

In Confidence

Office of the Minister of Justice

Chair, Cabinet Social Wellbeing Committee

## **An Anti-Corruption Work Programme for New Zealand**

### **Proposal**

- 1 This paper seeks approval for the Anti-Corruption Work Programme that has been developed to proactively respond to, and reduce the risks of, fraudulent and corrupt behaviours becoming embedded in New Zealand.
- 2 The Anti-Corruption Work Programme is intended to co-ordinate national and international engagement on fraud and corruption vulnerabilities and support proactive and consistent actions by the public, private and not for profit sectors of the economy.

### **Executive Summary**

- 3 New Zealand has a strong culture of integrity and our institutions remain largely free from systemic corruption. However, there are increasing global and domestic risks relating to corruption and international efforts to combat corruption are increasing. Maintaining our strong culture of integrity, and our international reputation, requires proactive steps that respond to these risks.
- 4 I therefore propose that Cabinet endorse the Anti-Corruption Work Programme developed by the Serious Fraud Office. Under the Anti-Corruption Work Programme, the Serious Fraud Office will lead an operational workstream, and the Ministry of Justice will lead work on potential legislative reform.
- 5 Further, I propose to report back to Cabinet by July 2019 on progress in implementing the Anti-Corruption Work Programme, and identifying any areas for future work. I have discussed this work with the Minister of Police and Minister of State Services, and will consult these Ministers ahead of future report backs.

### **Risks of corruption in New Zealand**

- 6 Corruption<sup>1</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 approximately NZ\$2 trillion per year.<sup>2</sup> In the United Kingdom, and other comparable jurisdictions, it is estimated that between 3 and 10 percent of public sector funding is lost through misappropriation and other corrupt behaviours.<sup>3</sup>
- 7 New Zealand has a strong culture of integrity and our institutions remain largely free from systemic corruption.<sup>4</sup> New Zealand therefore rightly enjoys an international

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<sup>1</sup> There is no legal definition of corruption in New Zealand, but the Asia Development Bank defines it as "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>2</sup> Kaufmann, Daniel, Myths and Realities of Governance and Corruption (November 2005).

<sup>3</sup> See, for example, Crowe Clark Whitehill, 'The Financial Cost of Fraud 2018: the latest data from around the world'.

<sup>4</sup> Transparency International NZ, (2013). Integrity Plus 2013 New Zealand National Integrity System Assessment.

reputation for being one of the least corrupt countries in the world, an asset worthy of protection.

- 8 Transparency International New Zealand's view is that, as a country with a high Corruption Perceptions Index ranking (New Zealand is currently placed first), arguably the most significant risk New Zealand faces is complacency.<sup>5</sup> Complacency impacts on our willingness and capacity to proactively detect and prevent corruption.
- 9 Indeed, there has been an observable increase in the number of corruption related prosecutions and allegations in New Zealand. There have been significant cases in New Zealand recently involving bribes paid to officials, corrupt payments made within the private sector, as well as cases which, although prosecuted as fraud, fit the Asia Development Bank definition of corruption.<sup>6</sup> New Zealand also has increasing social and business links to jurisdictions with a high risk of corruption.<sup>7</sup>
- 10 Recently corruption has been recognised by the Security and Intelligence Board as one of the top 20 national risks to New Zealand. The Serious Fraud Office is the risk-owner responsible for articulating the nature of the risk and leading mitigation of the problem. A National Risk Report is expected to be considered in the near future. This report was developed by the National Risk Unit within DPMC and will soon be before Cabinet to approve its release.
- 11 There is a strong nexus between transnational organised crime and corruption, with corruption often enabling transnational and domestic organised crime activity. For example, recent high-profile cases, including the Mossack Fonseca leak (Panama Papers) in 2016 and the Paradise Papers in 2017, have exposed corruption in many foreign countries. In these cases, corrupt officials were acting with others, often linked to other crime including illicit drugs trafficking, human trafficking, arms trafficking, sanctions avoidance, and tax evasion.
- 12 Surveys by Deloitte and PricewaterhouseCoopers suggest that the most common types of domestic corruption are undisclosed conflicts of interest, inappropriate gifts and favours, the misappropriation of assets, and procurement fraud.<sup>8</sup> Recent surveys also suggest that though these behaviours were previously tolerated at certain levels, attitudes and perceptions are shifting markedly.<sup>9</sup>

### **Anti-Corruption Work Programme**

- 13 To be proactive in responding to the risks outlined above, chief executives from relevant organisations directed the Serious Fraud Office to develop an Anti-Corruption Work Programme.<sup>10</sup> The Serious Fraud Office led a series of workshops involving over 20 agencies to gather information to inform the design of the Anti-Corruption Work Programme).
- 14 I propose that Cabinet endorse the Anti-Corruption Work Programme and direct the Serious Fraud Office and Ministry of Justice to lead its implementation, with support from relevant agencies. The Serious Fraud Office would be responsible for the

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<sup>5</sup> Transparency International NZ, (2013). Integrity Plus 2013 New Zealand National Integrity System Assessment.

<sup>6</sup> See, for example, *R v Borlase and Noone* [2017] NZHC 236; *Harrison v Serious Fraud Office* [2016] NZHC 2127 and also the recent case of Jeremy Malifa prosecuted for misuse of electronic equipment.

<sup>7</sup> Deloitte Bribery and Corruption Survey 2015.

<sup>8</sup> See, for example, Deloitte Bribery and Corruption Survey 2017; PricewaterhouseCoopers, Global Economic Crime Survey 2016, New Zealand Insights.

<sup>9</sup> See, for example, PricewaterhouseCoopers, Global Economic Crime Survey 2018, pg. 7.

<sup>10</sup> Relevant organisations include the Department of the Prime Minister and Cabinet, Serious Fraud Office, State Services Commission, New Zealand Police, Ministry of Justice, Department of Internal Affairs, the Ministry of Business, Innovation and Employment, and the Office of the Controller and Auditor-General.

operational work and implementation, assisted by other officials as necessary. The Ministry of Justice will provide legal and policy leadership and lead work on potential legislative reform. More detail on these workstreams is provided below.

- 15 These efforts will, amongst other actions, seek to enhance our compliance with international obligations under the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention) and the UN Convention Against Corruption (the UNCAC). New Zealand will be reviewed for its compliance with both conventions in 2020.

*Operational work led by the Serious Fraud Office*

- 16 The focus of the Serious Fraud Office's operational work will be to build a shared understanding of corruption in New Zealand, enhancing prevention efforts, and proactively detecting and disrupting corrupt conduct.
- 17 Specifically, I propose that Cabinet direct the Serious Fraud Office to:
  - 17.1 develop a shared understanding of corruption in New Zealand and the vulnerabilities inherent to specific sectors or spheres of economic activity;
  - 17.2 review whether controls for the allocation and expenditure of public money (central and local government) for the provision of services, grants and programmes are effective in preventing fraud and corruption;
  - 17.3 work with Auckland Council to test procurement controls following recent changes to their procurement procedures, along with a review of case examples, with a view to sharing the outcomes of that review with Local Government New Zealand;
  - 17.4 design a framework to measure the value of the savings and non-economic benefits to government (central and local) that can be attributed to prevention efforts; and
  - 17.5 build on previous work the Serious Fraud Office has carried out in the private sector to implement an engagement programme with industry groups.
- 18 These actions recognise the need to build a collective understanding of the risks of corruption, including the nexus to transnational organised crime and the risk of corruption faced by New Zealand businesses operating overseas. They will focus on the vulnerabilities inherent to specific sectors, or themes of economic activity, including those existing offshore.
- 19 The actions are also informed by New Zealand's participation in the International Public Sector Fraud Forum (the Forum). The Forum was initiated following work in the United Kingdom aimed at better identifying and mitigating the impact of fraud on public expenditure. For example, as part of efforts to measure savings to government from fraud prevention, the UK has created an expert panel to review public sector prevention methodologies. The expert panel is responsible for signing off 98 percent of prevention savings claimed by public service agencies.
- 20 Outreach to local government and the private and not for profit sectors recognises that the risks of fraud and corruption are not limited to central government. Specifically, the Serious Fraud Office will engage with:
  - 20.1 Auckland Council, Local Government New Zealand, Society for Local Government Managers on specific corruption risks in local government; and

- 20.2 groups such as Business NZ, Institute of Directors, the AML supervisor's network and other relevant bodies to raise awareness of corruption risks in the private and not for profit sectors.
- 21 The operational work will also build off work being done in existing fora such as the Combined Law Agency Group, Organised Crime Group, Senior Crime Managers group, and the Sport Integrity Group.
- 22 It is anticipated that research, data collation and consultation will take place across 2018, with a summary report distributed for feedback in early 2019. This will be carried out with the assistance of relevant agencies and subject matter experts, and will build on previous collaboration.

*Potential legislative reform led by the Ministry of Justice*

- 23 Over the last year, in the context of developing the Anti-Corruption Work Programme and the planned Crimes Amendment Bill, the Ministry of Justice has undertaken an initial review of New Zealand's bribery and corruption offence framework in the Crimes Act 1961 and Secret Commissions Act 1910.<sup>11</sup>
- 24 The Ministry's preliminary view is that the bribery and corruption offence framework is out of date and contains numerous inconsistencies. New Zealand also appears to rely heavily on willing compliance and culture, rather than dedicated anti-corruption legislation and compliance frameworks.
- 25 I therefore propose that the Ministry of Justice provide advice to me on possible legislative reform in the following areas:
- 25.1 modernising and consolidating New Zealand's offence framework – improving the clarity, coherence and consistency of the bribery and corruption offences;
- 25.2 deferred prosecution agreements – an internationally recognised tool for holding companies to account and encouraging self-reporting, that allows a prosecution to be suspended provided a company meets certain conditions (such as compensation and ongoing monitoring); and
- 25.3 whether there is a need to expressly enable auditors who, in the course of their duties, suspect that fraud, bribery or corruption is occurring, to report it to the appropriate authorities – responding to an outstanding OECD Working Group on Bribery recommendation and potentially strengthen detection of corruption.
- 26 Initial work on modernising and consolidating our offence framework has already begun, and includes looking at issues such as the corporate liability rules for bribery and corruption, the "facilitation payment" exemption in the foreign bribery offence<sup>12</sup>, and providing clearer statutory guidance as to the meaning of acting 'corruptly'.
- 27 The Ministry has also done some initial exploration of the other areas for possible reform, including updating New Zealand's fraud offences, but further regulatory analysis is required. Work on these areas will be informed by progress made in the Anti-Corruption Work Programme.

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<sup>11</sup> Generally speaking, public sector bribery and corruption is criminalised in the Crimes Act, and private sector bribery and corruption offences are contained in the Secret Commissions Act.

<sup>12</sup> Broadly speaking, a "facilitation payment" is a small payment made to a foreign public official to speed up a service to which the payer is already entitled.

- 28 I anticipate the Ministry will also identify, and provide advice on, whether any additional measures to those outlined above may be required to better meet our obligations under the OECD Convention and UNCAC.

*Work aligned with the Anti-Corruption Work Programme*

- 29 I note that the Anti-Corruption Work Programme will align with the State Services Commission Integrity and Conduct work programme. The State Services Commissioner has a statutory mandate to maintain high standards of integrity in the public sector which is recognised as integral to preventing corruption. The State Service Commissioner's role also ensures that New Zealand has the machinery in place for our public management system to lead on high standards of corporate governance that deter corruption.
- 30 The State Services Commissioner's integrity work includes:
- 30.1 issuing guidance and standards, for example "Speaking Up" which addresses raising issues of wrongdoing, and the new State Services Commissioner Standard on Conflicts of Interest;
  - 30.2 support for agencies to implement the guidance and standards, for example practitioner groups, case studies, resources;
  - 30.3 a review of the Protected Disclosure Act 2000; and
  - 30.4 exercising, as required, independent powers of investigation and inquiry, including in relation to concerns about corruption in the State services.
- 31 Police is also currently working with partner agencies to identify any gaps in existing tools and legislation to more effectively tackle organised crime and related money flows, both domestically and internationally. Work is underway on possible organised crime-related amendments for the 2019 legislative programme. This work will contribute to New Zealand's ability to tackle and disrupt organised crime and its ability to corrupt New Zealand's financial, property and business systems.

*Reporting back on progress*

- 32 Subject to Cabinet's approval, the first phase of the Anti-Corruption Work Programme will commence in August 2018. I propose, in consultation with the Minister of Police and the Minister of State Services, to provide a report back to Cabinet by July 2019 on progress made in implementing the first phase of the Anti-Corruption Work Programme and opportunities for further work.

**Consultation**

- 33 The Department of the Prime Minister and Cabinet (Security and Intelligence Group and Policy Advisory Group), State Services Commission, Serious Fraud Office, New Zealand Police, Ministry for Business, Innovation and Employment, Department of Internal Affairs, Ministry for Social Development, Department of Corrections, Commerce Commission, New Zealand Customs Service, Accident Compensation Corporation, Crown Law Office, Inland Revenue Department, Ministry for Primary Industries, Ministry of Health, Ministry of Transport, and Sport New Zealand have been consulted on the paper. The Treasury has been informed of the paper and have reviewed the Risk Profile held by the National Risk Unit.

## **Financial Implications**

- 34 There are no financial implications arising directly from the proposals in this paper. Implementation of the Anti-Corruption Work Programme is expected to be met within agency baselines. The financial implications of specific legislative or operational changes will be included in any future papers seeking Cabinet approvals.

## **Human Rights**

- 35 There are no human rights implications arising directly from the proposals in this paper. However, as indicated above, efforts to prevent and combat corruption are consistent with efforts to protect the rule of law and enhance human rights.

## **Legislative Implications**

- 36 There are no legislative implications arising directly from the proposals in this paper. There may, however, be a need for legislative reform arising from the work led by the Ministry of Justice.

## **Regulatory Impact Analysis**

- 37 This paper is not subject to the Regulatory Impact Analysis requirements as it is not seeking to create, amend or repeal primary or secondary legislation, nor does it seek in-principle policy decisions or intermediate policy decisions. Any proposals for regulatory change arising from the work programme will be subject to the Regulatory Impact Analysis requirements and addressed in the report back to Cabinet.

## **Gender Implications**

- 38 There are no gender implications arising directly from the proposals in this paper. However, I note that international research demonstrates that corruption has a disproportionate impact on women. For example, corruption can reinforce social, cultural, political and institutional discrimination that women confront in their daily lives. Work to prevent corruption may therefore help to relieve these disproportionate impacts.

## **Disability Perspective**

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

## **Publicity**

- 40 Subject to Cabinet approval, I intend to issue a press release announcing the launch of the Anti-Corruption Work Programme. I also intend to publish this paper and related Cabinet decisions online, subject to consideration of any redactions that would be justified if the information had been requested under the Official Information Act 1982.

## **Recommendations**

- 41 The Minister of Justice recommends that the Committee:
- 1 **note** that the Serious Fraud Office, in consultation with relevant agencies, has designed an Anti-Corruption Work Programme to proactively protect and enhance our reputation as one of the least corrupt countries in the world;
  - 2 **agree** that the Anti-Corruption Work Programme will commence in August 2018;

- 3 **direct** the Serious Fraud Office, as part of the first phase of the Anti-Corruption Work Programme, to:
  - 3.1 develop a shared understanding of corruption in New Zealand and the vulnerabilities inherent to specific sectors or spheres of economic activity;
  - 3.2 review whether controls for the allocation and expenditure of public money (central and local government) for the provision of services, grants and programmes are effective in preventing fraud and corruption;
  - 3.3 work with Auckland Council to test procurement controls following recent changes to their procurement procedures, along with a review of case examples, with a view to sharing the outcomes of that review with Local Government New Zealand and New Zealand Government Procurement;
  - 3.4 design a framework to measure the value of the savings and non-economic benefits to government (central and local) that can be attributed to prevention efforts;
  - 3.5 build on previous work Serious Fraud Office has carried out in the private sector to implement an engagement programme with industry groups;
- 4 **direct** the Ministry of Justice, as part of the first phase of the Anti-Corruption Work Programme, to provide advice to the Minister of Justice on:
  - 4.1 modernising and consolidating New Zealand's corruption offence framework;
  - 4.2 introducing deferred prosecution agreements for corruption offences;
  - 4.3 whether there is a need to expressly enable auditors who, in the course of their duties, suspect that fraud, bribery or corruption is occurring, to report it to the appropriate authorities.
- 5 **note** that the Ministry of Justice will identify any additional measures that may be required to better meet our obligations under the OECD Convention on Combatting Bribery of Foreign Public Officials and the UN Convention Against Corruption;
- 6 **note** that the Anti-Corruption Work Programme is aligned with the State Services Commission Integrity and Conduct work programme;
- 7 **note** that Police is working with partner agencies, including the Ministry of Justice, on potential organised crime-related amendments to legislation to be introduced in 2019;
- 8 **invite** the Minister of Justice, in consultation with the Minister of Police and the Minister of State Services, to provide a report back to Cabinet by July 2019 on progress made in implementing the first phase of the Anti-Corruption Work Programme and opportunities for further work.

Authorised for lodgement

Hon Andrew Little

Minister of Justice