In Confidence

Office of the Minister of Justice

Cabinet Social Policy Committee

Report back: All of Government Response to Organised Crime

Proposal

1. This paper:

   1.1. reports back to Cabinet on work undertaken as part of the All of Government Response to Organised Crime

   1.2. seeks agreement to legislative amendments arising out of that work; and

   1.3. notes areas of future focus to respond to organised crime and corruption.

Executive Summary

2. The Organised Crime Strategy[1] (the Strategy) outlined a multi-agency work programme containing 15 initiatives designed to build on the laws passed over 2009-2011 to target and disrupt the activities of organised criminal groups. Many of those initiatives have already resulted in operational improvements and changes to the way agencies work together.

3. This next set of reforms improves New Zealand's ability to collaborate with international efforts to disrupt organised crime and ensures law enforcement agencies are able to quickly and effectively respond to new challenges.

4. In addition to benefits to domestic law enforcement, the proposed Bill, once enacted, will align New Zealand domestic law with the United Nations Convention against Corruption (UNCAC), the UN Anti-Trafficking Protocol, the Recommendations of the Financial Actions Taskforce (FATF), and the Preventing and Combating Crime Agreement with the United States.

5. Alignment with these international standards maintains New Zealand's reputation as a responsible international citizen. This supports New Zealand's efforts to pursue a range of multilateral goals, including assisting in New Zealand's campaign for a seat on the UN Security Council and enhancing New Zealand's reputation as a responsible trading partner (which has flow-on benefits for New Zealand businesses looking to trade overseas). Making progress on this Bill and the proposed Anti-Corruption Strategy this year will also improve the outcome of New Zealand's evaluation for compliance with the OECD Anti-Bribery Convention taking place in October 2013.

Legislative amendments proposed

6. The paper includes proposals to address technical and legislative limitations faced by law enforcement agencies in relation to:

[1] Ministry of Justice, *Strengthening New Zealand's Resistance to Organised Crime: An all-of-Government Response*, August 2011.

6.1. investigating and prosecuting money laundering and identity crime

6.2. the efficiency of mutual legal assistance and combating trafficking in persons

6.3. the ability to gather and share information for law enforcement purposes, including with international partner agencies.

7. The amendments proposed will:

7.1. clarify that intent to conceal is not an element of the money laundering offence and remove the requirement that the offence from which proceeds are derived must be punishable by 5 years' or more imprisonment

7.2. amend the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to require reporting entities to report all international wire transfers over $1,000 and all physical cash transactions over $10,000

7.3. create new offences to address gaps in New Zealand's identity crime offence framework

7.4. extend the time frames for foreign restraining orders and provide the ability to register such orders without notice

7.5. amend the offence of trafficking in persons in the Crimes Act 1961 to refine the elements of the offence and remove the requirement to cross borders

7.6. allow Police to share personal information with its international counterparts in order to implement the agreement with the United States on Preventing and Combating Crime

7.7. enable New Zealand Police to share DNA databank information with overseas agencies.

8. I propose that the legislative amendments, along with amendments regarding corruption previously agreed by Cabinet to strengthen New Zealand's compliance with the OECD Anti-Bribery Convention and the UN Convention Against Corruption (outlined in detail below), be consolidated into a single omnibus Organised Crime and Anti-Corruption Bill, currently priority on the Legislative Programme.

Focus areas for a New Zealand Anti-Corruption Strategy

9. The Strategy identified the need for a national anti-corruption strategy. The Strategy will also support the anti-corruption amendments to be made in the proposed Bill. This paper outlines work to date on a national anti-corruption strategy, and proposes four focus areas for future work. These are:

9.1. improving data collection and monitoring of corruption statistics

9.2. increasing business awareness of corruption risks overseas and liability under New Zealand and other jurisdictions' legislation

9.3. providing best practice national guidance to prevent and respond to corruption

9.4. strengthening New Zealand's legislative framework on bribery and corruption.

Future focus areas for organised crime in New Zealand

10. There is still work to be completed as part of the Strategy. This work will commence in late 2013 and focus on:

10.1. reviewing the Extradition Act 1999 and the Mutual Assistance in Criminal Matters Act 1992

10.2. enhancing New Zealand's ability to cooperate internationally by aligning our legislation with that of other countries and modernising our legislation

10.3. addressing new enablers of organised and financial crime – most notably, cybercrime and implementing the second phase of anti-money laundering reforms.

Background

11. Organised crime is pervasive both internationally and nationally, with serious impacts on New Zealand's communities, international reputation and economy. In recognition of this, the Government published *Strengthening New Zealand's Resistance to Organised Crime: An all-of-Government Response* (the Strategy) in August 2011.

12. The initiatives included in the Strategy build on laws passed over 2009-2011 to target and further disrupt the activities of organised criminal groups.

Information-gathering initiatives

13. Two initiatives in the Strategy focused on improving our understanding of the problem of organised crime:

13.1. a scale of fraud report identifies the scale of losses experienced on an industry sector basis, and identifies enablers of organised crime. This work was led by the Serious Fraud Office and the report has been provided to the Ministers of Police and Justice, and interested agencies to inform future policy and operational initiatives

13.2. a stocktake of existing arrangements for financial crime investigations showed that arrangements of agencies were adequate in terms of efficiency and cost-effectiveness, within the constraints of resourcing and prioritisation by agencies. Impediments to information sharing were identified. A review of existing legislation to improve information sharing and data-matching is underway as a part of the Strategy.

Operational initiatives

14. Some workstreams in the Strategy were purely operational, and where appropriate, have been implemented.

15. These initiatives include:

15.1. improving cross-agency threat and risk assessment

15.2. improving the exchange of information on techniques with overseas enforcement agencies

15.3. developing a financial targeting model.

Investigating and prosecuting money laundering and identity crime

Improving effectiveness of New Zealand's money laundering offences

16. As part of the Strategy, Cabinet directed that work be undertaken on "improving the international alignment and effectiveness of the Crimes Act 1961 money laundering offence" .

17. As a member of the Financial Action Task Force (FATF), New Zealand is regularly evaluated on its implementation of the FATF recommendations. In the last evaluation, issues were raised regarding the technical compliance of New Zealand's money laundering offences with the FATF recommendations, the United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances (Vienna Convention), and the United Nations Convention against Transnational Organised Crime (UNTOC).

Purpose of concealment

18. Courts now interpret the money laundering offence as requiring the prosecution to prove intent to conceal or intent to enable another to conceal. This interpretation is inconsistent with UNTOC. I recommend that section 243 of the Crimes Act and section 12B of the Misuse of Drugs Act (the money laundering offences) be amended to clarify that *intent to conceal* is not a necessary element of the offence.

Self-laundering

19. New Zealand does not criminalise self-laundering. Self-laundering is where the offender who commits an offence 'deals with' the proceeds of offending himself or herself (eg, Person A sells drugs then spends the proceeds on a car for himself). The amendment proposed above (to remove the requirement for intent to conceal) will also ensure self-laundering is an offence.

Predicate offences

20. A predicate offence is the originating offence from which the proceeds to be laundered are obtained. The FATF considered that New Zealand's arms trafficking offences did not sufficiently cover the offences required by the FATF in the designated predicate offence category of illicit arms trafficking. This issue would have been addressed by the Arms Amendment Bill (No 3) introduced into Parliament in 2005. One of the Bill's goals was to enable New Zealand to comply with the UNTOC Firearms Protocol. However, that Bill was discharged on 29 March 2012, after the Law and Order Committee recommended that it not be passed. I recommend that no further action is taken on this issue until a decision is made on whether to accede to the Firearms Protocol. This work is being led by the Ministry of Foreign Affairs and Trade.

Effectiveness of New Zealand's money laundering offence

21. New Zealand law enforcement agencies have had difficulties during prosecutions in showing that illegal money is the result of a "serious offence" (punishable by more than 5 years' imprisonment). I propose that the current requirement that the property is proceeds of an offence that is punishable by 5 years' or more imprisonment be removed. Instead, the money laundering offence will apply to property that is proceeds of *any* offence. This approach is comparable to the United Kingdom's money laundering offence, and the Anti-Money Laundering Model Common Law money laundering provisions.

Collection and monitoring of international funds transfers data to improve ability to investigate money laundering

22. As part of the Strategy, Cabinet directed work to be undertaken on developing proposals for the routine collection and monitoring of high risk transactions .

23. The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) comes into force in June 2013. Under this Act, banks, financial institutions and casinos (reporting entities) will be required to report suspicious transactions to the Police's Financial Intelligence Unit (FIU). Many entities already report this information under the existing money laundering framework; however, the information that is reported is of limited value due to the subjective and disparate nature of reports.

24. The *National Risk Assessment* classifies international funds transfers and large cash transactions as high risk for money laundering and terrorist financing and states that this risk is almost certain to increase. The assessment also notes that these methods are two of the top three methods by impact on New Zealand.

25. Suspicious transaction reports are unlikely to fully address the high risk from international funds transfers and large cash transactions because suspicious transaction reports are subjective (suspicious transactions have the potential to go unnoticed) and disparate (eg, a reporting entity may see one transaction, which on its own is not suspicious, but forms part of a suspicious set of transactions).

26. Requiring routine reporting of international funds transfers and large physical cash transactions would give the FIU greater capability to track transactions internationally and follow up on suspicious transaction reports to detect money laundering. It also enhances New Zealand's compliance with the Financial Action Taskforce recommendations and aligns New Zealand with like-minded jurisdictions.

Proposals for enhanced transaction reporting

27. I recommend that the AML/CFT Act be amended to require reporting entities to report to the FIU all international funds transfers over $1,000, and all domestic *physical* cash transactions over $10,000 (eg, a deposit of a large bundle of cash).

28. For each transaction, reporting entities would routinely report:

    28.1. the nature, amount, currency, and date of the transaction

28.2. the parties to the transaction (including name, date of birth and address)

28.3. if applicable, 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

28.4. 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 of the parties to the transaction, and has formed a suspicion about the transaction

28.5. any other information prescribed by regulations.

29. I recommend that reporting entities be required to make such reports within 10 working days of the transaction.

30. I further recommend that a new offence be created for failing to comply with these reporting obligations with a penalty consistent with the current penalty for failing to report suspicious transactions (up to 2 years' imprisonment and/or a fine of up to $300,000 for an individual, and a fine of up to $5 million dollars for a body corporate).

Use and sharing of information by the FIU

31. Routine reporting of international funds transfers and large physical cash transactions is an important tool to enable the FIU to analyse these transactions and detect money laundering. The FIU has comprehensive safeguards in place for the existing reporting regime. Stringent procedures exist in relation to the storage of and access to sensitive information. Information on international funds transfers and large cash transactions can currently be shared in accordance with the existing provisions under the AML/CFT Act.

Identity crime offences

32. As part of the Strategy, Cabinet directed work be undertaken on "remedying gaps in the identity offences framework" . For the purposes of this paper 'identity-related crime' has been defined as activities/offences involving a synthetic identity, a manipulated identity, or a stolen/assumed identity to facilitate the commission of a crime.

33. The increased use of technology is making identity information more vulnerable to use by criminals. Available information indicates that between 2.8% and 7% of the adult population may be victims of identity theft or fraud and that identity crimes may cost between 0.1% and 0.75% of GDP each year.

Transfer of identity-related information

34. It is not generally a criminal offence to sell, transfer, distribute or otherwise make available unlawfully obtained or manufactured identity-related information. There are some specific offences (eg, in relation to the sale of passports), but these do not address the sale of a wide range of identity-related information.

35. To remedy this gap I propose amending the Crimes Act to provide for an offence to sell, transfer, distribute or otherwise make available unlawfully obtained or

manufactured identity documents or information. I also propose to amend the Customs and Excise Act 1996 to address the import and export of this type of information.

36. I propose that the new offence should carry a maximum penalty of three years' imprisonment, which aligns with offences of similar seriousness.

Preparation of identity documents

37. It is not generally a criminal offence to make, possess or sell/dispose of goods intended to facilitate the commission of an identity-related crime. The closest offence is that of having paper or implements for forgery. There are specific offences relating to travel documents and software for facilitating crime, however, these do not cover the full range of identity documents or types of technology involved.

38. I recommend that the Crimes Act be amended to make it an offence to, without reasonable excuse:

    38.1. design, manufacture, or adapt goods with the intent to facilitate the commission of a crime involving dishonesty, or

    38.2. possess or sell, or dispose of such goods or

    38.3. possess goods that would otherwise have a legitimate purpose with the intention of using it to commit an offence

39. In addition, I recommend that these items be added to the Customs and Excise Act 1996 to ensure that their exportation is also prohibited.

40. I propose that the penalty for this offence be a maximum of three years' imprisonment, and that the equivalent offences in the Customs and Excise Act 1996 also be raised to three years imprisonment.

Improving the efficiency of mutual legal assistance and combating trafficking in persons

Improving the efficiency of mutual legal assistance

41. As part of the Strategy, Cabinet directed work to be undertaken on "more efficient processes and a broader scope for mutual legal assistance" .

42. This work has been separated into two phases. The first addresses urgent issues with foreign restraining and forfeiture orders. This work is set out below. The second phase involves a review of the Mutual Assistance in Criminal Matters Act 1992 (MACMA) and the Extradition Act 1999, to be commenced in 2014.

Timeframes for foreign restraining orders

43. The Criminal Proceeds (Recovery) Act 2009 (CPRA) allows the Crown to recover money or property that has been derived from crime. Under CPRA and MACMA a New Zealand court may enforce a foreign state's restraining order (which 'freezes' the assets) or forfeiture order (which forfeits the property to the state).

44. Foreign restraining orders are registered for two years with the possibility of a one year extension. At the end of this time, a foreign forfeiture order needs to

have been registered in New Zealand or the proceeds are returned to the individual. If this occurs, the Government may become liable for costs or damages caused by the restraint period (eg, loss of profit through lost opportunity). Some foreign countries require conviction before a forfeiture order is granted.

45. This timeframe can cause problems where an individual is being extradited (a process that typically takes a number of years).

46. I propose that where an order is made for property belonging to an individual in respect of whom an extradition request has been made, the Police have the ability to apply to the Court for a 2-year extension at the end of the initial 2-year restraint period. Multiple subsequent extensions can be applied for with no specified maximum number of extensions. The requirement that the Police justify each extension to the Court would protect against unjustified or overly lengthy restraint of assets; the onus would be on Police to show an extension is required.

Registration of foreign restraining orders on a 'without notice' basis

47. There are two types of foreign restraining order:

    47.1. An interim foreign restraining order made where a restraining order is yet to be issued in the foreign country, but an investigation has indicated that criminal proceeds are located in New Zealand. The application for this type of order may be made 'without notice' (ie, without notifying the individual whose assets are being restrained).

    47.2. A standard foreign restraining order made where a restraining order has been made in the foreign country and the country has requested that the order be registered in New Zealand to restrain assets located in New Zealand. The application for this type of order cannot be made without notice.

48. A foreign country may first approach New Zealand with a request to register a standard foreign restraining order. The inability to register this order on a without notice basis means New Zealand authorities must either risk 'tipping off' the individual (potentially resulting in the concealment of assets), or apply for an interim order as an unnecessary preliminary step (resulting in an increase in Crown costs and court time associated with the request).

49. I propose that the CPRA be amended to provide for the registration of foreign restraining orders on a without notice basis in a manner consistent with domestic restraining orders. This would mean that an application could only be made where there is a risk of assets being concealed or destroyed and the order would only remain in effect for seven days.

Trafficking in persons

50. The United Nations Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children (the Anti-Trafficking Protocol), to which New Zealand is a signatory, requires State parties to:

    50.1. ensure legislation clearly defines the elements of the trafficking offence; and

50.2. ensure the trafficking offence contains the elements of action, means, and exploitative purpose.

51. The Legislative Guides to the Anti-Trafficking Protocol states that transnationality (ie, the requirement to move people across borders) should not be an express element of the trafficking offence.

52. Section 98D of the Crimes Act criminalises trafficking in persons. It contains an express transnational requirement; the offence requires the "entry of a person into New Zealand." In addition, the offence does not explicitly include the element of an "exploitative purpose".

53. The United States' *Trafficking in Persons Report* has repeatedly criticised New Zealand's inclusion of the transnational requirement, while the United Nations has recommended that New Zealand consider removing this requirement in order to ensure that domestic trafficking is also criminalised. The United States has also recommended that the offence explicitly identify the element of an "exploitative purpose".

54. I recommend that the trafficking in persons offence in Section 98D of the Crimes Act be amended to remove the transnational element of the offence. I further recommend the trafficking in persons offence is refined to ensure that the use of an "exploitative purpose" is covered as a means of trafficking in persons.

Improving the ability to gather and share information for law enforcement purposes, including with international partner agencies

Implementing the agreement with the United States on preventing and combating crime

55. Cabinet agreed that New Zealand sign 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 (the PCC Agreement) . The PCC Agreement provides for New Zealand and the United States to exchange, on request, biometric and biographic data for the purpose of preventing, detecting and investigating offences that are punishable by more than one year imprisonment.

56. Cabinet also agreed, in principle, to the legislative changes necessary to implement the PCC Agreement. Cabinet noted that its agreement should be sought to the legislative changes needed to implement the PCC Agreement; and its direction sought on whether Police should be given a broad international information-sharing power.

57. The PCC Agreement was signed on 20 March 2013 in Washington.

Legislative amendment necessary for PCC implementation

58. Sharing information internationally enables law enforcement agencies to perform their functions regardless of the jurisdiction in which the crime was committed or where the criminal is currently located. New Zealand must be able to share law enforcement information with our international counterparts if we are to expect such information in return.

59. Amendments to the Policing Act 2008 are required to implement the PCC Agreement. The PCC Agreement involves the sharing of personal information collected by Police that is not currently shared internationally. Without express legislative authority allowing Police to share personal information under the PCC Agreement, there is a risk that such sharing will breach the Privacy Act 1993. However, it makes little sense to amend the Policing Act to authorise information sharing under the PCC Agreement, without authorising similar information sharing under other international agreements.

60. Unlike other legislation such as the Immigration Act 2009 and the Customs and Excise Act 1996, the Policing Act does not contain an express provision authorising Police to share information with its international counterparts. Police rely on a combination of domestic legislation and international agreements to provide authority for such sharing.

61. Current internal policy is that overseas requests for information should go through Interpol. Most countries are members of Interpol. Where justified, exceptions are made for specific business units and individuals (such as overseas liaison officers) who share information on a more formal basis.

62. I recommend amending the Policing Act to expressly provide Police with a power to share information with its international counterparts. Sharing under the PCC Agreement would take place in accordance with this power. In accordance with Standing Orders, the Parliamentary treaty examination process for the PCC Agreement will take place before the Organised Crime Omnibus Bill is introduced.

63. I recommend a broad international information sharing power, which reflects current Police sharing practices, that is balanced with appropriate accountability and transparency mechanisms. The proposal set out below places appropriate constraints on international information sharing by NZ Police while not impeding Police's ability to effectively take part in international policing activities.

Statutory requirements for responding to requests

64. I propose that a new provision in the Policing Act should require Police to satisfy a three-part test when responding to requests for personal information from an overseas agency. First, the request must come from an agency or body that performs one or more of the functions set out in section 9 of the Policing Act.[2]

65. Second, the information requested must be necessary for the overseas agency to discharge functions equivalent to section 9. This ensures that the information is being used by the overseas agency for a proper purpose.

66. Finally, if the above criteria are met and the sharing is not contrary to any other enactment I propose that information may only be disclosed:

    66.1. with the consent of the individual concerned, or

    66.2. under an agreement entered into by the New Zealand Government, or

    66.3. in response to an Interpol request, or

[2] For example keeping the peace, maintaining public safety, law enforcement, crime prevention, community support and reassurance, national security, participation in policing activities outside New Zealand, emergency management.

66.4. under an agreement entered into by NZ Police with an overseas agency or body (an agency-to-agency agreement), or

66.5. by an individual in a specific role or business unit in accordance with approval given by the Police Commissioner. See paragraph 69 for safeguards relating to this requirement.

67. The requirement that the disclosure is not contrary to any other enactment preserves other legislative mechanisms for sharing (in particular, the formal processes under the Mutual Assistance in Criminal Matters Act 1992). I also propose below at paragraphs 76-82 that DNA databank information should be shared only following a MACMA request.

Accountability and transparency

68. I recommend that Police continue the current practice of consulting the Privacy Commissioner before entering into an agency-to-agency agreement for international sharing of personal information or when such an agreement is varied or reviewed.

69. I further recommend that the Police Commissioner consult the Privacy Commissioner when deciding to approve specific individuals or business units[3] to respond to requests directly. The Police Commissioner may only approve specific individuals or business units if he or she is satisfied that guidelines are in place to ensure appropriate sharing.

70. Consultation with the Privacy Commissioner will ensure that privacy of individuals is appropriately protected in line with the statutory framework. The scope and nature of consultation with the Privacy Commissioner will be detailed in a Memorandum of Understanding between the Commissioner of Police and Privacy Commissioner.

71. I also recommend that Police provide an annual report to the Office of the Privacy Commissioner on the operation of assurance processes (such as internal guidelines) to ensure that the statutory criteria for international information sharing are being adhered to. This would cover all sharing of personal information. Police would identify areas of risk and design a rolling cycle to review information sharing in consultation with the Office of the Privacy Commissioner and the Ministry of Justice. Any costs associated with reporting under the proposed framework will be absorbed by Police within existing baselines.

72. I recommend that the new provision require Police to make agency-to-agency agreements publicly available (unless there is good reason under the Official Information Act for withholding the agreement or parts of the agreement). Similarly, Police will make publicly available a list of which business units and individual roles are authorised to share information internationally (unless there is good reason under the Official Information Act for withholding the agreement or parts of the agreement).

[3] Eg, OCEANZ, OFCANZ, FIU, Electronic Crime Lab and Liaison Officers

Enforcement

73. Police will monitor internal compliance with the new provision. Any breach of the provision could trigger the internal disciplinary process, or where warranted, a complaint to the Independent Police Conduct Authority.

74. In addition, an individual may make a complaint to the Privacy Commissioner under the Privacy Act where information has been shared in breach of the new provision and this breach has resulted in harm. For the purposes of section 66 of the Privacy Act, a breach of the proposed Policing Act provision will be deemed to be a breach of one of the Information Privacy Principles.[4]

Transitional arrangements

75. I recommend that existing agency-to-agency agreements continue to operate. Where they do not satisfy the new provisions in the Policing Act, they must be renegotiated in line with the new requirements at their next review date.

Sharing DNA databank information with overseas law enforcement agencies

76. Section 27 of the Criminal Investigations (Bodily Samples) Act 1995 prohibits disclosure of DNA profile information except in specified circumstances. The exceptions do not include the provision of DNA profile information to an overseas agency for the purposes of the investigation and prosecution of offences in their jurisdictions.

77. This means that, for example, the Queensland Police investigating a homicide may take a DNA sample from the crime scene and ask NZ Police whether or not there is a matching sample in New Zealand's databank, but in the event of a hit New Zealand Police are unable to disclose who the matching sample belongs to.

78. The Mutual Assistance in Criminal Matters Act 1992 (MACMA) cannot be used to share this type of information.

79. The inability of Police to provide DNA profile information is a significant impediment to international co-operative arrangements and puts New Zealand out of step with many like-minded jurisdictions.[5]

80. Provided there are adequate safeguards to ensure personal information relating to a DNA profile is provided only to assist with legitimate criminal investigations, it is appropriate to make provision for this to occur in New Zealand.

81. I recommend that section 27(1) of the Criminal Investigations (Bodily Samples) Act 1995 be amended to include an exception for Police where they are acting on the authorisation of the Attorney-General in response to a mutual assistance request under MACMA. This would ensure that all requests receive the independent scrutiny of the Attorney-General who is required to consider the matters listed in section 25A of MACMA (eg, the seriousness of the offence and

[4] This proposal is based on section 59(6) of the Electronic Identity Verification Act 2012. Section 66 of the Privacy Act allows a complaint to be brought where a Privacy Principle is breached resulting in harm.

[5] Australia can provide DNA information under the Mutual Assistance in Criminal Matters Act 1987. European Union member states make DNA databases available to each other on a hit/no hit basis. If this shows a match, personal information relating to the DNA profile is then exchanged under mutual assistance procedures. The United Kingdom shares DNA information under its mutual assistance framework.

any reciprocal arrangements with the requesting jurisdiction). He or she is also required to refuse the request in accordance with section 27 of MACMA (eg, if the information relates to an offence of a political character).

82. I also recommend as a further safeguard that the new exception under section 27(1) be confined to requests that relate to a criminal investigation for an offence that corresponds to an offence in New Zealand carrying a maximum penalty of more than one year imprisonment.

A national anti-corruption strategy

83. As part of the Strategy, Cabinet directed work be undertaken on developing a national anti-corruption policy covering prevention, detection, investigation and remedy of corruption and bribery across the public sector (including to local government and Crown entities) and the private sector .

84. The true extent of corruption in New Zealand is difficult to establish, but data confirms that bribery and corruption is occurring in New Zealand, albeit relatively rarely. The Controller and Auditor-General attributed the lack of systemic corruption to "the integrity of our standards and controls, underpinned by strong and shared common values within a small and cohesive society."[6] However, she also noted that, given changes in New Zealand society, we cannot afford to be complacent.

Proposed focus areas for national anti-corruption strategy

85. Four focus areas (discussed below) will form the basis of the strategy, and will be published as New Zealand's Anti-Corruption Strategy on the Ministry of Justice website. Rather than prescribe new areas of work, for the most part the proposed strategy simply brings together and provides an overarching framework for existing government activity.

Improving data collection and monitoring of corruption statistics

86. Current research data on bribery and corruption in New Zealand has some key limitations including no agreed definition of corruption, the combination of fraud and corruption in surveys, and a lack of New Zealand-specific survey data.

87. Future work priorities under this focus area include:

    87.1. identifying an appropriate lead agency to improve New Zealand data on corruption and to collate, monitor and share available data

    87.2. working with research sponsors to improve the information available about corruption and bribery in New Zealand.

88. Transparency International New Zealand's National Integrity System (NIS) assessment is evaluating the risks and anti-corruption effort across a broad range of areas of New Zealand society.[7] The report will be published in June 2013.

[6] Controller and Auditor-General, *Fraud Awareness, Prevention and Detection in the Public Sector*, 2012 (page 5)
[7] Including the legislature, executive, judiciary, public sector, law enforcement, media and business.

Increasing business awareness of corruption risks and liabilities

89. A number of New Zealand's top ten trading partners are high-risk countries in terms of the prevalence of corruption. New Zealand businesses operating abroad need to develop appropriate anti-bribery practices to protect the business and its employees from liability for bribery offences. It appears that many companies are unprepared for the operating conditions that they will find in the countries of many of our trading partners.

90. Future work to address this focus area should include:

    90.1. developing information for the business sector to support understanding of international risks and liabilities

    90.2. working with the business sector to encourage the training of staff.

Providing best practice national guidance to prevent and respond to corruption

91. There is a lack of operating guidance for the public and private sector dealing directly with the issue of corruption. Some of the existing corruption-related guidance for the private sector (eg, on gifts or conflicts of interest) is inconsistent. Guidance for the not-for-profit sector is minimal and generally does not contain content on ethical leadership or frameworks such as codes of conduct.

92. A New Zealand standard on an anti-corruption management system is required. The International Standards Organisation has agreed to a United Kingdom proposal to develop an international standard. This is in the early stages, and is expected to take around three years to complete. When completed, this will provide a useful tool for New Zealand businesses and organisations. The Ministry of Justice in association with Standards New Zealand will continue to monitor this work.

Strengthening New Zealand's legislative framework on bribery and corruption

93. In August 2009, Cabinet approved a number of legislative amendments to strengthen New Zealand's compliance with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Anti-Bribery Convention) and to allow New Zealand to ratify the United Nations Convention Against Corruption .

94. These changes strengthen New Zealand's anti-corruption framework and enhance our international reputation. Progress on making these changes will positively impact New Zealand's evaluation for compliance with the OECD Anti-Bribery Convention (to take place in October 2013). New Zealand has been criticised for being one of the very few countries yet to ratify UNCAC.[8]

95. The legislative amendments will:

    95.1. create new bribery offences relating to the provision of international aid, the solicitation and acceptance of bribes by foreign public officials and trading in influence over public officials

[8] As at 30 September 2011 UNCAC had been ratified by 154 states including Australia, Canada, the United Kingdom and the United States.

95.2. increase the penalties for private sector corruption to bring them into line with public sector corruption

95.3. prevent the tax deductibility of bribes

95.4. ensure the bribery of a foreign public official can be prosecuted in New Zealand regardless of whether it was an offence in the foreign country

95.5. clarify the provision allowing for small facilitation payments

95.6. extend record-keeping requirements to require businesses to keep records of facilitation payments

95.7. extend the company director disqualification provisions to corruption and bribery offences.

96. I recommend that these amendments be included in the proposed Organised Crime and Anti-Corruption Bill.

Implementation

Legislation: Organised Crime and Anti-Corruption Bill

97. A Bill will be required to implement the legislative proposals outlined in this paper. The Bill will contain a range of legislative amendments to combat transnational organised crime, and bring New Zealand's law into line with international standards. Progress of the Bill (in particular, the anti-corruption provisions) will have a positive effect on New Zealand's evaluation for compliance with the OECD Anti-Bribery Convention (to take place in October 2013).

98. Once enacted, further work will be required to accede to the United Nations Convention against Corruption, and to operationalise the PCC Agreement.

99.

National anti-corruption strategy

100. If agreed, the national anti-corruption strategy will be published on the Ministry of Justice website (subject to my approval of the final text).

Future work to address organised and financial crime

101. Organised and financial crime continues to be an area for inter-agency and international collaboration. There is still work to be completed as part of the Strategy, including:

101.1. reducing misuse of New Zealand legal arrangements – in particular, the passage of the Companies and Limited Partnerships Bill (currently awaiting second reading)

101.2. protecting against cybercrimes – in particular, acceding to the Budapest Convention Against Cybercrime

101.3. improving international legal assistance and cooperation – a broader review of the Extradition Act and Mutual Assistance in Criminal Matters Act is required to improve efficiency and effectiveness (to be commenced in 2014)

101.4. reviewing existing legislation to improve domestic and cross-border information sharing and data-matching between agencies – Inland Revenue is currently consulting on a proposal to allow sharing of information for serious crimes, and the Privacy Act review (currently underway) will look at existing legislative impediments to information sharing

101.5. enhancing anti-money laundering protections by extending industry sector coverage of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (policy work due to commence later this year).

102. The officials' Sub-Committee on Organised and Financial Crime has a strategic, priority-setting role in relation to organised and financial crime, and will continue to monitor this area and report risk areas to Cabinet as appropriate.

Consultation

103. The New Zealand Police; the Treasury; Inland Revenue Department; New Zealand Customs Service; Department of Internal Affairs; Department of Corrections; Ministry of Business, Innovation and Employment; Ministry of Foreign Affairs and Trade; the Crown Law Office; the Department of Corrections; the Serious Fraud Office and the Office of the Privacy Commissioner have been consulted on the proposals contained in the paper. The Department of the Prime Minister and Cabinet and Parliamentary Counsel Office have been informed.

104. A number of banks and financial institutions were consulted on the proposals relating to the collection and monitoring of international funds transfers.

Comment from the Privacy Commissioner

105. I agree there is a need to grant Police the ability to share information internationally. The absence of a power to share internationally is out of step with other New Zealand agencies with enforcement roles, and limits Police's ability to engage in international efforts to combat organised crime. But a power of this type must be appropriately circumscribed, and be accompanied by a meaningful accountability mechanism.

106. The proposal currently has no statutory mechanism to ensure accountability. This is a serious omission. New Zealanders have a high level of trust in the Police. But that trust relies on a belief that Police act within the law, and that there are mechanisms to detect and address non-compliance. International information sharing by Police is currently governed by the Privacy Act, but I, and those affected, have limited practical ability to determine what Police are sharing, and whether they are sharing information appropriately. This new legislation will greatly increase Police's powers to share information, but without a corresponding increase in accountability.

107. I propose that the Police Commissioner should at least be required to report annually on compliance, in order to provide some assurance that any compliance issues can be identified and will be addressed. Because of the need to protect confidential information this could be a confidential report to the Privacy Commissioner. The exact content and format could be determined by discussion between the Police Commissioner and me.

108. The paper also sets out circumstances in which the Police Commissioner intends to consult me. Including these circumstances as obligations in the Bill would provide additional assurance to the public that Police are using their powers responsibly.

109. I also have some concerns about the apparent breadth of the powers described by the Cabinet paper. The scope of the information sharing power is limited only by the functions of the Police under the Policing Act. The Cabinet paper balances this breadth by proposing a requirement that information requested by an overseas agency must be "necessary" for the overseas agency to discharge its functions. I recommend that this idea of "necessity" should be an explicit requirement of the legislative drafting, in order to ensure that Police's powers are appropriately circumscribed in the final bill.

110. Because the powers granted to Police under this legislation are very broad and the accountability mechanisms are weak, I recommend that the international information sharing powers should be reviewed after five years of operation.

New Zealand Police Response

111. The proposed amendment to the Policing Act does not provide Police with any additional powers to share information internationally. Instead it codifies the existing information sharing that Police has been undertaking through mechanisms such as Interpol since 1955. It provides a positive source of authority within Police's primary legislation, so that Police may continue to share information to fulfil their functions under the Policing Act. The proposed amendment establishes new accountability mechanisms for Police where currently no specific accountability mechanisms exist.

112. Checks and balances such as:

    112.1. designating groups capable of sharing;

    112.2. ensuring policies are in place to govern sharing across all designated groups before they can share;

    112.3. consulting with the Privacy Commissioner on the establishment and review of agency-to-agency agreements;

    112.4. developing an audit framework to ensure compliance with the statutory regime in consultation with the Ministry of Justice and the Privacy Commissioner;

    112.5. providing an annual report to the Privacy Commissioner on compliance; and

112.6. making publicly available the list of groups designated capable of sharing information and copies of the agency-to-agency agreements,

are all new accountability requirements for Police that will ensure that peoples' privacy is appropriately protected.

113. The process and framework for consultation will be agreed between the Police Commissioner and the Privacy Commissioner and set out in a Memorandum of Understanding before any amendment comes into force. The Memorandum of Understanding could include a commitment to review audit processes after five years, to ensure that they remain fit for purpose.

Financial Implications

114. This paper proposes new offences and clarification to existing offences. The proposed new offences are either for the purposes of ensuring regulatory compliance (eg, the new offence of failing to comply with reporting obligations for financial institutions) or to ensure there are no gaps in the law (eg, new identity crime offences). We expect these new offences to be used very rarely, though the proposed new identity offence and the related sentence increases for other identity offences *may* have a small but visible impact on courts and the Department of Corrections due to the potential volume of criminal activity. This will depend ultimately on detection and prosecution rates.

115. The proposed amendments to offences are largely technical in nature (eg, to clarify the trafficking in persons offence), or to ensure the effectiveness of existing offences (eg, the changes to the money laundering offence). These amendments are not expected to result in changes to the frequency of use of these offences.

116. The most significant change is to remove the requirement in the money laundering offence that the predicate offence be an offence punishable by 5 years' or more in prison. This change is expected to result in an increase in the number of charges, but not an increase in prosecutions, since money laundering would almost always be prosecuted with other offending. It would be sentenced concurrently and therefore would also not result in an increase in sentence lengths.

117. The new offences and amendments to offences are therefore not expected to result in a significant increase in prosecutions and accordingly will not result in any significant financial implications.

Human Rights

118. The proposals in this paper are not expected to raise issues with the New Zealand Bill of Rights Act 1990.

Regulatory Impact Analysis

119. The Ministry of Justice's internal RIS quality assurance panel has reviewed the Regulatory Impact Statement (RIS). The panel considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.

120. The panel has noted the comments in the agency's disclosure statement about the constraints on the analysis as a result of the lack of detailed information about

the extent of organised crime in New Zealand and the impact of the proposed changes. The panel was also mindful of the importance of complying with the relevant international conventions, which also constrained the range of options that could be considered.

121. I certify that the proposals in the paper are consistent with the expectations set out in the Government Statement on Regulation.

Gender Implications

122. The proposals have no gender implications.

Disability Perspective

123. The proposals have no disability implications.

Publicity

124. I will issue a press release about these proposals, and if agreed by Cabinet, the proposed national anti-corruption strategy will be published on the Ministry of Justice's website (subject to my approval of the final text).

Recommendations

125. The Minister of Justice recommends that the Committee:

1. **Note** that this paper reports back on work undertaken as part of the All of Government Response to Organised Crime

Improving New Zealand's money laundering offence

2. **Note** that issues have been raised regarding the technical compliance of New Zealand's money laundering offence with the Financial Action Taskforce (FATF) recommendations, and the UN Convention on Transnational and Organised Crime (UNTOC) and the Vienna Convention

3. **Agree** that section 243 of the Crimes Act 1961 and 12B of the Misuse of Drugs Act 1975 be amended to clarify that *intent to conceal* is not a necessary element of the offences

4. **Note** that the above amendment will address FATF concerns as to whether "self-laundering" (dealing with proceeds of one's own offending) is an offence in New Zealand

5. **Agree** that no further action be taken on the predicate money laundering offence relating to illicit arms trafficking until a decision has been made on whether to accede to the Firearms Protocol

6. **Agree** that the money laundering offence be amended so that the property can be the proceeds of any offence, rather than the proceeds of an offence punishable by 5 years' or more imprisonment

Collection and monitoring of international funds transfers data

7. **Note** that the suspicious transaction reporting framework under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 does not adequately address the high risk posed by international funds transfers and large cash transactions

8. **Agree** to amend the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to require reporting entities to report to the Financial Intelligence Unit all international wire transfers over $1,000 and all domestic physical cash transactions over $10,000

9. **Agree** that such reports contain the following information:

    9.1. the nature, amount, currency, and date of the transaction

    9.2. the parties to the transaction (including name, date of birth and address)

    9.3. if applicable, 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

    9.4. 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 of the parties to the transaction, and has formed a suspicion about the transaction

    9.5. any other information prescribed by regulations

10. **Agree** that reporting entities must report these transactions within 10 business days of the transaction

11. **Agree** that a new offence be created for failing to comply with these new reporting obligations with a penalty consistent with the current penalty for failing to report suspicious transactions

Identity crime offences

12. **Note** that there are gaps in New Zealand's identity-related offence framework relating to the transfer of unauthorised identity-related information, and possessing or selling goods intended to facilitate the commission of identity-crime

13. **Agree** that the Crimes Act 1961 be amended to make it an offence to sell transfer, distribute, or otherwise make available unlawfully obtained or manufactured identity documents or information

14. **Agree** that the Customs and Excise Act 1996 be similarly amended to make it an offence to import or export this type of information.

15. **Agree** that this new offence be punishable by a maximum of three years' imprisonment

16. **Agree** that the Crimes Act 1961 be amended to make it an offence to, without reasonable excuse:

16.1. design, manufacture, or adapt goods with the intent to facilitate the commission of a crime involving dishonesty or

16.2. possess or sell, or dispose of such goods or

16.3. possess goods that would otherwise have for a legitimate purpose with the intention of using it to commit an offence

17. **Agree** that these items be added to the Customs and Excise Act 1996 to ensure that their exportation is also prohibited

18. **Agree** that the penalty for this offence be a maximum of three years' imprisonment and that the equivalent offences in the Customs and Excise Act 1996 also be raised to three years imprisonment

Improving the efficiency of mutual legal assistance

19. **Note** that work on New Zealand's mutual assistance framework has been broken up into two phases, the first addresses urgent practical issues and the second is a full review of the legislation to be undertaken in 2014

20. **Agree** that where a foreign restraining order is made for property belonging to an individual in respect of whom an extradition request has been made, the Police have the ability to apply to the Court for a 2-year extension at the end of the initial 2-year restraint period

21. **Agree** that more than one subsequent extension may be applied for with no specified maximum number of extensions

22. **Agree** that justification for the continued restraint of a person's property will need to be shown for an extension to be granted

23. **Agree** that the Criminal Proceeds (Recovery) Act 2009 be amended to provide for the registration of foreign restraining orders on a without notice basis in a manner consistent with domestic restraining orders

Trafficking in persons

24. **Note** that in recent years New Zealand has come under criticism for perceived gaps in the trafficking in persons offence, in particular from the United Nations and the United States

25. **Agree** to amend the trafficking in persons offence in section 98D of the Crimes Act to remove the transnational element of the offence

26. **Agree** to refine the trafficking in persons offence to ensure that the use of an "exploitative purpose" is covered as a means of trafficking in persons

Implementing the agreement with the United States on preventing and combating crime

27. **Agree** that the Policing Act 2008 should be amended to expressly provide Police with a power to share personal information with its international counterparts

28. **Note** that this power would not apply where the sharing of personal information is explicitly governed by another enactment, in particular, the Mutual Assistance in Criminal Matters Act 1992

29. **Note** that sharing under 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, which was signed on 20 March 2013, will take place in accordance with the proposed Policing Act amendment

30. **Agree** that the amendment to the Policing Act should include criteria for how Police respond to requests for information from overseas agencies

31. **Note** that the Police Commissioner will consult the Privacy Commissioner:

    31.1. before entering into agency-to-agency agreements for international sharing of personal information or when such agreements are varied or reviewed; and

    31.2. when deciding to approve specific individuals or business units to respond to overseas requests for information directly

32. **Note** the Commissioner of Police will take reasonable steps to enter into a Memorandum of Understanding with the Privacy Commissioner as to the nature and scope of the consultation referred to in recommendation 31

33. **Note** that the Police Commissioner will provide an annual report to the Privacy Commissioner on the operation of assurance processes

34. **Note** Police will identify areas of risk and develop an audit plan in consultation with the Office of the Privacy Commissioner and the Ministry of Justice

35. **Note** Police will brief the Minister of Police on the audit plan by 30 September 2013

36. **Agree** that the provision should allow NZ Police to continue to share personal information under existing agreements with their international counterparts

37. **Note** that individuals may complain to the Independent Police Conduct Authority if their complaint relates to internal disciplinary matters

38. **Agree** that a breach of the new provision will be treated as if it were a breach of one of the Information Privacy Principles, meaning that an individual may complain about a breach to the Privacy Commissioner under the Privacy Act

Sharing DNA databank information with overseas agencies

39. **Note** the Criminal Investigations (Bodily Samples) Act 1995 does not permit DNA profile information to be provided to an overseas agency for the purposes of the investigation and prosecution of offences in their jurisdictions.

40. **Agree** to amend the Criminal investigations (Bodily Samples) Act 1995 to provide a specific exception for Police to share DNA profile information with an overseas law enforcement agency where they are acting on the authorisation of the Attorney-General in response to a mutual assistance request under the Mutual Assistance in Criminal Matters 1992

41. **Agree** that the above exception is confined to requests that relate to a criminal investigation for an offence that corresponds to an offence in New Zealand carrying a maximum penalty of more than one year imprisonment

New Zealand's Anti-Corruption Strategy

42. **Note** that Cabinet has already agreed to legislative amendments to increase New Zealand's compliance with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and allow ratification of the United Nations Convention against Corruption

43. **Agree** that the following four focus areas form the framework for New Zealand's anti-corruption strategy:

    43.1. Improving data collection and monitoring of corruption statistics.

    43.2. Increasing business awareness of corruption risks overseas and liabilities under New Zealand and other jurisdictions' legislation.

    43.3. Providing best practice national guidance to prevent and respond to corruption

    43.4. Strengthening New Zealand's legislative framework on bribery and corruption.

44. **Note** that agencies will continue work in the above areas

45. **Note** that, subject to my approval of the final text, the Ministry of Justice will publish the New Zealand Anti-Corruption Strategy containing the above focus areas on its website

Financial implications

46. **Note** that these proposals are not expected to result in any significant financial implications

Legislative implications

47. **Authorise** the Minister of Justice to approve any recommendations for amendment for any minor, technical or incidental issues arising from the drafting of the Bill

48. **Note** that the Organised Crime and Anti-Corruption Bill has priority on the 2013 Legislation Programme

49. **Note** that progress of the Bill (in particular, the anti-corruption provisions) will have a positive effect on New Zealand's evaluation for compliance with the OECD Anti-Bribery Convention (to take place in October 2013)

50. **Agree** that the amendments relating to corruption previously agreed by Cabinet be included in the proposed Organised Crime and Anti-Corruption Bill

51. **Invite** the Minister of Justice to issue drafting instructions to the Parliamentary Counsel Office to give effect to the policy proposals contained in this paper.

Minister of Justice
Date signed: