**EPET 21.2 New Technology Framework and Updated Policy**

1. The Committee was impressed by the degree of detail in this proposal. This sort of framework is very much what is needed to progress from high-level principles to practical action guide. In particular, we strongly support the approach of "lifecycle management" of technologies and regular reviews of their performance. Overall, the Framework is a promising step. However, the Panel believes there are several areas of the proposal that require further work if it is to meet the policy purposes.

2. **Scope**. The Panel is unclear about the applicability of the Framework to non-public-facing interactions. The Framework indicates that all of the technologies designated "High risk" at 3A would have the policy applied to them, whether or not they are public-facing. That includes "any technology that may be interpreted as surveillance" and "algorithms to generate risk assessments, or to make or recommend actions or decisions". However, the Draft Police Instruction states that the policy <u>does not apply</u> to uses which are not public-facing, with no reference to this exception (p.3). This should be restated for clarity in the Instruction.

   More generally, the Panel would like to query why the policy should not be applicable to non-public-facing uses of new technologies, notwithstanding the stated exceptions. While we accept that these are less likely to be uses that raise issues of public trust, applications of new technologies to police personnel, for example, could raise some of the same issues are addressed ion the policy, and could benefit from consideration against that background.

3. **Principles**. We were unclear about the relationship between the principles as set out respectively on pages 6-8 of the Framework, pages 19-23 of the Framework and page 7 of the Draft Police Instruction. Importantly, to which of these would someone seeking approval be directed? These vary considerably in their degree of detail, with the table starting at p.19 of the Framework being considerably the most informative. We advise that the Instruction document should direct applicants to that table.

4. **Principle 1: Necessity**. The Panel recommends that this principle should offer greater clarity about whether it is referring to the "demonstrable need" to acquire the capability, or the claim that the capability could not be acquired without the technology. These are distinct claims, but the bullet points seem to suggest that either will be sufficient to satisfy this Principle. As written, this could mean that a relatively trivial purpose would suffice to justify the deployment of new technology, if it could not be achieved any other way. We suspect this is not what is intended. We advise that clearer wording is adopted to make it clear that *both* elements are relevant to this Principle. We note that this is better articulated in the table that begins on p.19 of the Framework, and we would advise that the principle is explained in that way.

5. **Principle 2: Effectiveness**. The requirement that the technology is "explainable" is important, but leaves open the question of "explainable to whom?" The OCGG? The person operating the technology? A member of the public seeking to query its result,

or perhaps a court? This question is a regular feature of discussions about algorithmic transparency/explainability. This is better articulated in the table at p.23.

6. **Principle 3: Lawfulness**. The Panel considered that this principle could be better articulated. The assumption that lawfulness is a "relatively straightforward principle" requiring minimal guidance as to what is required (Framework, p.7) seems questionable. Given the uncertain legal and regulatory status of some emergent technologies, we are unclear that a proposer would be expected to offer reassurance about that without a legal opinion. How is the proposer to "Certify, and reference operative provisions of any applicable legislation" if "a formal legal opinion … to confirm lawfulness" is not a standard expectation?

   We note that there is inevitably a degree of overlap between principles, such that the lawfulness of the proposal may in some cases depend on e.g. its necessity or proportionality, but it should be made clear that the fact that a proposed use constitutes an important police purpose will not necessarily render it lawful.

7. **Principle 4: Fairness.** The reference to identifying "any possible biases" at the pre-trial stage is probably unrealistic. Biases can come to light once algorithms are in use, and only ongoing oversight and testing can be certain of having identified these. The reference to "any identified risks" in the table is more realistic. It is worth noting that there are various different measures of "fairness" (see referral EPET 21.1, p.20) and whoever is responsible for checking this principle should be aware of this and familiar with these.

8. **Principle 5: Privacy**. The panel notes that the framework discusses privacy in terms of "data sourcing, use, retention and storage". While these are of course important considerations, they are not the only aspects of privacy that merit attention. For example, New Zealand common law also recognizes a privacy right concerned with the act of intrusion into privacy/seclusion. The framework should, therefore, emphasise the need to assess the impact of the use of the tool in an operational environment, and not only the subsequent use of any data gathered.

   We are unsure whether a term like "incorporates privacy by design" will be particularly meaningful for the proposer. We support the statement in the table that a PIA should either be conducted, or a rationale provided if this is deemed unnecessary.

9. **Principle 7: Partnership**. This was perhaps the greatest source of concern for the Panel. Consideration of Māori perspectives is not "partnership", but the two concepts appear to have been equated. There is no reference to the possibility of co-design. There has been some good recent research in the area of co-design between Māori and Crown entities; see, for example:

   - Tawhiti Nuku, Māori Data Governance Co-design Outcomes report (January 2021). This report presents the outcomes of co-design workshops, including a

Māori Data Governance model and the next steps to move towards implementation.

- Maori data governance co-design review for Te Kāhui Raraunga Charitable Trust (January 2021). This presents a Māori-Crown co-design continuum that can provide guidance for co-design in Māori/indigenous.

We are also concerned that "consideration of a proposal's impact from a te ao Māori and Treaty partnership perspective" (Framework, p.16) could be made prior to, and potentially without, any consultation with Māori (though we were somewhat reassured by the requirement on p.20 to summarise the basis for a judgment that a technology is not likely to have a particular impact.)

10. **Principle 8: Proportionality**. The panel noted a significant degree of overlap between aspects of principles 7 and 8, specifically with regard to considering group perspectives from te ao Māori perspective. While the wide-angled lens being applied in this principle is in some respects commendable, it may be asking a lot for the proposer to "consider the positive and negative impacts on society as a whole" and "weigh the individual, group and collective public interest".

11. **Principle 9: Oversight and accountability**. The panel strongly endorses the requirement to describe measures to monitor the technology's use and restrict its use to that for which approval is sought.

12. **Assessment process**. If the proposer decides that the policy does not apply, and advises the National lead: New technologies of that decision, to what extent is the basis for that decision reviewed by the National Lead? The Framework's explanation that "This is required to ensure complete records are maintained" (p.11) suggests that review may not routinely take place. The Panel suggests that the Framework should stipulate that a reason / explanation be given, either by the applicant or the National Lead, as to why the Policy does not apply. It would be difficult to review a decision not to apply the policy if no records of reasons/justifications are kept.

13. **Technology Proposal document**. The Panel queries whether the limit of 2-5 pages will be always be adequate for all of the information this is expected to contain (Framework, p.13).

14. **Proposals to deploy technology after successful trial**. The Panel supports the requirement for the process to be followed again before the technology is deployed after a successful trial. We draw attention, though, to the distinct ethical considerations that will be raised by the trial phase itself, if it involves human participants. There will be different ethical requirements for an experimental trial compared to the standard operating procedures for an actual rollout of the technology.

15. The Panel recommends that the Framework and Instruction make reference to the dangers of importing technologies from overseas that have not been trained or tested for use on a New Zealand population.

16. As a general observation, the Panel felt that the Framework and Instruction could benefit from an early emphasis on the decision whether to use the new technology at all. This is not entirely overlooked in the documents, but there was a collective sense that the tone implied a question of *how* rather than *whether* to use. We also propose that there could be a clearly marked 'early exit point' in the framework, for proposals that do not meet this first criterion.