

Organised Crime and Anti-corruption Legislation Bill

Government Bill

Explanatory note

General policy statement

Overview

This is an omnibus Bill aimed at strengthening the law to combat organised crime and corruption. The Bill implements proposals contained in Strengthening New Zealand's Resistance to Organised Crime: An all-of-Government Response (August 2011). These proposals aim to improve New Zealand's ability to collaborate with international efforts to disrupt organised crime and ensure law enforcement agencies are able to quickly and effectively respond to new challenges.

The Bill allows New Zealand to ratify the United Nations Convention against Corruption and enables implementation of the Agreement between the Government of the United States of America and the Government of New Zealand on Enhancing Cooperation in Preventing and Combating Crime. It also improves New Zealand's compliance with a number of other international conventions including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the United Nations Convention against Transnational Organized Crime, and the United Nations Anti-Trafficking Protocol.

Organised crime amendments

The Bill contains amendments that build on existing legislation to target and further disrupt the activities of organised criminal groups. The human trafficking offence in the Crimes Act 1961 is amended to be made more effective and brought into line with international best practice. The transnational element of the offence is removed to ensure trafficking can be prosecuted regardless of whether the crime crosses a border. In addition, the Bill ensures that the use of an “exploitative purpose” is covered as a means of trafficking in persons.

The Crimes Act 1961 and the Customs and Excise Act 1996 are amended to address gaps in New Zealand’s identity-offence framework. Existing offences are expanded to ensure that selling, transferring, distributing, importing, exporting, or otherwise making available unlawfully obtained or manufactured identity-related information is a criminal offence. Similarly, making, possessing, selling, exporting, and disposing of goods intended to facilitate the commission of identity-related crime are criminalised.

The money laundering offences in the Crimes Act 1961 and the Misuse of Drugs Act 1975 are amended to ensure they are effective and compliant with New Zealand’s international obligations. The Bill clarifies that intent to conceal is not a necessary element of the offence and removes the requirement that the property laundered must be the proceeds of an offence punishable by at least 5 years’ imprisonment. These changes require consequential amendments to the Financial Transactions Reporting Act 1996.

The ability to detect and investigate money laundering is improved through amendments to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. Financial institutions are required to routinely report inherently high-risk transactions to the Financial Intelligence Unit of the New Zealand Police.

New Zealand’s ability to co-operate internationally is improved. The Criminal Investigations (Bodily Samples) Act 1995 and the Mutual Assistance in Criminal Matters Act 1992 are amended to allow the sharing of DNA information for the purpose of criminal investigations or proceedings, subject to the Attorney-General’s authorisation. New Zealand will be better equipped to assist other countries to recover illicit gains. Amendments to the Criminal Proceeds (Recovery) Act 2009 ensure that the time frame for restraining assets on behalf

of another country is sufficient and that the restraint can occur without tipping off the individual concerned.

The Bill amends the Policing Act 2008 to expressly provide the Police with a power to share personal information with its international counterparts. Safeguards are included to ensure any information-sharing is appropriate. This enables New Zealand to implement the agreement with the United States on Enhancing Cooperation in Preventing and Combating Crime.

Anti-corruption amendments

The Bill also contains amendments to enhance New Zealand's anti-corruption legislative frameworks and bring New Zealand into line with international best practice as set by the United Nations Convention Against Corruption, the Recommendations of the Financial Action Taskforce, and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Bill is intended to ensure New Zealand's full compliance with the United Nations Convention Against Corruption, while taking into account the existing legislative framework and the extent to which obligations under that Convention can be met through non-legislative means.

The Bill updates the definition of crime involving dishonesty in the Crimes Act 1961 to ensure those convicted of corruption offences cannot hold positions of trust in the community. The definitions of business and routine government action are also updated to ensure the foreign bribery offence applies to bribery in relation to the provision of international aid and the facilitation payments exception is not open to abuse.

The foreign bribery offence in the Crimes Act 1961 is amended to remove the dual criminality requirement. This ensures that New Zealand can effectively prosecute foreign bribery regardless of whether it was an offence in the country in which the conduct occurred.

New offences are created to address gaps in New Zealand's anti-corruption framework. The Crimes Act 1961 is amended to criminalise the acceptance of a bribe by a foreign public official and the acceptance of a bribe in return for using one's influence over an official.

The foreign bribery offence is amended to clarify the circumstances in which a legal person is liable for foreign bribery.

The obligations of companies are clarified. The Companies Act 1993 is amended to ensure companies record small facilitation payments (small payments to speed up an action to which the payer is already entitled) in a consistent manner. The Income Tax Act 2007 is amended to ensure that no bribes are tax deductible.

The Bill ensures that New Zealand can provide international assistance in corruption investigations and prosecutions by amending the Mutual Assistance in Criminal Matters Act 1992.

The penalties for bribery and corruption in the private sector are increased. The Secret Commissions Act 1910 is amended to bring penalties into line with public sector bribery and general fraud offences.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. It provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2014&no=219&>.

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 9 June 2014 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <http://www.justice.govt.nz/policy/regulatoryimpactstatements>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause. This Bill is an omnibus bill that is to be divided into 12 bills. Each of the resulting bills is to have a bill-specific commencement clause, one that takes into consideration any system changes and training that needs to be carried out before the proposed changes may be implemented. The commencement provision set out in *clause 2(1)* is a model of the type of commencement clause that is designed to accommodate this preparatory work. The commencement provision set out in *clause 2(2)* is specific to the resulting bill that is to amend the Policing Act 2008. Commencement of these amendments at the earliest possible time is desirable to facilitate the implementation of the Agreement between the Government of the United States of America and the Government of New Zealand on Enhancing Cooperation in Preventing and Combating Crime.

Part 1

Amendments to Crimes Act 1961

Clause 3 provides that this Part amends the Crimes Act 1961 (the **principal Act**).

Clause 4 amends section 2(1), which relates to interpretation. The amendment replaces the definition of crime involving dishonesty.

Clause 5 replaces section 98D, which relates to trafficking in people by means of coercion or deception. *New section 98D* augments the offence of trafficking in persons. The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both.

Clause 6 amends section 105C, which concerns the bribery of foreign public officials. The amendments insert a definition of business and employee, adjust the definition of routine government action, and change a cross-reference. They also provides for corporate liability.

Clause 7 replaces section 105E, which relates to an exception for acts that are lawful in the country of a foreign public official, with *new sections 105E and 105F*. *New section 105E* sets out an offence for the corruption of foreign public officials. The penalty is imprisonment for a term not exceeding 7 years. *New section 105F* sets out an offence for trading in influence. The penalty is imprisonment for a term not exceeding 7 years.

Clause 8 amends section 106, which concerns restrictions on prosecution. The amendment changes a cross-reference.

Clause 9 amends section 228, which concerns dishonestly taking or using a document. The amendment sets out an offence for selling, transferring, or otherwise making available any document knowing that the document was, dishonestly and without claim of right, taken, obtained, or used with intent to obtain any property, service, pecuniary advantage, or valuable consideration. The penalty is imprisonment for a term not exceeding 3 years.

Clause 10 inserts *new sections 228A to 228C*. *New section 228A* sets out an offence for designing, manufacturing, or adapting goods with intent to facilitate the commission of crimes involving dishonesty. *New section 228B* sets out an offence for possessing, selling, or disposing of goods designed, manufactured, or adapted with intent to facilitate the commission of crimes involving dishonesty. *New section 228C* sets out an offence for possessing goods capable of being used to facilitate crimes involving dishonesty with intent to facilitate the commission of those offences. The penalty for each offence is imprisonment for a term not exceeding 3 years.

Clause 11 amends section 240, which relates to obtaining or causing loss by deception. The amendment sets out an offence for selling, transferring, or otherwise making available any document or thing capable of being used to derive a pecuniary advantage knowing that, by deception and without claim of right, the document or thing was, or was caused to be, delivered, executed, made, accepted, endorsed, or altered. The penalty is imprisonment for a term not exceeding 3 years.

Clause 12 amends section 243, which relates to money laundering. The amendments insert a definition of offence, adjust the definition of proceeds, repeal the definition of serious offence, and add a clause that provides that, despite anything in section 243(4), the prosecution is not required to prove that the accused had an intent to conceal any property or to enable any other person to conceal any property.

Clause 13 replaces section 243A, which relates to charges for money laundering. *New section 243A* provides that a person may be charged under section 243(2) or (3) in respect of any property that is the proceeds of an offence to which section 243(2) or (3) applies even though the person who committed the offence has not been charged or convicted of that offence.

Clause 14 amends section 244, which relates to a defence in connection with the enforcement of certain enactments. The amendment

replaces “this section, any other provision of this Act, or any other enactment relating to a serious offence” with “section 243”.

Clause 15 amends section 245, which concerns the application of section 243. The amendments make several consequential changes.

Clause 16 amends section 256, which relates to forgery. The amendment sets out an offence for selling, transferring, or otherwise making available any false document knowing it to be false and to have been made with the intention that it be used or acted on (in New Zealand or elsewhere) as genuine. The penalty is imprisonment for a term not exceeding 3 years.

Clause 17 amends section 258, which relates to altering, concealing, destroying, or reproducing documents with intent to deceive. The amendment adds an offence for selling, transferring, or otherwise making available any document knowing that the document was altered, concealed, or made, in whole or in part, as a reproduction of another document with intent to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration, or to cause loss to any other person. The penalty is imprisonment for a term not exceeding 3 years.

Part 2

Amendments to other enactments

Subpart 1—Amendments to Anti-Money Laundering and Countering Financing of Terrorism Act 2009

Clause 18 indicates that this subpart amends the Anti-Money Laundering and Countering Financing of Terrorism Act 2009.

Clause 19 amends section 5, which concerns interpretation. The amendments add definitions of domestic physical cash transaction, international wire transfer, and prescribed transaction, and adjust the definition of law enforcement purposes.

Clause 20 amends section 40, which requires reporting entities to report suspicious transactions. The amendment changes “a serious offence” to “an offence”.

Clause 21 amends section 42, which defines privileged communication. The amendment adjusts a cross-reference.

Clause 22 amends section 43, which provides that auditors may report suspicious transactions. The amendment changes “a serious offence” to “an offence”.

Clause 23 inserts *new subpart 2A* of Part 2, which concerns prescribed transaction reports.

Clause 24 replaces the cross-heading above section 92 to account for prescribed transaction reports.

Clause 25 amends section 92, which deals with failing to report suspicious transactions, to account for prescribed transactions.

Clause 26 amends section 93, which deals with providing false or misleading information in connection with suspicious transaction reports, to account for prescribed transaction reports.

Clause 27 amends section 94, which deals with the unlawful disclosure of suspicious transaction reports, to account for prescribed transaction reports.

Clause 28 amends section 95, which deals with the failure to keep or retain adequate records relating to suspicious transactions, to account for prescribed transactions.

Clause 29 amends section 96, which deals with the obstruction of investigations relating to suspicious transaction reports, to account for prescribed transaction reports.

Clause 30 amends section 97, which concerns the contravention of section 47(1). The amendments adjust 2 cross-references.

Clause 31 amends section 99, which provides a limitation period in respect of certain offences, to account for prescribed transaction reports.

Clause 32 amends section 101, which concerns structuring transactions to avoid application of certain requirements. The amendment adds a definition of transaction.

Clause 33 amends section 142, which sets out the financial intelligence functions of the Commissioner of Police, to account for prescribed transaction reports.

Clause 34 amends section 143, which sets out the powers relating to the financial intelligence functions of the Commissioner of Police, to account for prescribed transaction reports.

Clause 35 amends section 145, which concerns the issue of guidelines relating to reporting of suspicious transactions. The amendment changes “a serious offence” to “an offence”.

Subpart 2—Amendment to Companies Act 1993

Clause 36 indicates that this subpart amends the Companies Act 1993.

Clause 37 amends section 194, which specifies the accounting records required to be kept. The amendment requires companies to keep a record of transactions that constitute acts of the kind described in section 105C(3) of the Crimes Act 1961.

Subpart 3—Amendment to Criminal Investigations (Bodily Samples) Act 1995

Clause 38 indicates that this subpart amends the Criminal Investigations (Bodily Samples) Act 1995.

Clause 39 amends section 27, which concerns access to and disclosure of information on the DNA profile databank. The amendment provides access to this information for the purpose of responding to certain requests under the Mutual Assistance in Criminal Matters Act 1992.

Subpart 4—Amendments to Criminal Proceeds (Recovery) Act 2009

Clause 40 indicates that this subpart amends the Criminal Proceeds (Recovery) Act 2009.

Clause 41 amends section 134, which concerns provisions of subpart 2 of Part 2 applying to registering foreign restraining orders. The amendment adds a reference to section 22.

Clause 42 inserts *new section 137A*, which provides for the extension of the duration of the registration of foreign restraining orders where extradition requests are received.

Subpart 5—Amendments to Customs and Excise Act 1996

Clause 43 indicates that this subpart amends the Customs and Excise Act 1996.

Clause 44 amends section 54, which concerns prohibited imports. The amendment prohibits the importation of certain goods in relation to crimes involving dishonesty.

Clause 45 amends section 56, which concerns prohibited exports. The amendment prohibits the exportation of certain goods in relation to crimes involving dishonesty.

Clause 46 amends section 209, which sets out offences in relation to the importation or exportation of prohibited goods. The amendments account for the changes made to sections 54 and 56.

Subpart 6—Amendments to Financial Transactions Reporting Act 1996

Clause 47 indicates that this subpart amends the Financial Transactions Reporting Act 1996.

Clause 48 amends section 21, which concerns the protection of the identity of persons who make suspicious transaction reports. The amendment changes “any serious offence (within the meaning of section 243 of the Crimes Act 1961)” to “an offence”.

Clause 49 amends section 28, which concerns the application of the Privacy Act 1993. The amendment changes “any serious offence (within the meaning of section 243 of the Crimes Act 1961)” to “an offence”.

Subpart 7—Amendments to Income Tax Act 2007

Clause 50 indicates that this subpart amends the Income Tax Act 2007.

Clause 51 replaces section DB 45. *New section DB 45* denies deductions for bribes.

Clause 52 amends section YA 1, which concerns definitions, to adjust the definitions of bribe and foreign country and to repeal, as a

consequence, the definitions of benefit, foreign public official, and routine government action.

Subpart 8—Amendments to Misuse of Drugs Act 1975

Clause 53 indicates that this subpart amends the Misuse of Drugs Act 1975.

Clause 54 repeals section 12B.

Clause 55 repeals section 12BA.

Clause 56 amends section 12C, which concerns the commission of offences outside New Zealand. The amendment repeals section 12C(1)(d).

Subpart 9—Amendments to Mutual Assistance in Criminal Matters Act 1992

Clause 57 indicates that this subpart amends the Mutual Assistance in Criminal Matters Act 1992.

Clause 58 replaces section 31. *New section 31* sets out the procedure by which a foreign country may request assistance in obtaining evidence in New Zealand.

Clause 59 consequentially amends Schedule 1 to reflect the changes that this Bill makes to the Crimes Act 1961 and Secret Commissions Act 1910.

Subpart 10—Amendments to Policing Act 2008

Clause 60 indicates that this subpart amends the Policing Act 2008.

Clause 61 inserts a new cross-heading and *new sections 95A to 95E* into the Policing Act 2008.

New section 95A sets out definitions of terms used in *new sections 95A to 95E*.

New section 95B authorises the Commissioner of Police to disclose personal information held by the New Zealand Police to a corresponding overseas agency, that is an agency, including Interpol, that performs functions outside New Zealand that correspond to those of the New Zealand Police. The disclosure must be reasonably neces-

sary to enable the corresponding overseas agency to undertake a task that could be undertaken by the New Zealand Police. The disclosure may only be made with the consent of the individual to whom the information relates, or in accordance with an international disclosure instrument (that is, an international agreement or arrangement or documents governing the operation of Interpol) or in accordance with directions issued by the Commissioner of Police under *new section 95C*, or by the Commissioner of Police personally. These provisions are subject to any other enactment, but override the Privacy Act 1993. A contravention of the new section can be the subject of a complaint under the Privacy Act 1993 and is, for that purpose, deemed to be a breach of an information privacy principle.

New section 95C authorises the Commissioner of Police to issue directions to Police employees about the disclosure of personal information to corresponding overseas agencies.

New section 95D requires the Commissioner of Police to make copies of the following documents publicly available:

- (a) new arrangements entered into by the Police and a corresponding overseas agency;
- (b) existing arrangements of that kind that have been reviewed;
- (c) directions issued under *new section 95C*.

Making a copy publicly available means making it accessible, free of charge, on an Internet site maintained on behalf of the Commissioner of Police and making it available for inspection, free of charge, at the Police National Headquarters. The grounds for withholding information under the Official Information Act 1982 also apply to documents that are to be made available under this section.

New section 95E provides that *new sections 95B to 95D* do not affect existing international disclosure instruments. However, every existing arrangement between the New Zealand Police and a corresponding overseas agency becomes subject to *new sections 95B to 95D* when the arrangement has been reviewed. Any existing arrangement expires if it is not reviewed before the fifth anniversary of the coming into force of *new section 95E*.

**Subpart 11—Amendment to Secret
Commissions Act 1910**

Clause 62 indicates that this subpart amends the Secret Commissions Act 1910.

Clause 63 replaces section 13. *New section 13* provides that a person who commits an offence against the Secret Commissions Act 1910 is liable to imprisonment for a term not exceeding 7 years.

Hon Judith Collins

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Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Organised Crime and Anti-corruption Legislation Act **2014**.

2 Commencement

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(1) This Act, except as provided in **subsection (2)**, comes into force on the earlier of the following:

(a) a date appointed by the Governor-General by Order in Council:

(b) **1 January 2016**.

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(2) **Subpart 10 of Part 2** comes into force on the day after the date on which this Act receives the Royal assent.

(3) One or more Orders in Council may be made under **subsection (1)** appointing different dates for different provisions.

Part 1

15

Amendments to Crimes Act 1961

3 Principal Act

This **Part** amends the Crimes Act 1961 (the **principal Act**).

4 Section 2 amended (Interpretation)

In section 2(1), replace the definition of **crime involving dishonesty** with:

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“**crime involving dishonesty** means any crime described in—

- “(a) sections 100 to 105:
- “(b) Part 10, except the crimes described in sections 267 to 272:
- “(c) sections 3(1), 4(1), and 8(1) of the Secret Commissions Act 1910”.

5 Section 98D replaced (Trafficking in people by means of coercion or deception)

Replace section 98D with:

“98D Trafficking in persons 10

“(1) Every one is liable to the penalty stated in **subsection (2)** who arranges, organises, or procures—

“(a) the entry of a person into, or the exit of a person out of, New Zealand or any other State—

“(i) for the purpose of exploiting or facilitating the exploitation of the person; or 15

“(ii) knowing that the entry or exit of the person involves 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both; or 20

“(b) the reception, recruitment, transport, transfer, concealment, or harbouring of a person in New Zealand or any other State—

“(i) for the purpose of exploiting or facilitating the exploitation of the person; or 25

“(ii) knowing that the reception, recruitment, transport, transfer, concealment, or harbouring of the person involves 1 or more acts of coercion against the person, 1 or more acts of deception of the person, or both. 30

“(2) The penalty is imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both.

“(3) Proceedings may be brought under this section even if—

“(a) parts of the process by which the person was exploited, coerced, or deceived were accomplished without an act of exploitation, coercion, or deception: 35

“(b) the person exploited, coerced, or deceived—

- “(i) did not in fact enter or exit the State concerned;
or
“(ii) was not in fact received, recruited, transported,
transferred, concealed, or harboured in the State
concerned. 5
- “(4) For the purposes of this section, **exploit**, in relation to a person,
means to cause, or to have caused, that person, by an act of
deception or coercion, to be involved in—
- “(a) prostitution or other sexual services:
“(b) slavery, practices similar to slavery, servitude, forced 10
labour, or other forced services:
“(c) the removal of organs.”
- 6 Section 105C amended (Bribery of foreign public official)**
- (1) In section 105C(1), insert in their appropriate alphabetical 15
order:
“**business** includes the provision of international aid
“**employee**, in relation to a body corporate or corporation sole,
means an individual who is an employee, agent, or officer of
that body corporate or corporation sole”.
- (2) In section 105C(1), definition of **routine government action**, 20
paragraph (b), after “official”, insert “; or”.
- (3) In section 105C(1), definition of **routine government action**,
after paragraph (b), insert:
“(c) any action that provides—
“(i) an undue material benefit to a person who makes 25
a payment; or
“(ii) an undue material disadvantage to any other per-
son”.
- (4) After section 105C(2), insert:
“(2A) A body corporate or corporation sole commits an offence 30
against subsection (2) if—
“(a) an employee of the body corporate or corporation sole
does an act that would constitute an offence under sub-
section (2); and
“(b) the employee does the act, in whole or in part, with the 35
intent to benefit the body corporate or corporation sole;
and

- “(c) the employee, in doing the act, is acting within the scope of their authority as an employee of the body corporate or corporation sole.
- “(2B) A body corporate or corporation sole does not commit an offence under subsection (2) if it has taken reasonable steps to prevent the offence. 5
- “(2C) If a body corporate or corporation sole is charged with an offence under subsection (2), it is to be presumed, unless the body corporate or corporation sole puts the matter at issue, that it did not take reasonable steps.” 10
- (5) Replace section 105C(4) with:
- “(4) **Subsections (2A), (2B), and (2C)**—
- “(a) apply only in respect of offences under subsection (2) and section 105D; and
- “(b) do not preclude the liability of a body corporate or corporation sole under any other provision of this Act.” 15
- 7 Section 105E replaced (Exception for acts lawful in country of foreign public official)**
Replace section 105E with:
- “105E Corruption of foreign public officials”** 20
- “(1) Every person specified in **subsection (2)** who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for that person or another person in respect of any act or omission by an official in the official’s official capacity (whether or not the act or omission is within the scope of the official’s authority) is liable to imprisonment for a term not exceeding 7 years. 25
- “(2) **Subsection (1)** applies to—
- “(a) any foreign public official who has committed the offence while in New Zealand: 30
- “(b) any person employed as a foreign public official who has committed the offence while outside New Zealand if the person is—
- “(i) a New Zealand citizen; or
- “(ii) ordinarily resident in New Zealand; or 35
- “(iii) a body corporate incorporated in New Zealand; or

- “(iv) a corporation sole incorporated in New Zealand.
“(3) Nothing in this section limits any immunity that a foreign public official or person has under this Act or any other enactment.

“**105F Trading in influence**

Every person is liable to imprisonment for a term not exceeding 5
7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for that person or another person with intent to influence an official in respect of any act or omission by that official in the official’s official capacity (whether or not the act or omission is within the scope of 10
the official’s authority).”

8 Section 106 amended (Restrictions on prosecution)

In section 106(1), replace “and 105D” with “105D, **105E, and 105F**”.

9 Section 228 amended (Dishonestly taking or using document)

In section 228, insert as subsection (2):

- “(2) Every one is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document knowing that— 20
“(a) the document was, dishonestly and without claim of right, taken, obtained, or used; and
“(b) the document was dealt with in the manner specified in **paragraph (a)** with intent to obtain any property, service, pecuniary advantage, or valuable consideration.” 25

10 New sections 228A to 228C inserted

After section 228, insert:

“**228A Designing, manufacturing, or adapting goods with intent to facilitate commission of crimes involving dishonesty**

Every one is liable to imprisonment for a term not exceeding 3 30
years who designs, manufactures, or adapts goods with intent to facilitate the commission of a crime involving dishonesty.

- “**228B Possessing, selling, or disposing of goods designed, manufactured, or adapted with intent to facilitate commission of crimes involving dishonesty**
Every one is liable to imprisonment for a term not exceeding 3 years who, without lawful authority or excuse, possesses, sells, or disposes of any goods designed, manufactured, or adapted to facilitate the commission of a crime involving dishonesty, with intent to use, or to enable another person to use, the goods to facilitate the commission of a crime involving dishonesty. 5
- “**228C Possessing goods capable of being used to facilitate crimes involving dishonesty with intent to facilitate commission of those offences**
Every one is liable to imprisonment for a term not exceeding 3 years who, without lawful authority or excuse, possesses any goods capable of being used to facilitate the commission of a crime involving dishonesty (other than those specified in sections 227, 233, and 264) with intent to use the goods to facilitate the commission of that offence.” 10 15
- 11 Section 240 amended (Obtaining by deception or causing loss by deception)** 20
After section 240(1), insert:
“(1A) Every one is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document or thing capable of being used to derive a pecuniary advantage knowing that, by deception and without claim of right, the document or thing was, or was caused to be, delivered, executed, made, accepted, endorsed, or altered.” 25
- 12 Section 243 amended (Money laundering)**
(1) In section 243(1), insert in its appropriate alphabetical order: 30
“**offence** means an offence (or any offence described as a crime) that is punishable under New Zealand law, including any act, wherever committed, that would be an offence in New Zealand if committed in New Zealand”.

- (2) In section 243(1), definition of **proceeds**, replace “a serious offence” with “an offence”.
- (3) In section 243(1), repeal the definition of **serious offence**.
- (4) In section 243(2) and (3), replace “a serious offence” with “an offence” in each place. 5
- (5) After section 243(4), insert:
 “(4A) Despite anything in subsection (4), the prosecution is not required to prove that the defendant had an intent to—
 “(a) conceal any property; or
 “(b) enable any other person to conceal any property.” 10
- (6) In section 243(5), delete “serious” in each place.
- (7) After section 243(6), insert:
 “(7) To avoid doubt, for the purposes of the definition of offence in subsection (1), New Zealand law includes, but is not limited to, the Misuse of Drugs Act 1975.” 15
- 13 Section 243A replaced (Charges for money laundering)**
 Replace section 243A with:
“243A Charges for money laundering
 A person may be charged under section 243(2) or (3) in respect of any property that is the proceeds of an offence to which section 243(2) or (3) applies even though the person who committed the offence— 20
 “(a) has not been charged with that offence; or
 “(b) has not been convicted of that offence.”
- 14 Section 244 amended (Defence of enforcement of enactment)** 25
 In section 244(a), replace “this section, any other provision of this Act, or any other enactment relating to a serious offence” with “section 243”.
- 15 Section 245 amended (Section 243 not to apply to certain acts committed outside New Zealand)** 30
- (1) In section 245(1)(a), replace “a serious offence” with “an offence”.
- (2) In section 245(1)(b), delete “serious”.

- (3) In section 245(2),—
(a) replace “this section” with “section 243”; and
(b) delete “serious”.
- 16 Section 256 amended (Forgery)** 5
After section 256(4), insert:
“(5) Every one is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any false document knowing it to be false and to have been made with the intention that it be used or acted on (in New Zealand or elsewhere) as genuine.” 10
- 17 Section 258 amended (Altering, concealing, destroying, or reproducing documents with intent to deceive)**
After section 258(2), insert:
“(3) Every one is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document knowing that— 15
“(a) the document was altered, concealed, or made, in whole or in part, as a reproduction of another document; and
“(b) the document was dealt with in the manner specified in **paragraph (a)** with intent to— 20
“(i) obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or
“(ii) cause loss to any other person.”
- Part 2**
Amendments to other enactments 25
Subpart 1—Amendments to Anti-Money Laundering and Countering Financing of Terrorism Act 2009
- 18 Principal Act** 30
This **subpart** amends the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **principal Act**).
- 19 Section 5 amended (Interpretation)**
(1) In section 5, insert in their appropriate alphabetical order:

- “**domestic physical cash transaction** means a transaction in New Zealand that is an actual cash transaction of any currency
- “**international wire transfer** means a wire transfer where—
- “(a) at least one of the following institutions is in New Zealand: 5
- “(i) the ordering institution:
- “(ii) the intermediary institution:
- “(iii) the beneficiary institution; and
- “(b) at least one of the following institutions is outside New Zealand: 10
- “(i) the ordering institution:
- “(ii) the intermediary institution:
- “(iii) the beneficiary institution
- “**prescribed transaction**, in relation to a reporting entity, means a transaction conducted through the reporting entity in respect of— 15
- “(a) an international wire transfer of a value greater than the applicable threshold value; or
- “(b) a domestic physical cash transaction of a value greater than the applicable threshold value”. 20
- (2) In section 5, definition of **law enforcement purposes**, replace paragraph (b)(iv) with:
- “(iv) an offence within the meaning of section 243(1) of the Crimes Act 1961.”.
- 20 Section 40 amended (Reporting entities to report suspicious transactions)** 25
- In section 40(1)(b)(v), replace “a serious offence” with “an offence”.
- 21 Section 42 amended (Privileged communication defined)**
- In section 42(1), replace “section 40(3)” with “sections 40(3) and **48A(2)**”. 30
- 22 Section 43 amended (Auditors may report suspicious transactions)**
- In section 43(1)(e), replace “a serious offence” with “an offence”. 35

23 New subpart 2A of Part 2 inserted

After section 48, insert:

“Subpart 2A—Prescribed transaction reports

“48A Reporting entities to report certain prescribed transactions

5

“(1) Despite any other enactment or rule of law, if a person conducts a prescribed transaction through a reporting entity, the reporting entity must (as soon as practicable, but not later than 10 days after the transaction) report the transaction to the Commissioner in accordance with **section 48B**.

10

“(2) Nothing in **subsection (1)** requires any lawyer to disclose any privileged communication (as defined in section 42).

“48B Prescribed transaction reports

“(1) Except as provided in **subsection (2)**, a report made under **section 48A(1)** must—

15

“(a) be in the form or forms (if any) prescribed by regulations made under section 153(c); and

“(b) contain the following information:

“(i) a description of the nature of the transaction:

“(ii) the amount of the transaction and the currency in which it was denominated: 20

“(iii) the date on which the transaction was conducted:

“(iv) the parties to the transaction:

“(v) if applicable, the name of the facility through which the transaction was conducted, and any other facilities (whether or not provided by the reporting entity) directly involved in the transaction: 25

“(vi) the name of the officer, employee, or agent of the reporting entity who handled the transaction, if that officer, employee, or agent has face-to-face dealings in respect of the transaction with any party to the transaction: 30

“(vii) any other information prescribed by regulations made under section 153(c); and 35

“(c) be signed by a person authorised by the reporting entity to sign prescribed transaction reports (unless the report

- is provided by electronic means other than an electronic copy of the signed report); and
- “(d) be forwarded, in writing, to the Commissioner—
- “(i) by way of secure electronic transmission specified or provided by the Commissioner for this purpose; or 5
- “(ii) by another means (including, without limitation, by way of transmission by post, fax, or email) that may be agreed from time to time between the Commissioner and the reporting entity concerned. 10
- “(2) The Commissioner may confer the authority to receive a prescribed transaction report under **subsection (1)** on—
- “(a) any specified Police employee; or
- “(b) Police employees of any specified rank or class; or 15
- “(c) any Police employee or Police employees for the time being holding any specified office or specified class of offices.
- “48C Sections 43 to 48 apply to prescribed transactions**
Sections 43 to 48 apply, with all necessary modifications, to prescribed transactions.” 20
- 24 Cross-heading above section 92 replaced**
Replace the cross-heading above section 92 with:
“Offences relating to suspicious transaction reports and prescribed transaction reports”. 25
- 25 Section 92 amended (Failing to report suspicious transaction)**
- (1) In the heading to section 92, replace “**suspicious transaction**” with “**suspicious transactions or prescribed transactions**”.
- (2) In section 92(b)(v), replace “a serious offence” with “an offence”. 30
- (3) In section 92, insert as subsection (2):
- “(2) A reporting entity commits an offence if—
- “(a) a transaction is conducted through the reporting entity; and 35

- “(b) the reporting entity knows, or ought to know, that the transaction is a prescribed transaction; and
“(c) the reporting entity fails to report the transaction to the Commissioner as soon as practicable, but not later than 10 days after the transaction.”

5

26 Section 93 amended (Providing false or misleading information in connection with suspicious transaction report)

- (1) In the heading to section 93, replace “**suspicious transaction report**” with “**suspicious transaction reports or prescribed transaction reports**”. 10
- (2) In section 93, replace “a suspicious transaction report or in supplying information in connection with that report” with “a suspicious transaction report or a prescribed transaction report, or in supplying information in connection with a suspicious transaction report or a prescribed transaction report”. 15

27 Section 94 amended (Unlawful disclosure of suspicious transaction report)

- (1) In the heading to section 94, replace “**suspicious transaction report**” with “**suspicious transaction reports or prescribed transaction reports**”. 20
- (2) In section 94(2)(b), after “a suspicious transaction report”, insert “or a prescribed transaction report”.

28 Section 95 amended (Failure to keep or retain adequate records relating to suspicious transaction)

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- (1) In the heading to section 95, replace “**suspicious transaction**” with “**suspicious transactions or prescribed transactions**”.
- (2) In section 95, after “suspicious transaction”, insert “or a prescribed transaction”.

29 Section 96 amended (Obstruction of investigation relating to suspicious transaction report)

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- (1) In the heading to section 96, replace “**suspicious transaction report**” with “**suspicious transaction reports or prescribed transaction reports**”.

- (2) In section 96, after “report”, insert “or prescribed transaction report”.
- 30 Section 97 amended (Contravention of section 47(1))**
- (1) In the heading to section 97, after “47(1)”, insert “or **48A(1)**”.
- (2) In section 97, after “47(1)”, insert “or **48A(1)**”. 5
- 31 Section 99 amended (Time limit for prosecution of offences relating to civil liability act and suspicious transaction reports)**
- In the heading to section 99, after “reports”, insert “or prescribed transaction reports”. 10
- 32 Section 101 amended (Structuring transaction to avoid application of AML/CFT requirements)**
- In section 101, insert as subsection (2):
- “(2) For the purposes of this section, **transaction** includes, but is not limited to, a suspicious transaction or a prescribed transaction.” 15
- 33 Section 142 amended (Financial intelligence functions of Commissioner)**
- (1) After section 142(j), insert:
- “(ja) receive, analyse, and (if appropriate) refer to investigative branches of the New Zealand Police and to other law enforcement agencies, any prescribed transaction reports:” 20
- (2) In section 142(f), after “reports”, insert “and prescribed transaction reports”. 25
- (3) In section 142(g), after “reports”, insert “and prescribed transaction reports”.
- (4) In section 142(h), after “reports”, insert “and prescribed transaction reports” in each place.
- 34 Section 143 amended (Powers relating to financial intelligence functions of Commissioner)** 30
- (1) In section 143(a), after “report”, insert “or a prescribed transaction report”.

- (2) In section 143(b), after “suspicious transaction reports,”, insert “prescribed transaction reports.”

35 Section 145 amended (Guidelines relating to reporting of suspicious transactions)

In section 145(1)(a)(v), replace “a serious offence” with “an offence”.

Subpart 2—Amendment to Companies Act
1993

36 Principal Act

This **subpart** amends the Companies Act 1993 (the **principal Act**).

37 Section 194 amended (Accounting records to be kept)

After section 194(2)(d), insert:

- “(e) if the company engages in a transaction that constitutes an act of the kind described in section 105C(3) of the Crimes Act 1961, a record of the particulars of that transaction, including any payments made.”

Subpart 3—Amendment to Criminal
Investigations (Bodily Samples) Act 1995

38 Principal Act

This **subpart** amends the Criminal Investigations (Bodily Samples) Act 1995 (the **principal Act**).

39 Section 27 amended (Access to and disclosure of information on DNA profile databank)

After section 27(1)(c), insert:

- “(d) for the purpose of responding to a request under the Mutual Assistance in Criminal Matters Act 1992 if—
- “(i) access to the information requested is authorised by the Attorney-General; and
 - “(ii) the request relates to an offence that corresponds to an offence in New Zealand that is punishable by a term of imprisonment of more than 1 year.”

Subpart 4—Amendments to Criminal
Proceeds (Recovery) Act 2009

- 40 Principal Act**
This **subpart** amends the Criminal Proceeds (Recovery) Act 2009 (the **principal Act**). 5
- 41 Section 134 amended (Provisions of subpart 2 of Part 2 applying to registering foreign restraining orders)**
After section 134(1)(b), insert:
“(ba) section 22 (application for restraining order without notice):”. 10
- 42 New section 137A inserted (Extension of duration of registration of foreign restraining order where extradition request received)**
After section 137, insert:
“**137A Extension of duration of registration of foreign restraining order where extradition request received** 15
“(1) If the High Court has registered a foreign restraining order in New Zealand and the Minister of Justice has received an extradition request in respect of the respondent, the applicant for that order may, before its registration expires, apply to the High Court for an extension of its period of registration in New Zealand. 20
“(2) If an application is made under **subsection (1)**, the High Court may order that the period of registration of the foreign restraining order be extended for a further period not exceeding 2 years. 25
“(3) If an extension is granted under **subsection (2)**, the High Court may successively extend the registration of the foreign restraining order for periods that do not exceed 2 years on any 1 occasion if— 30
“(a) the applicant applies before the current extension period expires; and
“(b) the High Court is satisfied that there are reasonable grounds upon which to grant a further extension.

“(4) If an extension is not extended before it expires, the registration of the foreign restraining order in New Zealand ceases at the time specified in the order.”

Subpart 5—Amendments to Customs and
Excise Act 1996

5

43 Principal Act

This **subpart** amends the Customs and Excise Act 1996 (the **principal Act**).

44 Section 54 amended (Prohibited imports)

(1) After section 54(1)(aa), insert: 10

“(ab) goods designed, manufactured, or adapted with intent to facilitate the commission of a crime involving dishonesty; or

“(ac) goods that, having regard to all relevant circumstances, can reasonably be considered— 15

“(i) part of, or involved in, an attempt to commit a crime involving dishonesty to which section 72 of the Crimes Act 1961 applies; or

“(ii) related to a conspiracy to commit a crime involving dishonesty to which section 310 of the Crimes Act 1961 applies; or” 20

(2) After section 54(8), insert:

“(9) In this section, **crime involving dishonesty** has the same meaning as in section 2(1) of the Crimes Act 1961.”

45 Section 56 amended (Prohibited exports)

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(1) After section 56(1)(a), insert:

“(ab) goods designed, manufactured, or adapted with intent to facilitate the commission of a crime involving dishonesty; and

“(ac) goods that, having regard to all relevant circumstances, can reasonably be considered— 30

“(i) part of, or involved in, an attempt to commit a crime involving dishonesty to which section 72 of the Crimes Act 1961 applies; or

- “(ii) related to a conspiracy to commit a crime involving dishonesty to which section 310 of the Crimes Act 1961 applies; and”.
- (2) In section 56(2A), insert in its appropriate alphabetical order: “**crime involving dishonesty** has the same meaning as in section 2(1) of the Crimes Act 1961”. 5
- 46 Section 209 amended (Offences in relation to importation or exportation of prohibited goods)**
- (1) After section 209(1)(ca), insert: 10
- “(cab) is knowingly concerned in any importation or exportation of—
- “(i) goods that are designed, manufactured, or adapted with intent to facilitate the commission of a crime involving dishonesty; or
- “(ii) goods that, having regard to all relevant circumstances, can reasonably be considered— 15
- “(A) part of, or involved in, an attempt to commit a crime involving dishonesty to which section 72 of the Crimes Act 1961 applies; or 20
- “(B) related to a conspiracy to commit a crime involving dishonesty to which section 310 of the Crimes Act 1961 applies; or”.
- (2) After section 209(2), insert:
- “(2A) Every person who commits an offence against **subsection (1)(cab)** is liable on conviction to imprisonment for a term not exceeding 3 years.” 25
- (3) After section 209(6), insert:
- “(7) In this section, **crime involving dishonesty** has the same meaning as in section 2(1) of the Crimes Act 1961.” 30

Subpart 6—Amendments to Financial
Transactions Reporting Act 1996

- 47 Principal Act**
This **subpart** amends the Financial Transactions Reporting Act 1996 (the **principal Act**). 35

48 Section 21 amended (Protection of identity of persons making suspicious transaction reports)

- (1) In section 21(2)(a)(ii), replace “any serious offence (within the meaning of section 243 of the Crimes Act 1961)” with “an offence within the meaning of section 243 of the Crimes Act 1961”. 5
- (2) In section 21(2)(a)(ii), replace “proceeds of that serious offence” with “proceeds of that offence”.

49 Section 28 amended (Application of Privacy Act 1993)

- (1) In section 28(b)(ii), replace “any serious offence (within the meaning of section 243 of the Crimes Act 1961)” with “an offence within the meaning of section 243 of the Crimes Act 1961”. 10
- (2) In section 28(b)(ii), replace “proceeds of that serious offence” with “proceeds of that offence”. 15

Subpart 7—Amendments to Income Tax Act
2007**50 Principal Act**

This **subpart** amends the Income Tax Act 2007 (the **principal Act**). 20

51 Section DB 45 replaced (Bribes paid to public officials)

Replace section DB 45 with:

“DB 45 Bribes

“When this section applies

- “(1) This section applies when a person (**person A**) gives or offers, or agrees to give, a bribe in the circumstances specified in section 101, 102(2), 103(2), 104(2), 105(2), 105C, or 105D(1) of the Crimes Act 1961. 25

“No deduction

- “(2) Person A is denied a deduction for the amount of the bribe. 30

“Exclusions

- “(3) This section does not apply in the circumstances specified in section 105C(3) of the Crimes Act 1961.

<i>“Definition</i>		
“(4)	In this section, bribe is defined in section 99 of the Crimes Act 1961.	
<i>“Link with subpart DA</i>		
“(5)	This section overrides the general permission.	5
	<i>“Defined in this Act: bribe, deduction, general permission, New Zealand “Compare: 2004 No 35 s DB 36”.</i>	
52	Section YA 1 amended (Definitions)	
(1)	In section YA 1, repeal the definitions of benefit, foreign public official, public official, and routine government action.	10
(2)	In section YA 1, definition of bribe , delete “paid to public officials”.	
(3)	In section YA 1, definition of foreign country , delete “paid to public officials”.	
	Subpart 8—Amendments to Misuse of Drugs Act 1975	15
53	Principal Act This subpart amends the Misuse of Drugs Act 1975 (the principal Act).	
54	Section 12B repealed (Laundering proceeds of drug offences) Repeal section 12B.	20
55	Section 12BA repealed (Charges for money laundering) Repeal section 12BA.	
56	Section 12C amended (Commission of offences outside New Zealand)	25
(1)	In section 12C(1)(ca), delete “; or”.	
(2)	Repeal section 12C(1)(d).	

Subpart 9—Amendments to Mutual
Assistance in Criminal Matters Act 1992

- 57 Principal Act**
This **subpart** amends the Mutual Assistance in Criminal Matters Act 1992 (the **principal Act**). 5
- 58 Section 31 replaced (Assistance in obtaining evidence in New Zealand)**
Replace section 31 with:
- “31 Assistance in obtaining evidence in New Zealand**
- “(1)** A foreign country may request the Attorney-General to assist 10
in arranging—
- “(a)** the taking of evidence in New Zealand; or
 - “(b)** the production of documents or other articles in New Zealand; or
 - “(c)** the undertaking of a forensic comparison under the 15
Criminal Investigations (Bodily Samples) Act 1995 and the production of a document specifying the result of that comparison.
- “(2)** The Attorney-General may, in writing, authorise the requested 20
assistance if,—
- “(a)** in the case of receipt of a request made under **sub-**
section (1)(a) or (b) by a foreign country, the Attor-
ney-General is satisfied that—
 - “(i)** the request relates to criminal proceedings in the 25
foreign country; and
 - “(ii)** there are reasonable grounds for believing that
the evidence can be taken or the documents or
other articles can be produced in New Zealand:
 - “(b)** in the case of receipt of a request made under **subsec-**
tion (1)(c) by a foreign country, the Attorney-General 30
is satisfied that—
 - “(i)** the request relates to a criminal matter in the for-
eign country; and
 - “(ii)** the request is in respect of an offence that corres- 35
ponds to an offence in New Zealand that is pun-
ishable by a term of imprisonment of more than
1 year.

- “(3) If, under **subsection (2)**, the Attorney-General authorises—
- “(a) the taking of evidence, a Judge may, subject to sections 32 and 33 and to any regulations made under this Act, take the evidence on oath of each witness appearing before the Judge and must, in this case,— 5
- “(i) cause the evidence to be put in writing and certify, in the prescribed form, that the evidence was taken by the Judge; and
- “(ii) cause the writing to be sent to the Attorney-General: 10
- “(b) the production of documents or other articles, a Judge may, subject to sections 32 and 33 and to any regulations made under this Act, require the production of the documents or other articles, and, unless the Judge otherwise orders, must cause the documents, or copies of the documents certified by the Judge to be true copies, or 15
the other articles, to be sent to the Attorney-General.”

59 Schedule 1 amended

In Schedule 1, after item 31, insert:

32	The United Nations Convention against Corruption (2003)	An offence against any of the following sections of the Crimes Act 1961:
		<i>section subject matter</i>
		100 judicial corruption
		101 bribery of judicial officer, etc
		102(1), (2) corruption and bribery of Minister of the Crown
		103(1), (2) corruption and bribery of member of Parliament
		104 corruption and bribery of law enforcement officer
		105 corruption and bribery of official
		105A corrupt use of official information
		105B use or disclosure of personal information disclosed in breach of section 105A
		105C(2) bribery of foreign public official

105E(1)	corruption of foreign public officials
105F	trading in influence
116	conspiring to defeat justice
117	corrupting juries and witnesses
219	theft or stealing
220	theft by person in special relationship
228	dishonestly taking or using document
240(1)	obtaining by deception or causing loss by deception
243(2), (3)	money laundering
246(1)	receiving
249(1), (2)	accessing computer system for dishonest purpose
An offence against any of the following sections of the Secret Commissions Act 1910:	
<i>section</i>	<i>subject matter</i>
3(1)	gifts to agent without consent of principal an offence
4(1)	acceptance of such gifts by agent an offence
8(1)	receiving secret reward for procuring contracts an offence

Subpart 10—Amendment to Policing Act 2008

60 Principal Act

This **subpart** amends the Policing Act 2008 (the **principal Act**).

5

61 New sections 95A to 95E and cross-heading inserted

After section 95, insert:

“International policing: information sharing

“95A Interpretation

In this section and in **sections 95B to 95E**, unless the context otherwise requires,—

“agency-to-agency agreement means an international disclosure instrument that is an agreement between the Police and 1 or more corresponding overseas agencies 5

“biometric information means information that relates to an individual, whether or not currently identifiable, that is 1 or more of the following: 10

“(a) fingerprints:

“(b) palm-prints:

“(c) an iris scan

“corresponding overseas agency—

“(a) means an overseas person, body, or agency that is empowered to perform functions that correspond, wholly or partly, to the functions set out in section 9; and 15

“(b) includes Interpol and every overseas person, body, or agency appointed under article 32 of the constitution of Interpol to co-operate with Interpol 20

“international disclosure instrument means an instrument that provides for the disclosure of personal information to a corresponding overseas agency, being an instrument that is—

“(a) an international arrangement or agreement to which the Government of New Zealand is a party; or 25

“(b) an agency-to-agency agreement; or

“(c) the constitution of Interpol and any instrument adopted under article 44 of that constitution

“Interpol means the International Criminal Police Organization 30

“personal information means information about an identifiable individual and includes biometric information.

“95B Disclosure of personal information

“(1) If the requirements of this section are met, the Commissioner may disclose any personal information held by the Police to a corresponding overseas agency. 35

- “(2) The disclosure of the personal information must be reasonably necessary to enable the corresponding overseas agency to perform a function in its jurisdiction that the Police perform in New Zealand under section 9.
- “(3) Personal information under this section may be disclosed 5 only—
- “(a) with the consent of the individual to whom the information relates; or
- “(b) in accordance with an international disclosure instrument; or 10
- “(c) in accordance with directions issued by the Commissioner under **section 95C**, where the disclosure is made by a Police employee acting under delegated authority; or
- “(d) by the Commissioner personally. 15
- “(4) For the purposes of this section, personal information may be disclosed to a corresponding overseas agency by disclosing the information to an overseas person, body, or agency that is authorised to act on behalf of the corresponding overseas agency. 20
- “(5) **Subsections (1) to (4)** are subject to any other enactment, other than the Privacy Act 1993, that limits or restricts the disclosure of information or requires information of a particular kind to be disclosed or obtained in a prescribed manner.
- “(6) For the purposes of Part 8 of the Privacy Act 1993, a person is 25 taken to have breached an information privacy principle under section 66(1)(a)(i) of that Act if the person contravenes a provision of this section.
- “**95C Commissioner may issue directions to certain Police employees** 30
- “(1) The Commissioner may issue written directions relating to the disclosure of personal information under **section 95B(1)** to any Police employees authorised to make that disclosure under delegated authority.
- “(2) The directions may identify the Police employees to whom 35 they apply by the positions that the employees hold or by the groups to which they belong.

- “(3) Without limiting the generality of **subsection (1)**, the directions may do either or both of the following:
- “(a) describe the circumstances in which personal information may be disclosed without a request from the corresponding overseas agency: 5
 - “(b) set out any criteria in addition to those stated in **section 95B** for disclosing any personal information.
- “**95D Publication of certain agency-to-agency agreements and directions**
- “(1) As soon as practicable after an agency-to-agency agreement enters into force at any time after the commencement of this section, the Commissioner must make a copy of the agreement publicly available. 10
- “(2) When an agency-to-agency agreement that is in effect before the commencement of this section is first reviewed following that commencement, the Commissioner must, as soon as practicable after that review, make a copy of the agreement (as modified or proposed to be modified by the review) publicly available. 15
- “(3) As soon as practicable after issuing any directions under **section 95C**, the Commissioner must make a copy of the directions publicly available. 20
- “(4) However, this section does not apply to—
- “(a) an agency-to-agency agreement, or to any directions, that may be withheld under the Official Information Act 1982 or whose existence need not be confirmed or denied under that Act: 25
 - “(b) any provision of an agency-to-agency agreement, or of any directions, that may be withheld under the Official Information Act 1982. 30
- “(5) For the purposes of this section, a copy is **publicly available** if it is—
- “(a) available for inspection, free of charge, at the Police National Headquarters on any working day; and
 - “(b) accessible, free of charge, on an Internet site maintained by or on behalf of the Commissioner. 35

“95E Saving for existing international disclosure instruments

- “(1) **Sections 95B to 95D** do not affect an international disclosure instrument that entered into force before the commencement of this section and every such instrument continues in force according to its tenor until it expires or is terminated. 5
- “(2) Despite **subsection (1)**, an agency-to-agency agreement that entered into force before the commencement of this section becomes subject to **sections 95B to 95D** immediately after the conclusion of the first review of the agreement that is, in accordance with the provisions of that agreement, undertaken 10 after that commencement.
- “(3) Despite **subsection (1)**, an agency-to-agency agreement that entered into force before the commencement of this section expires on the close of the day that is the 5th anniversary of the commencement of this section if the agreement has not been 15 reviewed before that anniversary.”

Subpart 11—Amendment to Secret
Commissions Act 1910**62 Principal Act**

This **subpart** amends the Secret Commissions Act 1910 (the **principal Act**). 20

63 Section 13 replaced (Penalty on conviction)

Replace section 13 with:

“13 Penalty on conviction

A person who commits an offence against this Act is liable to 25 imprisonment for a term not exceeding 7 years.”