

In Confidence

Office of the Minister of Justice and Minister responsible for the Serious Fraud Office

Chair, Cabinet Social Policy Committee

## **Corruption in New Zealand: Risks and opportunities to respond**

### **Proposal**

- 1 This paper provides an overview of New Zealand's corruption risks and current work to address that risk. The paper also seeks Cabinet's agreement to direct the Officials Committee for Domestic and External Security Coordination (ODESC)<sup>1</sup> to report to the Cabinet Social Policy Committee (SOC) by the end of 2017 on the anti-corruption work programme being developed by the Serious Fraud Office (the SFO).
- 2 The aim of the work programme is to provide a cohesive framework for agencies' anti-corruption efforts relating to education, prevention, detection, enforcement, and engagement. The ODESC report back to SOC will focus on agreeing key actions, including any necessary legislative changes.

### **Executive Summary**

- 3 New Zealand has made valuable progress combating bribery and corruption in recent years. This progress, along with a strong culture of integrity, means that New Zealand enjoys a reputation for being one of the least corrupt countries in the world.
- 4 However, there is a growing consensus that the risk of corruption in New Zealand is increasing and that it may be more pervasive than is generally acknowledged. While numbers remain minimal overall, the number of bribery and corruption-related complaints and investigations has increased.
- 5 Work is already underway to help respond to the key risks of corruption. But it will also need to ensure there is coordination, oversight and that there is the ability to detect emerging trends and issues whilst also addressing all of New Zealand's risk areas.
- 6 To help address these matters, Chief Executives directed the SFO to develop a work programme to respond to the risk of corruption. The aim of developing the work programme is to provide a cohesive framework for agencies' anti-corruption efforts so that the conditions which allow corruption to occur do not take root in New Zealand.
- 7 We propose that Cabinet ask ODESC to report back to Cabinet on the work programme developed by the SFO before the end of 2017, with a view to agreeing on key practical actions, as well as any necessary legislative changes to enable those actions to be implemented.

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<sup>1</sup> ODESC is a committee of Chief Executives which manages national security in New Zealand in both its governance and response mode. ODESC is chaired by the Chief Executive of the Department of the Prime Minister and Cabinet, and other organisations represented at the meeting included the Ministry of Justice, Serious Fraud Office, State Services Commission, Office of the Controller and Auditor-General, New Zealand Police, Ministry of Business, Innovation and Employment, and Auckland City Council.

## Background

- 8 New Zealand has made valuable progress in our contribution to global efforts to combat bribery and corruption.
- 9 In November 2015 we passed the Organised Crime and Anti-corruption Legislation Bill which, among other things, increased penalties for bribery and corruption offences in the private sector, improved our ability to share information with international law enforcement counterparts, and clarified that no bribes are tax deductible.
- 10 The amendments mean New Zealand is now compliant with all mandatory provisions of the United Nations Convention Against Corruption (UNCAC). Consequently, we ratified UNCAC on 1 December 2015. The first review of New Zealand's compliance with Chapters III and IV (criminalisation and law enforcement, and international cooperation) of UNCAC is almost complete and the assessment is expected to be largely positive.
- 11 The Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Amendment Bill (the Bill) passed its third reading on 3 August 2017. The Bill puts in place "Phase 2" of New Zealand's AML/CFT laws.
- 12 New Zealand also made a number of commitments at the London Anti-Corruption Summit (the London Summit) in May 2016. Many of these commitments have already been met. For example, New Zealand has nominated representatives to the Governance Board of the International Anti-Corruption Coordination Centre (the Centre), which was officially launched on 5 July 2017. The SFO has received funding to provide resource to the Centre, which has resulted in the appointment of an investigator who commenced at the Centre in June 2017.
- 13 Despite these initiatives, there have been recent examples of corrupt practices, which have the potential to undermine confidence in public institutions and take a toll on New Zealand's economy.
- 14 In response to concerns about the risk of corruption, officials developed a corruption risk profile for New Zealand. ODESC met in late 2016 and early 2017 to consider how best to respond to that risk. ODESC commissioned a Police-led strategic risk assessment, which supported a growing consensus that the occurrence of corruption is increasing in New Zealand and that may be more pervasive than generally acknowledged.<sup>2</sup>
- 15 In response, ODESC has agreed in principle that the SFO would take the lead in developing an anti-corruption work programme, to be completed by November 2017.

## The risk of corruption in New Zealand

- 16 Corruption<sup>3</sup> erodes public trust in government, institutions and the rule of law, and takes a significant toll on the global economy. Estimates of the total cost of corruption vary, but studies have placed the global cost of bribery alone at US\$1.5 trillion (approximately NZ\$2.2 trillion) per year.<sup>4</sup>

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<sup>2</sup> NZ Police (2017), Strategic Assessment: Corruption in New Zealand Perception vs Reality.

<sup>3</sup> There is no legally binding definition of corruption in New Zealand. The definition used by the Asia Development Bank is:

"Behaviour on the part of officials in the public or private sector in which they improperly and unlawfully enrich themselves or those close to them, or induce others to do so, by misusing the position in which they are placed."

<sup>4</sup> Kaufmann, Daniel, Myths and Realities of Governance and Corruption (November 2005).

17 However, as the OECD has noted, the true costs of corruption are likely to go much further than bribery alone, including misallocation of resources and market distortion.<sup>5</sup> Indeed, some estimates of the total cost of corruption suggest the figure is in excess of 5 percent of global GDP (approximately US\$2.6 trillion).<sup>6</sup>

*New Zealand remains relatively free of corruption but our risk is increasing*

18 New Zealand has a strong culture of integrity and our institutions remain largely free from systemic corruption.<sup>7</sup> New Zealand therefore rightly enjoys an international reputation for being one of the least corrupt countries in the world.

19 As noted above, Police's risk assessment notes that there is, however, a growing consensus that the occurrence of corruption is increasing in New Zealand and that it is likely more pervasive than generally acknowledged.

20 In recent years there has been an increase in the number of corruption related prosecutions and allegations in New Zealand. Instances of domestic corruption are becoming more common and allegations with an international element are also increasing. The SFO currently has 13 open investigations involving bribery or corruption allegations. Although the numbers remain minimal overall, the number of bribery and corruption-related complaints have increased over the last decade and more corruption related investigations are now being undertaken.

21 Research indicates that the most common types of domestic corruption are undisclosed conflicts of interest, inappropriate gifts and personal favours.<sup>8</sup> There have also been significant cases recently involving bribes paid to officials and corrupt payments made within the private sector.<sup>9</sup>

22 New Zealand also has increasing social and business links to jurisdictions with a high risk of corruption.<sup>10</sup> The risk of corruption is also known to be amplified in the context of increased spending on public infrastructure and Government procurement.<sup>11</sup>

*Complacency and a lack of proactive detection and prevention are the biggest risks*

23 As a country with generally solid anti-corruption foundations and a reputation for relatively low levels of corruption, arguably the most significant risk New Zealand faces is complacency.<sup>12</sup> Complacency impacts on our willingness and capacity to proactively detect and prevent corruption. It can also lead to inconsistent approaches in managing integrity risks including, for example, in relation to gifts and conflicts of interest policies.

24 For example, the Deloitte Bribery and Corruption Survey 2017 reported that approximately 20 percent of organisations surveyed have experienced one or more known instance of corruption in the last five years, both domestically and abroad.<sup>13</sup> However, only 55 percent of organisations expect to implement or upgrade their anti-

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<sup>5</sup> G20/OECD (2013), Issues Paper on Corruption and Economic Growth.

<sup>6</sup> OECD (2014). Background Brief: The rationale for fighting corruption

<sup>7</sup> Transparency International NZ, (2013). Integrity Plus 2013 New Zealand National Integrity System Assessment.

<sup>8</sup> Deloitte Bribery and Corruption Survey 2017.

<sup>9</sup> See, for example, *R v Borlase and Noone* [2017] NZHC 236; *Harrison v Serious Fraud Office* [2016] NZHC 2127.

<sup>10</sup> Deloitte Bribery and Corruption Survey 2015.

<sup>11</sup> See, for example, OECD, 'Preventing Corruption in Public Procurement' (2016).

<sup>12</sup> Transparency International NZ, (2013). Integrity Plus 2013 New Zealand National Integrity System Assessment.

<sup>13</sup> Including board members, executives, managers, and operations staff from public and private sector organisations, and not-for-profits. Deloitte Bribery and Corruption Survey 2017.

bribery and corruption compliance framework within the next five years, and more than half of respondents had not conducted a foreign bribery and corruption risk assessment.

- 25 Complacency can also lead to a lack of planning or overarching strategy among the agencies which have responsibility for New Zealand's anti-corruption framework. A table listing relevant agencies and their anti-corruption responsibilities is attached as **Appendix A**.
- 26 Given the number of agencies working on anti-corruption, there is a risk that without clear strategy and allocation of responsibility, New Zealand's approach to anti-corruption becomes uncoordinated and inefficient.
- 27 Moreover, while a number of public sector organisations have some powers or responsibility to launch investigations into corrupt behaviour<sup>14</sup> and the mismanagement of public funds<sup>15</sup>, in practice these are generally conducted reactively once the offending has already occurred.
- 28 There may be a particular risk in devolved public entities such as local government, where elected officials and staff are not regularly involved in anti-corruption policy development and where there is arguably more of a focus on voluntary compliance (e.g. making public declarations of pecuniary interests). This has been highlighted by a number of local government corruption-related complaints to the SFO which have resulted in investigations.

#### **Current work to respond to the risk of corruption**

- 29 As noted above, work is already underway to help respond to the key risks of corruption.
- 30 At a general level, the Ministry of Justice plays a key role in New Zealand's efforts to combat bribery and corruption, usually through leading on legislative reform and engagement with international organisations, including the OECD and the United Nations Office on Drugs and Crime. Engagement with the international community is an integral part of maintaining and enhancing New Zealand's reputation, and also provides valuable opportunities to learn about international best practice.
- 31 Responsibility for investigating and prosecuting complex or serious fraud, including bribery and corruption, lies with the SFO. The SFO coordinates with New Zealand Police on these investigations through a MOU. The Crown Law Office handles requests to and from other countries for mutual legal assistance in criminal matters.
- 32 More specifically, the State Services Commission (SSC) is developing new integrity guidance, including on conflicts of interest, gifts, and benefits for the State services.
- 33 The SSC is also currently working with Australia on a joint research project, 'Whistling While They Work 2', which aims to inform governments, regulators, and organisations of the effective management of internal reports of suspected wrongdoing. The project is due out in late 2018. The next phase of the work will, among other things, aim to identify best practice in this area.
- 34 The State Services Commissioner recently noted that he is considering a review of the Protected Disclosures Act 2000 in the context of the release of the Beatie report into the

<sup>14</sup> See, for example, the Serious Fraud Office Act 1990, Part 2.

<sup>15</sup> Public Audit Act 2001, section 18 and Part 4.

treatment of whistleblowers at the Ministry of Transport.<sup>16</sup> The Commissioner has also issued model standards outlining minimum expectations for organisations to support staff on speaking up in relation to wrongdoing, and will monitor compliance with these.

- 35 Following a commitment made by New Zealand at the London Summit, the Ministry of Business, Innovation and Employment (MBIE) is also exploring the establishment of a public central register of company beneficial ownership information, and intends to consult on this issue in early 2018.
- 36 The OAG has also proposed procurement and contract management as the theme for its 2018 - 19 work plan.
- 37 MBIE has also established a Procurement Capability Index, which is a tool designed to assist government agencies to self-assess procurement performance against a wide range of measures, including governance, accountability and good procurement practice.
- 38 These efforts, and a number of related pieces of work, are summarised in **Appendix B** attached and could form part of the work programme being developed by the SFO.

*There are several areas of our risk that are not currently being actively considered*

- 39 There are a number of specific risks which, to our knowledge, are not being addressed by current pieces of work. For example, we consider there are potential risks around a lack of auditing of decision-making which does not involve the spending of public money but nonetheless has considerable financial impact for the parties involved, including regulatory and quasi-regulatory decisions. Improper influence over such decisions, including through personal favours or gifts poses the same risk of undermining the legitimacy of decision-making as it does where it involves public expenditure.
- 40 We are also unaware of any work concerning issues such as broader based asset disclosure rules for elected and public officials,<sup>17</sup> strengthening requirements or incentives for companies to adopt robust anti-corruption compliance policies<sup>18</sup>, or enhancing incentives for companies to self-report where they detect compliance breaches.
- 41 The consistent theme of the issues that are yet to be carefully considered is the lack of mechanisms to proactively detect and prevent corruption. It is necessary that we proactively review our laws and policies to identify ways to reduce the risk of, and enhance our capacity to uncover corruption.
- 42 In this vein, Chief Executives directed the Ministry of Justice to undertake a review of international legislation related to preventing corruption, including procurement and auditing standards, and compliance regimes. The preliminary conclusions of that review are that New Zealand appears to rely more heavily on willing compliance and culture than on dedicated anti-corruption legislation and compliance frameworks. There appears

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<sup>16</sup> <http://www.ssc.govt.nz/media-statement-report-investigation-whistle-blower-treatment-within-ministry-transport>

<sup>17</sup> Asset disclosure systems are mechanism by which a public official must periodically submit information about their income, assets, liabilities, and/or interests; see Ivana M. Rossi, Laura Pop & Tamar Berger, 'Getting the Full Picture on Public Officials: A How-To Guide For Effective Financial Disclosure' (Stolen Asset Recovery Initiative; The World Bank & UNODC) (2017).

<sup>18</sup> Including in relation to recruitment and employment termination, and procurement.



to be relatively little tailoring of legislative solutions to specific risks of bribery or corruption. A summary of the draft review is attached as **Appendix C**.

- 43 The intention is that this work will help to inform possible areas of legislative reform to explore as part of the work programme being developed by the SFO. We propose that the Ministry provides advice on possible improvements to our legislative framework as part of the ODESC report back discussed below.

### **The SFO is developing a work programme to improve our response to corruption**

- 44 While the ongoing pieces of work described above are all positive moves individually, they do not overcome the issue of a lack of coordination, oversight and our ability to detect emerging trends and issues. Nor do they address all of New Zealand's risk areas.

- 45 The issue of coordination was discussed by Chief Executives at their meeting of 3 May 2017. As a result of that discussion, Chief Executives agreed in principle to the SFO developing a work programme to respond to the risk of corruption. The most recent version of the terms of reference to give SFO a mandate to lead the development of the work programme are attached as **Appendix D**,<sup>19</sup>

- 46 The SFO is well placed to lead this work given its expertise in anti-corruption work, policy development experience and a wide range of established domestic and international government and private sector contacts.

- 47 The aim of developing the work programme is to provide a cohesive framework for agencies' anti-corruption efforts so that the conditions which allow corruption to occur do not take root in New Zealand. It is anticipated that the initial product will be a plan of prioritised actions under three different streams of the proposed programme. The four work streams are:

- 47.1 prevent – address the conditions that allow corruption to occur, including exploring whether a specific agency should have structural oversight of public and private entities' internal prevention systems
- 47.2 detect and enforce – improve practical mechanisms to proactively identify and act on individual cases
- 47.3 engage and educate – enhance domestic and international engagement and raise awareness of integrity standards and corruption, and
- 47.4 understand and inform – develop a shared understanding of corruption and how this relates to New Zealand's capability to inform and diagnose the common areas of risk.

- 48 A lead agency will be assigned to each of the actions, which will be targeted at addressing the gaps and risks identified in this paper as well as other risks or gaps that are identified during the process.

- 49 Several elements stand out as being important to all the work streams; improved data collection, strong connections with public entities<sup>20</sup> and the private sector, and the

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<sup>19</sup> This version is subject to amendment and it is anticipated it will be approved by the Chair of ODESC in the near future.

<sup>20</sup> Including local government agencies, the health and education sector, State-owned enterprises, and Crown entities.

development of proactive and practical solutions to help deter and detect unethical behaviour.

- 50 Improved data collection, sharing and monitoring of corruption indicators would allow more precise identification of our corruption risk, gaps in the system, and opportunities for targeted investment in anti-corruption efforts.
- 51 Close partnerships with local government, the private sector and non-government organisations are also essential. These sectors all contribute to New Zealand's economy and have a key role to play in maintaining our reputation as one of the least corrupt countries in the world.
- 52 Most importantly, in our view, it is vital that any proposed solutions are proactive and pragmatic. If our systems are not effective in looking for fraud and corruption then, whether through complacency or impunity, our risks will never be reduced.
- 53 Both public and private entities need to have effective mechanisms and prevention systems in place. Prevention systems can help to ensure probity in decision making, and to detect and deter corrupt behaviours. Increased oversight of prevention systems will also enable us to identify risk areas. Because most agencies with anti-corruption responsibilities have primarily reactive functions, including the SFO, initial work will need to specifically assess which agencies should lead aspects of the work programme with a more proactive focus.
- 54 The SFO intends to develop the work programme by November 2017. We therefore propose that Cabinet ask ODESC to report back to Cabinet on the work programme developed by the SFO before the end of 2017, with a view to agreeing on key practical actions, as well as any necessary legislative changes to enable those actions to be implemented.

### **Consultation**

- 55 The Department of Prime Minister and Cabinet, State Services Commission, Serious Fraud Office, New Zealand Police, Ministry for Business, Innovation and Employment, Department of Internal Affairs, and the Office of the Controller and Auditor-General have been consulted on the paper. The Treasury has been informed of the paper.

### **Financial Implications**

- 56 There are no financial implications arising directly from the proposals in this paper.
- 57 As noted above, however, any policy changes to respond to the risk of corruption could, for example, cement and improve New Zealand's reputation as country with relatively low levels of corruption. Conversely, enhancing our efforts to combat corruption could lead to increased compliance costs for central and local government, as well as for New Zealand businesses.
- 58 Officials will provide more detailed information on the financial implications of any proposals once the work programme above has reported back.

### **Human Rights**

- 59 There are no human rights implications arising directly from the proposals in this paper.

## Legislative Implications

60 There are no legislative implications arising directly from the proposals in this paper. There may, however, be a need for legislative change depending on the conclusions of the work programme above.

## Regulatory Impact Analysis

61 The Regulatory Impact Analysis requirements do not apply to this paper and therefore no Regulatory Impact Statement has yet been prepared.

## Gender Implications

62 There are no gender implications arising directly from the proposals in this paper.

## Disability Perspective

63 There are no disability implications arising directly from the proposals in this paper.

## Publicity

64 We do not propose to undertake any publicity until after the work programme outlined above has reported back with possible next steps.

## Recommendations

65 The Minister of Justice and the Minister responsible for the Serious Fraud Office recommend that the Committee:

- 1 **note** that New Zealand remains relatively free of corruption but that the risk is increasing
- 2 **note** that officials have begun a programme of work aimed at better identifying and responding to the risk of corruption in New Zealand
- 3 **direct** the Officials Committee for Domestic and External Security Coordination to report to the Cabinet Social Policy Committee on the anti-corruption work programme by the end of 2017
- 4 **direct** the Ministry of Justice to provide advice on possible improvements to our legislative framework, in consultation with relevant agencies including Serious Fraud Office and New Zealand Police, as part of the ODESC report back by the end of 2017.

Authorised for lodgement

Hon Amy Adams

Minister of Justice

Authorised for lodgement

Hon Paula Bennett

Minister responsible for the Serious Fraud Office



## Appendix A: Agency responsibilities

Agency	Responsibility
The Serious Fraud Office (SFO)	SFO is responsible for complex or serious fraud investigations and prosecutions. Priority cases for the SFO include bribery and corruption, and any case that could significantly damage New Zealand's reputation for fair and free financial markets minus corruption. The SFO has received funding to provide resource to the Centre, which has resulted in the appointment of an investigator who commenced at the Centre in June 2017.
The Ministry of Justice (MoJ)	MOJ has general anti-corruption policy responsibility and administers some of the key anti-corruption legislation. MoJ works with other agencies and organisations – both domestically and globally – to maintain New Zealand's reputation, support international anti-corruption efforts and strengthen our anti-bribery laws.
The Office of Controller and Auditor-General (OAG)	The OAG is an Officer of Parliament with a central role ensuring the accountability of the public sector. Part of its role is to look closely at the way the public sector uses its money and to report any corrupt use to Parliament. Audit service providers appointed by the Auditor-General carry out annual audits of public entities on the Auditor-General's behalf to give taxpayers and ratepayers assurance that public entities are appropriately reporting on how they spend public money and on the services they have provided.
The Office of the Ombudsman	The Office of the Ombudsman investigates complaints raised against New Zealand central, regional and local government. The Ombudsmen can look into complaints about corrupt behaviour.
Sport New Zealand	Sport New Zealand works with agencies and organisations – domestically and internationally – to promote integrity in sport.
The Ministry of Business, Innovation and Employment (MBIE)	MBIE is responsible for anti-corruption work related to companies and limited partnerships, and for procurement policy. This also includes labour exploitation risks.
The State Services Commission (SSC)	The State Services Commissioner holds the integrity mandate for the State services and is responsible for setting standards of integrity and conduct. Under his statutory mandate, the Commissioner is the employer of public service chief executives. He can exercise independent powers of investigation and enquiry, including in relation to any concerns about bribery and corruption in the State services. The State Services Commission administers the Protected Disclosures Act 2000 (PDA), and is an "appropriate authority" under the PDA.
The Crown Law Office (CLO)	The CLO handles, alongside relevant agencies, requests to and from other countries for mutual legal assistance in criminal matters.

Agency	Responsibility
Inland Revenue Department (IRD)	IRD uses technology, information from other government agencies, and data analysis to detect and monitor suspicious activity, ranging from tax evasion and basic scams, to complex and organised criminal activities. IRD is responsible for matters including tax deductibility, training for tax examiners, and bilateral tax treaties.
New Zealand Police	Can cooperate with SFO in the investigation of bribery and corruption. The Financial Intelligence Unit within Police also receive suspicious transaction reports from banks and financial institutions to assist detection of money-laundering (which may follow bribery or corruption). Police has an important role in asset recovery, including proceeds of domestic and international corruption.
Department of Internal Affairs	Department of Internal Affairs (DIA) is responsible for working with other agencies, local government sector organisations and local authorities directly to resolve serious problems that may arise within local government. This may occasionally result in a Crown intervention to a local authority, including any entity that the local authority may control or have an interest in (Local Government Act, Part 10).

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## Appendix B: Current anti-corruption work being undertaken by agencies

Agency	Work	Key risk area	Completion date
MoJ	Review of international legislation on preventing corruption.	Lack of mechanisms to prevent corruption	July 2017
MoJ	UN Convention Against Corruption – first cycle review of New Zealand’s implementation of chapters III (criminalisation and law enforcement) and IV (international cooperation) of the Convention	Awareness	Late 2017
Ministry of Business, Innovation and Employment	Enhance the intelligence picture to gain a better understanding of the scale and scope of labour exploitation. (ODESC Action from May 2017 meeting)	Labour exploitation	July 2017
MBIE	Design of a procurement capability index to assist government agencies to self-assess procurement performance against a range of measures, including governance, accountability and good procurement practice.	Procurement	Late 2017

Agency	Work	Key risk area	Completion date
	All agencies covered by the Government Rules of Sourcing will be required to complete the Procurement Capability Index. New Zealand Government Procurement will report the findings to Ministers.		
SSC	Integrity guidance topics for the State services including: <ul style="list-style-type: none"> <li>• bribery and corruption risks</li> <li>• preventing fraud risks</li> <li>• ethical decision-making</li> <li>• gifts and benefits</li> <li>• hospitality</li> <li>• speaking up, and</li> <li>• endorsements.</li> </ul>	Awareness	TBA New Speaking Up standard is now published: <a href="http://www.ssc.govt.nz/speaking-state-services">http://www.ssc.govt.nz/speaking-state-services</a>
SSC	Conflicts of interest guidance for the State services, along with a training module.	Conflicts of interest	TBA
SSC	Whistling While They Work: Research into the management of reporting of suspected wrongdoing in New Zealand and Australian organisations	Improving the reporting and management of reports of wrongdoing in or by an organisation, including bribery and/or corruption by private and public sector employees.	Mid-late 2018

Agency	Work	Key risk area	Completion date
SSC	Scoping a review of the Protected Disclosures Act 2000	Ineffective legislation that does not support reporting concerns of bribery and corruption	2017 - 2018
Police (Financial Intelligence Unit)	Egmont Group Centre of Excellence and Leadership (ECOFEL) Establishment project that incorporates a focus on anti-corruption and money laundering. The set-up phase has begun with training operations to start in 2018.		July 2017

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## APPENDIX C

# Summary of draft report on international legislation to prevent bribery and corruption

### Purpose

This paper provides a summary of the draft report that responds to Chief Executives' direction to the Ministry of Justice to assess New Zealand's corruption prevention legislative framework against international best practice.

### Background

New Zealand has a strong culture of, and reputation for, integrity and our institutions remain free from systemic corruption. That reputation and progress has been built, in part, upon a relatively strong legislative foundation. However, there is now consensus among experts that corruption is increasingly occurring in New Zealand and that it is almost certainly more pervasive than we currently understand.

Given the increasing risk, it was considered timely to take a comparative look at New Zealand's legislative framework.

### Methodology

The Ministry of Justice identified seven topics recognised as being of importance in preventing corruption, many of which were identified in Police's 2017 Strategic Assessment of corruption in New Zealand. These topics are:

- Corruption prevention bodies
- Procurement
- Financial disclosure systems
- Reporting duties, incentives and protections
- Auditing
- Compliance regimes, and
- Lobbying regulations.

For each topic, New Zealand's legislative or policy approach is briefly described, followed by an assessment of any observable international trends which may indicate a "best practice" approach. Each topic chapter closes with three to four examples of legislation from other countries.

The content of the draft report was developed through a literature review, engagement with other state sector organisations, and consultation with a number of international experts from the relevant countries, including the United Kingdom, France, Canada, Australia, Finland, and the Netherlands.

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## Example of country profile

### FRANCE – SAPIN II

Sapin II, enacted in December 2016, established the *Agence Française Anticorruption* (the Agency). The Agency's main focus is prevention, but it does have a role in monitoring compliance with their new obligations under Sapin II, including the requirement to put in place anti-corruption policies.

While the Agency is not fully independent, it is headed by a magistrate who may not be given instructions by the Government.

The Agency has some investigative powers, including the ability to conduct on-site review, make document requests and conduct interviews. In the event of a violation, or if a company's anti-corruption procedures are deemed insufficient or ineffective, the Agency's enforcement committee has the power to issue warnings or orders to comply. The Agency may also impose administrative sanctions (up to EUR 1 million for companies and EUR 200,000 for individuals, together with the possible publication of the sanction).

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## Conclusions

There are a number of difficulties in assessing international best practice in relation to corruption prevention. For example, legislative practice varies significantly and there is no entirely reliable way to assess precisely how effective legislation is in the area.

The draft report also notes that, how the legislation is applied in practice is at least as, if not more important, than the words of the legislation itself.

Given these difficulties, the draft report takes a reasonably high level approach to drawing conclusions and does not make specific recommendations about the individual topic areas.

However, the preliminary conclusion is that there is a case to be made that New Zealand is falling behind the international community in finding new ways to prevent corruption.

There appears to be relatively little tailoring of our legislative solutions to specific risks of bribery or corruption. This contrasts with a number of pieces of legislation from around the world which have been drafted and enacted with clear intent to address concerns around probity and integrity. Some countries have opted for broad-based anti-corruption laws, as in France with Sapin II. Countries like the US, meanwhile, take a more piecemeal, but still very targeted, approach in their legislative solutions.

The common thread throughout the draft report is that New Zealand appears to rely more heavily on willing compliance and culture, rather than dedicated anti-corruption legislation and compliance frameworks.

This approach has largely served us well in the past. But while we are yet to experience a massive 'shock' in terms of corruption, increasing incidents of corruption may stress our legislative frameworks and erode trust in the public sector's ability to prevent, detect and investigate corrupt practices.

# Terms of Reference

Development of an Anti-Corruption Work  
Programme to enhance New Zealand's  
integrity framework

August 2017

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## Purpose

1. To develop an Anti-Corruption Work Programme that enables system-wide consistency and co-operation to reduce the risks of corruption and enhance New Zealand's integrity framework.

## Rationale

2. Corruption is a global problem that damages businesses, markets, democratic institutions, and the social fabric of societies everywhere. Widespread corruption undermines the rule of law and erodes justice. New Zealand is considered secure, resilient, and prosperous and continuously features in the top five of global anti-corruption surveys.
3. The structure of New Zealand's entities and legislation provides the basis for a strong anti-corruption ethos, but evidence now suggests that corruption in New Zealand is almost certainly more prevalent than generally acknowledged. This is supported by the draft risk profile developed by the Department of Prime Minister and Cabinet (DPMC) which rated the corruption risk in New Zealand as 'very high'.
4. The Officials Committee for Domestic and External Security Coordination (ODESC) convened a group of relevant Chief Executives on 3 May 2017 where it was agreed that the Serious Fraud Office (SFO) would provide a Terms of Reference for a project to develop an Anti-Corruption Work Programme (the Work Programme) to mitigate the risks posed by corruption in New Zealand and that:
  - Ministers would be consulted about the proposed project and work programme
  - The project and work programme would be supported by relevant agencies
  - The resulting Work Programme may indicate the need to develop a national anti-corruption strategy or action plan.

## Benefits

5. Deliver a cohesive, consistent and sustainable approach that ensures New Zealand continues to have a strong culture of integrity and anti-corruption so it is seen as a global leader in anti-corruption efforts.
6. Shared understanding of the required standards of conduct by government (central and local) and the New Zealand private sector and not-for-profits. This will be supported by robust compliance, regulatory and legislative mechanisms.
7. Enhanced compliance with international commitments including the United National Convention against Corruption (UNCAC), Organisation for Economic Co-Operation and Development (OECD), strategic plan of APEC Anti-Corruption Fora and the London Anti-Corruption Summit commitments (2016)<sup>1</sup>.
8. Contribution to the Government's Business Growth Agenda of building a more productive, confident and competitive New Zealand economy, through tackling corruption and financial crime.

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<sup>1</sup> This includes the recent appointment of a New Zealand representative to the Governance Board of the International Anti-Corruption Coordination Centre (IACCC) and MBIE is exploring the establishment of a public central register of company beneficial ownership information.

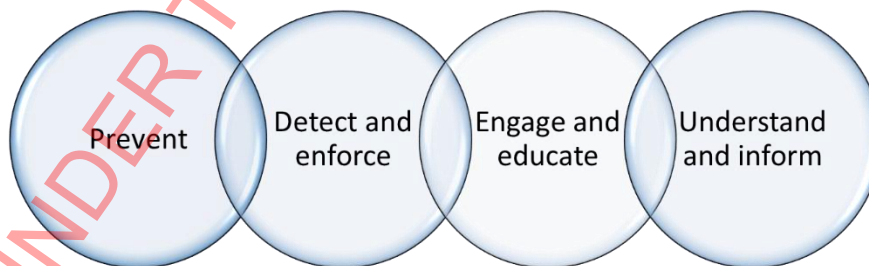


9. Increased collaboration across the criminal justice sector by increasing collective capability to achieve shared goals.<sup>2</sup>
10. Contribution directly and indirectly to the Government's Better Public Services' key priority areas specifically:
  - Result 7: Reducing crime
  - Result 9-10: Improving interaction with government.

## Themes

11. The Anti-corruption Work Programme will be developed around four key themes (illustrated in Diagram 1 with more detail in Appendix A):
  - *Theme One: Prevent* - address the conditions that allow corruption to occur in New Zealand, including exploring whether a specific agency should have ongoing oversight of New Zealand's anti-corruption efforts.
  - *Theme Two: Detect and enforce* - ensuring robust detection and enforcement programmes and capabilities are in place so that agencies proactively identify and act on individual cases using current, reliable and complete intelligence.
  - *Theme Three: Engage and educate* - enhancing and co-ordinating domestic and international engagement opportunities, to raise awareness, educate and reduce the risks of corruption in New Zealand.
  - *Theme Four: Understand and inform* - develop a shared understanding of corruption and how this relates to New Zealand's capability to inform and diagnose the common areas of risk. This may include introducing consistent key performance indicators and reporting mechanisms to understand New Zealand's overall risk of corruption based on consistent and reliable information.

Diagram 1 Anti-corruption themes



<sup>2</sup> Criminal Justice Sector Strategic Intent 2018 4-Year Plan.

## Stakeholders

12. The project to develop the Work Programme will be led by the Serious Fraud Office (SFO), supported by the wider ODESC system and agencies.
13. The other key stakeholder agencies are:
  - Department of Prime Minister and Cabinet (DPMC)
  - Ministry of Justice (MoJ)
  - State Services Commission (SSC)
  - New Zealand Police (NZP)
  - Ministry of Business, Innovation and Employment (MBIE).
14. Other agencies and stakeholders from other agencies, local government and the private and not-for-profit sectors are being identified and will be engaged throughout the development of the Work Programme. This will ensure actions and plans are aligned to deliver benefits for all stakeholders.
15. The SFO will deliver the Work Programme development from within its existing appropriation and there are likely to be opportunities for secondees from relevant agencies to participate in some work streams.

## Governance and project management

16. The Minister for the SFO and State Services with the Minister of Justice are the Joint Sponsoring Ministers to develop the Work Programme.
17. The governance framework/group for the Work Programme will come under the umbrella of ODESC and be chaired by the Chief Executive of DPMC, Andrew Kibblewhite. The ODESC Anti-corruption Governance Group will be made up of relevant Chief Executives (or their representatives) from the key stakeholder agencies as reflected below:

Julie Read	Serious Fraud Office (SFO)
Howard Broad	Department of the Prime Minister and Cabinet (DPMC)
Peter Hughes	State Services Commission (SSC)
Commissioner Mike Bush	New Zealand Police (NZP)
Carolyn Tremain	Ministry of Business, Innovation and Employment (MBIE)
Andrew Bridgeman	Ministry of Justice (MoJ)
Stephen Town	Auckland Council (AC)

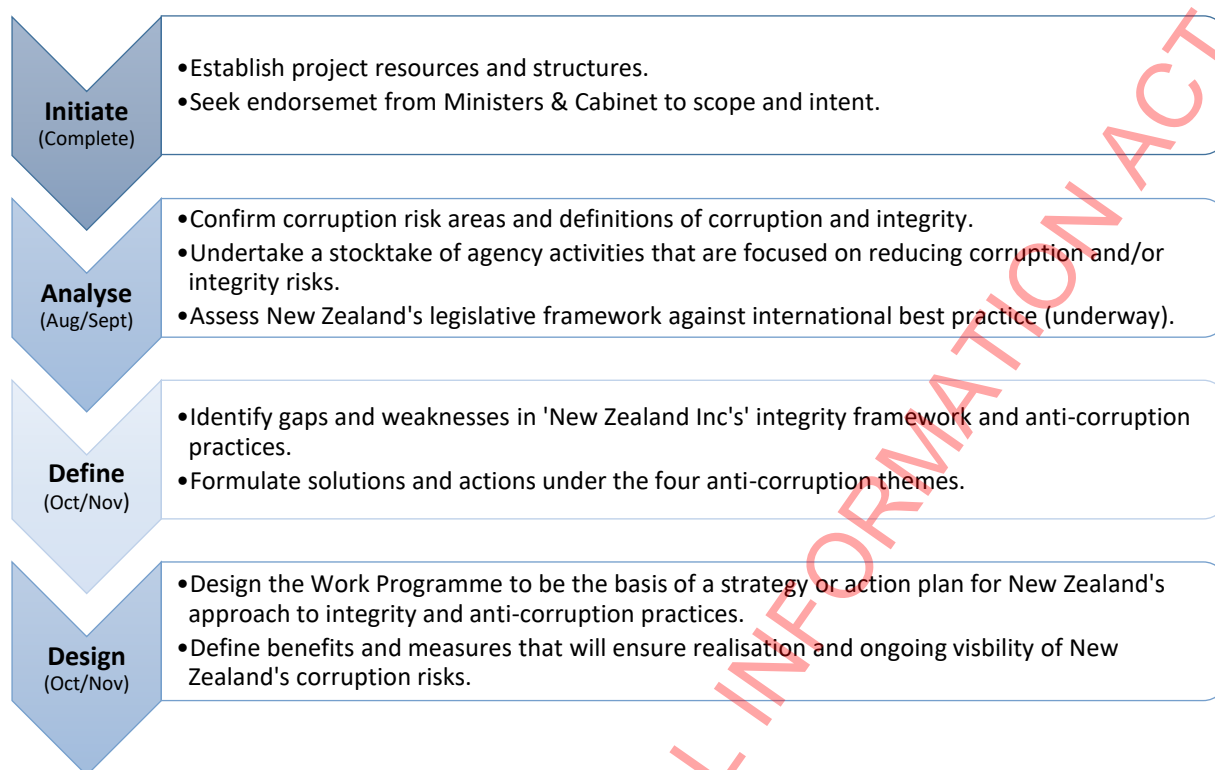
18. The Controller and Auditor-General will attend meetings as an observer but due to their constitutional role will not have decision making authority.
19. The NSS Directorate within DPMC will support the Anti-corruption Governance Group and Chair, who will have accountability for reporting through to the Joint Sponsoring Ministers.
20. The Project Executive is the SFO General Manager Investigations, Rebecca Rolls, who is working closely with DPMC as the conduit to the Anti-corruption Governance Group.

21. The SFO has engaged a Project Manager to manage project activities. The SFO Senior Leadership Team will provide advisory support, in particular in agreeing outcomes, measures and suggesting overall accountabilities in the Work Programme.
22. An Anti-corruption Cross Agency Working Group will be established, comprising of Senior Officials from the key stakeholder agencies. This will build on the group that formed during the development of the DPMC Corruption Risk Profile and the recently completed Strategic Assessment on Corruption in New Zealand.
23. The Working Group will collaborate with a number of Stakeholder Groups defined by matters of common interest and sector positioning (e.g. private, not-for-profit sectors) in order to the progress specific work streams.
24. An illustration of the governance and management of the project is detailed in Appendix B.

## Delivery

25. The SFO has initiated the project (based on the ODESC decision, 3 May) and it is anticipated that the ODESC Governance Group will be in a position to report back to the Joint Sponsoring Ministers in November 2017, and Cabinet by the end of 2017 if required.
26. The November report back will detail the Work Programme, which will outline the initiative, the delivery timing and potential costs (where available). This will enable decisions to be made on any initiatives requiring new or additional investment to deliver the longer term benefits of mitigating New Zealand's corruption risks.
27. The Work Programme will contain prioritised initiatives, under the four work streams, along with identification of the lead agencies that will be accountable for delivery of those actions. This ensures the longer term benefits of co-ordinating activity through the Work Programme are realised, i.e.:
  - Immediate improvement of the risk mitigation capability through consistent plans, to raise awareness and improve system capability.
  - Long term improvements in the integrity learning system, risk governance and partnerships.
  - Current and future needs of the integrity system are defined to enable sustainability of efforts.
  - Minimal duplication of effort in a joined up integrity system.
28. To develop a national Work Programme the following activity as illustrated in Diagram 2 is planned.

Diagram 2 Project activity and phases to November 2017



## Appendix A: Anti-corruption Themes

### One: Prevent

*Address the conditions that allow corruption to occur in New Zealand, including exploring whether a specific agency should have ongoing oversight of New Zealand's anti-corruption efforts.*

By ensuring that there is a consistent and accurate narrative around the causes and effects of corruption we can influence organisational culture and controls to engender an anti-corruption ethos across New Zealand. This will enable New Zealand to prevent corruption before it occurs. The roles and responsibilities of agencies across the anti-corruption landscape will be explored to understand where gaps or duplication of effort exists.

### Two: Detect and Enforce

*Ensuring robust detection and enforcement programmes and capabilities are in place so that agencies proactively identify and act on individual cases using current, reliable and complete intelligence.*

To really understand the scale of corruption and integrity risk New Zealand has we must have robust data on the extent and nature of corruption, to enhance efforts to detect and prosecute corrupt behaviour and inform how we might measure behaviour and test systems.

Improved intelligence gathering and information sharing would lead to earlier identification of indicators of potential corruption, and a better understanding of threat and systemic risks, including where these intersect with other types of crime. Investigation and prosecution are important tools in demonstrating New Zealand's commitment to anti-corruption which will also be enhanced by a more complete intelligence picture. This stream also encompasses development of awareness to align all remedies in our response tool kit (e.g. prosecution, asset recovery action, prohibition from directorships) to inform a tactical response framework.

### Three: Engage and Educate

*Enhancing and co-ordinating domestic and international engagement opportunities, to raise awareness, educate and reduce the risks of corruption in New Zealand.*

Corruption is an issue which cannot be solved by one agency or country alone. Perhaps our most important engagement effort is domestically where we need to ensure cross-system efforts are understood and coordinated to realise synergies. Engagement also needs to reach across the economic community through private and not-for-profit sectors particularly with international groups such as Transparency International.

We will address this by building on guidance material (such as codes of conduct) already available to New Zealand organisations and ensuring they are clearly communicated and easily accessible. The initial focus will be on at-risk sectors or activities, for example conflicts of interest and gift disclosures, to enable proactive identification of gaps or areas for improvement in our legislation and governance structures and how this is communicated

In an increasingly globalised world, we must also ensure that our international bilateral and multilateral relationships are healthy. In addition to our presence at the International Anti-Corruption Co-ordination Centre (IACCC), New Zealand agencies are well known for our work in the Pacific and New Zealand is a respected member of the OECD Working Group on Bribery, we have recently ratified the UNCAC convention and completed the first review phase. We are also active in APEC Anti-corruption fora where



opportunities may exist due to New Zealand hosting APEC in 2021. This engagement together with the development of a strategy as a whole would enhance New Zealand's reputation and be effective in meeting international obligations.

## Four: Understand and inform

*Develop a shared understanding of corruption and how this relates to New Zealand's capability to inform and diagnose the common areas of risk. This may include introducing consistent key performance indicators and reporting mechanisms to understand New Zealand's overall risk of corruption based on consistent and reliable information.*

Organisations need to sufficiently understand the capability they have to respond to their own internal and external risks, as well as how this contributes to system improvements and connectedness. In order to achieve this, they need to know how best to utilise the 'course of business' information they hold and collect but evaluate it from a hygiene and risk perspective. We will seek to work with entities to look at current practices and identify potential for enhancement of their engagement with their information and consider it through an anti-corruption lens. This will also enable them to identify links to any system impacts they may be in a position to influence. A diagnostic dimension is required in this approach in that not only does an organisation need to be prepared to identify examine any weaknesses but they need to be alive to what the relevant indicators are and be in a position to respond.

## Appendix B: Proposed governance structure – Anti-corruption

