guidelines, but it might help to reinforce the case for other options.

3. The capitalisation discussion would be a substantial policy development requiring wider discussion and potentially risks distraction from the other decisions on climate change.

RELEASED UNDER OFFICIAL INFORMATION ACT

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Reference: T2019/838

SH-11-2-7-2-24

Date: 20 March 2019

To: Minister of Finance  
(Hon Grant Robertson)

Deadline: None

## **Aide Memoire: Amendments to Arms Act 1983**

### **Purpose**

The purpose of this Aide Memoire is to outline for you a proposed process in regards to Regulatory Impact Analysis (RIA) on the proposals to amend the Arms Act 1983, for discussion with the Minister of Police (Hon Stuart Nash).

### **Background on the proposal**

On 18 March 2019 Cabinet considered a paper from the Minister of Police (Hon Stuart Nash) concerning *Operation Dean – Amendments to the Arms Act 1983*. The Cabinet paper noted that “Regulatory Impact Analysis has not yet been completed on these proposals.”

Other regulatory issues, including licensing requirements and the powers of Police, have been separated into another paper that will go to Cabinet on Monday.

Due to the haste with which the Cabinet papers had to be prepared, there was insufficient time to prepare a RIA for either paper.

### **The regulatory impact analysis is inadequate**

A RIA has not been prepared for Cabinet’s consideration. The RIA requirements have therefore not yet been met in regard to this proposal.

### **Next steps if the Cabinet paper proceeds with an inadequate RIA**

Minister Nash is planning to take the second paper to Cabinet on 25 March 2019. This will also not have a RIA attached.

If the Cabinet paper proceeds and Cabinet makes substantive decisions based on an inadequate RIA, the responsible Minister must provide a Supplementary Analysis Report (SAR). You and the responsible Minister must agree on the nature and timing of

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the SAR. The SAR must be quality assured and published along with the original RIA. Cabinet Office Circular (17) 3 sets out the RIA requirements. If the Cabinet paper proceeds as drafted, we will provide suggestions for the appropriate requirements for a SAR.

**Discussions with Police**

Treasury has discussed with NZ Police the most pragmatic way forward given that Cabinet has made policy decisions. We propose that a SAR be prepared to accompany the Bill's introduction into the House that will focus on the implementation of the proposals. This SAR would analyse such things as:

1. Administration issues (who will implement and administer, how it will function).
2. Timing and transitional issues.
3. Compliance cost minimisation.
4. Implementation risks, and
5. How regulated parties will be informed and educated.

Such a SAR will provide confidence to Ministers and the public that the proposed changes can be implemented appropriately.

**Recommendations**

We recommend that you discuss this matter with the Minister of Police.

**Bob Johnston**, Senior Analyst, Regulatory Quality, s9(2)(k)

**Kelly Chapman**, Acting Team Leader, Regulatory Quality, s9(2)(k)