

## Law enforcement and anti-corruption agencies (pillars 5 and 9)

### Summary

New Zealand's law enforcement agencies are generally adequately resourced, independent, and accountable. On occasions when they fail to meet good standards, the failures are quickly identified and these failures and controversies provide impetus for improvement. Compared to many countries, they appear to have low levels of internal corruption.

Reporting in 2007, a commission of inquiry addressed integrity issues concerning police conduct,<sup>554</sup> and New Zealand Police reports regularly on the implementation of the commission's recommendations.<sup>555</sup>

Police, as the largest of New Zealand's enforcement agencies, has a dedicated oversight body created under statute and headed by a retired judge to independently investigate misconduct and neglect of duty – the Independent Police Conduct Authority (IPCA). The other main law enforcement agency, the Serious Fraud Office (SFO) is not covered by the IPCA but is subject to the Ombudsman.

The Official Information Act 1982 (OIA) applies to Police and the SFO, but includes withholding provisions that protect information relevant to the maintenance of the law. While the two agencies generally comply with transparency obligations, two recent cases have led to concerns about a lack of transparency around surveillance activities and the use of information obtained through such activities.

Greater priority needs to be given to the prevention, detection, investigation, and prosecution of bribery and corruption. In particular, there is an absence of reliable information about actual and potential levels of corruption and an absence of monitoring of risk areas and of educational and awareness activities. For example, there should be training programmes and more thorough preparation for the triennial responsibility of thoroughly and rapidly investigating electoral offences.

The development of New Zealand bribery and corruption policy (see Chapters 3 and 4 for more detail) has been driven in the last decade by external pressures that have come through processes relating to the UN Convention against Corruption (UNCAC), the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the multilateral Financial Action Task Force. Despite these pressures, the New Zealand response has been slow. Recent impetus, brought about, in part, through a reprioritisation of anti-corruption legislation in line with New Zealand's bid to be an independent member of the UN Security Council, has led to proposals for a series of legislative changes. These changes are now under way to allow ratification of UNCAC and conformity to the OECD convention. New Zealand's bribery and

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<sup>554</sup> Dame Margaret Bazley, *Report of the Commission of Inquiry into Police Conduct* (Wellington: Commission of Inquiry into Police Conduct, 2007); "Commission of Inquiry into Police Conduct". <http://ndhadeliver.natlib.govt.nz/ArcAggregator/frameView/IE1112831>

<sup>555</sup> New Zealand Police, "Commission of Inquiry Quarterly reports". [www.police.govt.nz/about-us/publications/corporate/commission-of-inquiry](http://www.police.govt.nz/about-us/publications/corporate/commission-of-inquiry)

corruption legislation provides a basic framework for the criminalisation of such behaviours. There are overseas examples that could be useful to adopt in New Zealand.<sup>556</sup>

Options to address the deficiencies in the present regime are under discussion in the context of the recent announcement that New Zealand is to ratify UNCAC. UNCAC requires, and the government should take a formal decision to establish, an independent anti-corruption unit, with separately specified funding and a mandate that includes prevention as well as investigation and prosecution. Given New Zealand's small size, the unit could be placed inside an existing agency such as the SFO for administrative purposes, but it should operate as a stand-alone unit and the government should seek legislative mandate for its existence and role as soon as possible. This action will help build compliance with UNCAC and assist in meeting the standards required for ratification of that convention, which emphasises the need for education and participation by civil society in fighting corruption.

Another weakness derives from the difficulty of making corrupt activities visible. Making organisations and individuals within them individually responsible for proper risk management practice, along with monitoring processes, is a settled approach in respect of health and safety and has similar applicability in respect of bribery and corruption. Measures used overseas could be adopted here.<sup>557</sup>

Notwithstanding the actions taken by agencies in New Zealand, the belief that corruption is not a significant feature of New Zealand society has militated against stronger policy and action by the government. A principle of effective action is that because of the closed nature of corrupt transactions and the self-interest in non-disclosure by all parties, there is a need to investigate potential areas of corruption instead of waiting until complaints are made.

New Zealand law enforcement agencies maintain high standards of transparency, integrity, accountability, and independence. The New Zealand government has been slow to implement international policies and laws for deterring and combatting bribery and corruption. In several key areas, legislation, resources, and government policy are inadequate for addressing bribery and corruption, and there is little in the way of risk monitoring, preventative, or educational activity. Concern is also on-going about the extent of the over-representation of Māori in the criminal justice system.

The gaps in anti-corruption frameworks, particularly in relation to the implementation of international conventions, comprise an on-going risk in New Zealand; this is taken up as part of a wider theme in Chapter 6. There are government commitments to progress these areas, but they remain a necessary focus.

The recommendations in Chapter 6 relating to anti-corruption are wrapped into an overarching proposal for a national anti-corruption strategy. As well as direct enhancement of anti-corruption legislation, the strategy includes measures to improve the disclosure of beneficial interests in companies and trusts and the pecuniary

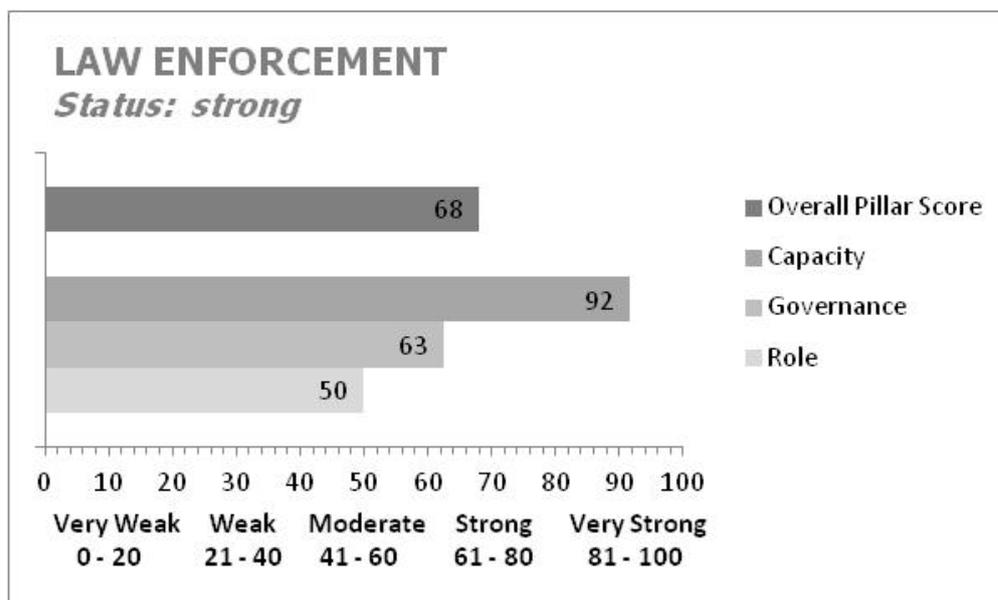
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<sup>556</sup> Bribery Act 2010 (UK), section 6.

<sup>557</sup> Bribery Act 2010 (UK), section 7.

interests of office-holders, to get more transparency in political party finances, and to take a broad approach to boost anti-corruption and integrity-focused education, training, and research.

Figure 7: Law enforcement scores



Source: Transparency International New Zealand, 25 October 2013.

### Structure and organisation

The main law enforcement agencies combating bribery and corruption are the SFO<sup>558</sup> and New Zealand Police.<sup>559</sup> Other organisations have a law enforcement function, sometimes together with regulatory activities; for example, the New Zealand Customs Service, the Ministry for Primary Industries, the Financial Markets Authority,<sup>560</sup> Maritime New Zealand, and the Immigration Service in the Ministry of Business, Innovation and Employment. By its nature, the Inland Revenue Department sometimes encounters issues of bribery and corruption and does discharge law enforcement functions. On occasion the New Zealand Defence Force works with Police.

The SFO is a specialist law-enforcement agency the purpose of which is to detect, investigate, and prosecute New Zealand’s most serious and complex financial crimes. It operates under the SFO Act 1990. In 2013, its two investigation units were the Financial Markets and Corporate Fraud unit and the Fraud, Bribery and Corruption unit.<sup>561</sup> The SFO has primary responsibility for liaising with foreign anti-corruption agencies and has strong relationships with those agencies, including active corruption investigations or prosecutions with the UK SFO and the Hong Kong Independent Commission against Corruption.<sup>562</sup> Under a memorandum of understanding with Police, the SFO is the lead agency for bribery and corruption, so complaints on those

<sup>558</sup> [www.sfo.govt.nz](http://www.sfo.govt.nz)

<sup>559</sup> [www.police.govt.nz](http://www.police.govt.nz)

<sup>560</sup> Financial Markets Authority Act 2011.

<sup>561</sup> SFO, “Our purpose and role”. [www.sfo.govt.nz/about](http://www.sfo.govt.nz/about)

<sup>562</sup> Communication from Nick Paterson, General Manager Fraud and Corruption, SFO, 22 July 2013.

matters are referred there in the first instance. Currently, SFO prioritises bribery and corruption cases. One of its strategic outcomes is “a just society that is largely free of fraud, corruption and bribery”. However, there is no statutory obligation for SFO to prioritise corruption and bribery, rather the SFO Director has made a discretionary decision to allocate resources to this area.

New Zealand Police is the lead agency for reducing crime and enhancing community safety. It conducts a variety of corruption and bribery investigations, and one of its goals is a “corruption-free public service”.<sup>563</sup>

The Organised and Financial Crime Agency New Zealand exists to prevent and disrupt organised crime through multi-agency action. It is responsible to the Commissioner of Police for its enforcement actions.<sup>564</sup> The agency is guided by and reports to a committee of senior officials drawn from other enforcement agencies. It was created to develop a “whole-of-government” approach to organised and financial crime and to be able to scale rapidly to meet the needs of particular investigations.

New Zealand anti-corruption and bribery legislation is listed in Chapter 4. Various international instruments are relevant to the operations of law enforcement agencies in New Zealand, and these are also covered in Chapter 4.

### 5.1.1 Resources (practice)

#### **To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?**

Score: 4

*Resourcing is generally adequate, but resource limitations may affect the prioritisation of anti-corruption activities.*

The SFO has a staff of 52 (50.5 full-time equivalents) and a budget of NZ\$10.7 million (2012).<sup>565</sup>

The SFO handles serious corruption and bribery cases. However, the limited resources of the agency restricts its activities. Notably, it has neither the legislative authority nor the funding to monitor the economy actively in high-risk areas or to conduct education and raise the profile of bribery and corruption issues. (It does makes staff available for public-speaking engagements but not for systematic training and publicity activities.) The SFO has a low level (currently two)<sup>566</sup> of foreign-based bribery investigations or prosecutions, a reflection of the difficulty of detection but also of the low profile of the problem and limited education and publicity. It also relies on other agencies, particularly Police, for some support capability. The SFO has limited ability to upscale investigations for long periods, but would look to Police to provide further resources as

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<sup>563</sup> New Zealand Police, *2011/12 Annual Report*, 2012. [www.police.govt.nz/about-us/publication/annual-report-2012](http://www.police.govt.nz/about-us/publication/annual-report-2012)

<sup>564</sup> Organised and Financial Crime Agency New Zealand, “About OFCANZ: Background”. [www.ofcanz.govt.nz/about-ofcanz/background](http://www.ofcanz.govt.nz/about-ofcanz/background).

<sup>565</sup> SFO, *Annual Report 2012*, 2012. [www.sfo.govt.nz/f55,18661/SFO\\_Annual\\_Report\\_2012.pdf](http://www.sfo.govt.nz/f55,18661/SFO_Annual_Report_2012.pdf)

<sup>566</sup> Communication from Nick Paterson, General Manager Fraud and Corruption, SFO, 22 July 2013.

appropriate. Where it does require support, it activates this through the memorandum of understanding with Police.<sup>567</sup> The SFO has a similar memorandum with the Financial Markets Authority.<sup>568</sup>

Police has 12,000 staff (as at 30 June 2012) with a policing ratio of about 280 per 100,000 population. However, it is not clear how this compares with the ratio in other countries, and appears to include, for example, road safety officers. Research in 2011, found a ratio of one constabulary officer to 498 people, which compares with 1 to 388 in England and Wales and 1 to 435 in Queensland, which has a similar total population and urban–rural population split to New Zealand.<sup>569</sup>

New Zealand Police's 2011/12 operating budget was NZ\$1.47 billion (1.5 per cent of total annual government expenditure).<sup>570</sup> Police does not have any dedicated anti-corruption and bribery staff apart from the dedicated internal investigation staff who deal with complaints about police, including bribery and corruption, that are conducted under the oversight of the IPCA.

Police distributes its resources in accordance with assessed needs. Responsibility for allocating resources within local areas (Police districts) is highly delegated. However, centralised direction, particularly allocation to preventive activity, ensures local districts comply with broad strategies. Police has strong internal operational performance management with regular reporting. This includes a significant focus on the local leadership's understanding of policing needs (crime and problems) and the actions taken in response. Engagement with local communities is expected to inform these decisions. In addition, a case-prioritisation system allocates investigative resources and allows for national oversight to ensure high-priority crime reports (for example, child abuse) are managed similarly nationally.<sup>571</sup>

Both SFO and Police have some discretion over the deployment of their funding, so there is no legal barrier to funding activities directed at prevention, education, and information about corruption and bribery. However, neither agency is specifically funded to oversee and assist central and local government or private companies and organisations to put in place processes and mechanisms to detect and deter bribery and corruption or to provide education and publicity about corruption and bribery.

Resource limitations reinforce the need, already discussed, for New Zealand to establish better processes for handling matters to do with bribery and corruption.

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<sup>567</sup> SFO and New Zealand Police, *Memorandum of Understanding between New Zealand Police and Serious Fraud*, 2011. [www.sfo.govt.nz/f232,17638/MOU\\_NZ\\_Police\\_and\\_SFO.pdf](http://www.sfo.govt.nz/f232,17638/MOU_NZ_Police_and_SFO.pdf)

<sup>568</sup> Financial Markets Authority and SFO, *Memorandum of Understanding between Financial Markets Authority and Serious Fraud Office*, 2011. [www.sfo.govt.nz/f249,14746/SFO\\_and\\_FMA\\_MOU.pdf](http://www.sfo.govt.nz/f249,14746/SFO_and_FMA_MOU.pdf)

<sup>569</sup> New Zealand Police Association, *Towards a Safer New Zealand: Police and law & order policies for the future*, October 2011, p.

<sup>570</sup> New Zealand Police, 2012. Included in the funding is a substantial amount attributable to road policing.

<sup>571</sup> In accordance with the recommendations of the IPCA in its *Inquiry into Police Conduct, Practices, Policies and Procedures Relating to the Investigation of Child Abuse: Part 1*, 2010; IPCA, *Inquiry into Police Conduct, Practices, Policies and Procedures Relating to the Investigation of Child Abuse: Part 2*, 2011. [www.ipca.govt.nz/Site/Child-Abuse-Inquiry/default.aspx](http://www.ipca.govt.nz/Site/Child-Abuse-Inquiry/default.aspx)

### 5.1.2 Independence (law)

#### To what extent are law enforcement agencies independent by law?

Score: 5

*Law enforcement agencies have full legal independence.*

The SFO operates under the SFO Act 1990, which provides that the Director of the SFO has complete independence in operational decisions: “in any matter relating to any decision to investigate any suspected case of serious or complex fraud, or to take proceedings relating to any such case or any offence against this Act, the Director shall not be responsible to the Attorney-General, but shall act independently”.<sup>572</sup> The Act provides guidance to the director in decisions on what matters to investigate, which includes consideration of the suspected nature and consequences of the fraud, the scale of the fraud, and any relevant public interest considerations. The investigation of bribery and corruption is not specifically identified in the Act. However, on the Director’s instructions it has been made a priority.

Despite the provisions for independence in the SFO Act 1990, the consent of the Attorney-General is required before the SFO starts a prosecution for bribery or corruption under the Secret Commissions Act 1910<sup>573</sup> or under most of the provisions of the Crimes Act 1961.<sup>574</sup> Provision for such consent is found in some other legislation and is seen as some protection against vexatious prosecutions, given that New Zealand law permits private prosecutions.

The SFO Director is appointed in accordance with processes under the State Sector Act 1988 and is subject to normal performance management processes conducted by the State Services Commissioner in his or her role as employer. This review would not cover matters on which the Director is authorised by statute to act independently (for example, operational decision making).<sup>575</sup>

Police’s organisation and governance arrangements are prescribed by the Policing Act 2008 and, like the SFO’s arrangements, they are covered by standard public management legislation such as the Public Finance Act 1989, State Sector Act 1988, and OIA.

The Governor-General, on the recommendation of the Prime Minister, appoints the Commissioner of Police.<sup>576</sup> Under the Policing Act 2008, the State Services Commissioner is responsible for the conduct of the selection process through to but not including the final decision to appoint.

The Policing Act 2008 sets out the relationship between the Minister of Police and Commissioner of Police with the commissioner being responsible to the minister for

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<sup>572</sup> Serious Fraud Office Act 1990, section 30(1).

<sup>573</sup> Secret Commissions Act 1910, section 12.

<sup>574</sup> Crimes Act 1961, section 106. Prosecutions of ministers or members of Parliament do not require the Attorney-General’s consent, but do require the consent of a High Court judge.

<sup>575</sup> See the public sector pillar report (pillar 4).

<sup>576</sup> Policing Act 2008, section 12.

carrying out the functions and duties of Police, the general conduct and management of Police, and tendering advice to the Crown. However, the commissioner “is not responsible to, and must act independently of, any Minister of the Crown (including any person acting on the instruction of a Minister of the Crown) regarding .... enforcement of the law ... and the investigation and prosecution of offences”.<sup>577</sup>

Further, the Crown Law 2010 Prosecution Guidelines state that the “universally central tenet of a prosecution system under the rule of law in a democratic society is the independence of the prosecutor from persons or agencies that are not properly part of the prosecution decision-making process. ... In practice in New Zealand the independence of the prosecutor refers to freedom from political or public pressure. All Government agencies should ensure wherever it is reasonably practicable to do so, that the initial decision to prosecute is made by legal officers independently from other branches of the agency and acting in accordance with these Guidelines”.<sup>578</sup>

### 5.1.3 Independence (practice)

#### To what extent are law enforcement agencies independent in practice?

Score: 5

*There is no reason to believe law enforcement agencies are other than independent in practice, including in corruption and bribery investigations.*

Research for this report has not identified any substantiated allegations of political interference in the activities of law enforcement agencies. Police staff also appear to be properly guided and controlled in relation to the relationship between law enforcement duties and political activities in that the Police Code of Conduct contains sufficiently clear rules about political neutrality for staff, and there have been no cases that would undermine the apparent nature of this position.

An enduring risk is the perception of political bias that arises when investigations that follow allegations of electoral impropriety are not conducted with sufficient vigour. It is known, for example, that political parties in New Zealand have expressed concerns based on perceptions that Police have failed to investigate electoral incidents and allegations in a sufficiently timely and thorough manner.<sup>579</sup> In a strongly partisan environment such as politics a perception based on a lack of vigour can easily transfer to a perception of bias. Police appears reluctant to investigate electoral cases because of the risk that to do so might be perceived as a willingness to engage politically.<sup>580</sup> The apparently minor nature of many allegations of electoral offending contributes to this reluctance. The reluctance to engage extends, perhaps unfortunately, to the training that would not only result in improvements to investigation technique (and therefore

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<sup>577</sup> Policing Act 2008, section 16.

<sup>578</sup> Crown Law, *Prosecution Guidelines* (Wellington: Crown Law, 2010), paras. 4.1 and 4.2. [www.crownlaw.govt.nz/uploads/prosecution\\_guidelines.pdf](http://www.crownlaw.govt.nz/uploads/prosecution_guidelines.pdf)

<sup>579</sup> Communication with Howard Broad, former Commissioner of Police, 10 October 2013 in relation to the political dispute over the 2005 election and whether the Labour party pledge card was properly and fully accounted for in election spending returns, and further in relation to whether a religious organisation’s advertising was more connected to a political party’s election campaign than was publicly admitted.

<sup>580</sup> Communication with Howard Broad, former Commissioner of Police, 19 October 2013.

competence to investigate electoral cases without a perception of bias), but also would increase the likelihood that Police would address these allegations with more effort and urgency.<sup>581</sup> The Police and SFO memorandum of understanding now provides for all political funding issues to be referred to the SFO. This may result in an improvement because the SFO has demonstrated it is prepared to investigate and prosecute cases involving politicians.<sup>582</sup>

### 5.2.1 Transparency (law)

**To what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?**

Score: 4

*The public generally has good access to information, but some law enforcement information is exempt from the OIA.*

The law enforcement agencies are governed by and have to comply with New Zealand legislation on disclosure of information. They must adhere to the OIA, Privacy Act 1993, Criminal Records (Clean Slate) Act 2004, New Zealand Bill of Rights Act 1990, and Criminal Disclosure Act 2008. The OIA and Privacy Act are described and assessed in other pillar reports. There are often exceptions within this legislation for the protection of information held by law enforcement agencies. A key provision of the OIA relates to information where disclosure would prejudice the maintenance of the law, including the prevention, detection, and investigation of offences and the right to a fair trial.<sup>583</sup>

Victims of crime have rights to information about the prosecution proceedings relevant to their case. This information includes the progress of the investigation, the charges laid or reasons for charges not being laid, and the outcome of proceedings (including decisions to grant bail).<sup>584</sup>

There are no special provisions relevant to anti-corruption activities or the investigation and prosecution of corruption offences, and research has failed to find any person or group advocating for such special provisions. This also applies to the provisions that relate to the collection of evidence and protection of witnesses.

Specific confidentiality provisions in the SFO Act 1990 protect information obtained during an investigation, but the Director may waive this confidentiality in some circumstances, for example, when the person supplying the information consents to disclosure or for the purposes of a prosecution.<sup>585</sup>

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<sup>581</sup> Communication with Howard Broad, former Commissioner of Police, 19 October 2013.

<sup>582</sup> For example, the Taito Philip Field case *R v Field* HC Auckland CRI-2007-092-18132, 6 October 2009.

<sup>583</sup> Official Information Act 1982, section 6(c).

<sup>584</sup> Victims' Rights Act 2002, section 12.

<sup>585</sup> Victims' Rights Act 2002, section 36.

### 5.2.2 Transparency (practice)

**To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?**

Score: 3

*Law enforcement agencies generally comply with their legal obligations, but there are concerns about the transparency of processes in relation to surveillance activities.*

The primary means by which those accused of a crime establish the case that is made out against them by the state is through “disclosure”. In this process, the evidence and the means by which it has been collected are communicated in writing to the accused according to rules derived from the OIA and Privacy Act 1993. Almost all of the detail of this process has been determined by case law precedent.

All citizens<sup>586</sup> have rights under the OIA and Privacy Act 1993 to information held by law enforcement agencies, although such information may be withheld if its disclosure would prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial.<sup>587</sup>

The limitations of the OIA can be seen most when agencies are slow or reluctant to provide information on contentious subjects. In 2011/12, the Ombudsmen noted 130 OIA complaints against Police.<sup>588</sup> There is no evidence that Police fails to cooperate with an Ombudsman’s investigation, and in the two cases specifically reported, where the Ombudsman recommended the release of information, Police accepted the recommendation.<sup>589</sup>

Select committee reviews of law enforcement agencies (see below) are open to the public.

Problems and weaknesses in the system sometimes come to light only as a result of controversies or revelations raised by the media, politicians, or the courts. For instance, the 2012/13 Kim Dotcom extradition case<sup>590</sup> revealed undisclosed and illegal (although not deliberately illegal) cooperation between the Police and the Government Communications Security Bureau (GCSB). It subsequently became apparent the GCSB had routinely provided such illegal assistance to law enforcement agencies.<sup>591</sup> The practice has since been legalised.<sup>592</sup>

GCSB activities, which evolved in a national security rather than policing context, are protected by strict secrecy rules that preclude normal cross-examination and testing of

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<sup>586</sup> And also any person in New Zealand: Official Information Act 1982, section 12.

<sup>587</sup> Official Information Act 1982, section 6(c); Privacy Act 1993, section 27(1)(c).

<sup>588</sup> Office of the Ombudsman, *Annual Report 2011/12*, 2012, p. 50.

<sup>589</sup> Office of the Ombudsman, 2012: 45–47.

<sup>590</sup> *Dotcom v Attorney-General* [2012] NZHC 1,494.

<sup>591</sup> Prime Minister, press release, 3 October 2012. [www.beehive.govt.nz/release/pm-releases-results-gcsb-file-review](http://www.beehive.govt.nz/release/pm-releases-results-gcsb-file-review)

<sup>592</sup> The Government Communications Security Bureau Amendment Act 2013 amended the Government Communications Security Bureau Act 2003.

evidence in the course of a court case. The result is that using the GCSB to assist law enforcement agencies has the potential to undermine transparency, due process, and the checks and balances of good policing. There are grounds for arguing that unless GCSB evidence provided to domestic law enforcement agencies can be treated in court like any other evidence, it should be excluded.

There are also concerns about the case of the Urewera Four<sup>593</sup> where police executed a large number of search warrants in the Ruatoki Valley, seeking evidence of offences under the Arms Act 1983 and, more significantly, the Terrorism Suppression Act 2002. Questions arose about the lawfulness of evidence collected under some warrants, the manner in which some search warrants were carried out (in particular the sensitivity to the presence of children), and the manner in which the Ngāi Tūhoe rohe was controlled with roadblocks. Four of those arrested were eventually convicted of Arms Act offences, but there was a series of failures to progress elements of the case through to court and questions were asked about the decision making involved.

In a review of the case, having had full access to police records and personnel, the IPCA found that the operation and its termination were lawful, reasonable, and justified, but it also found that there were serious failures in the execution of the investigation and some police actions were described as “unlawful, unjustified and unreasonable”.<sup>594</sup>

The question about process endures because whether police actions were proportionate to the risk has never been satisfactorily answered; nor has it been possible for citizens to form their own views on the issues because insufficient information has been made public. Police is, however, to some extent limited by legislation designed to protect the rights of those under surveillance.<sup>595</sup>

Broad, continuous police surveillance of groups of citizens who are not involved in serious criminal activities is undesirable and cannot be justified. (In certain exceptional circumstances, specific and lawful surveillance of individual citizens can be justified if it is proportionate and reviewable.) Police intelligence information like this is rarely able to be accessed and checked by the people concerned, either under the OIA or the Privacy Act 1993 or in court. The lack of transparency facilitates operations that lack integrity and undermine accountability.

### 5.2.3 Accountability (law)

**To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?**

Score: 4

*In general, provision for the accountability of law enforcement agencies is adequate, but weaknesses exist.*

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<sup>593</sup> Extensive litigation includes *R v Iiti* HC Auckland CRI-2008-004-20749, 24 May 2012, and *Hamed v R* [2011] NZSC 101.

<sup>594</sup> IPCA, *Operation Eight: The Report of the Independent Police Conduct Authority*, May 2013.

<sup>595</sup> Such as sections 312J, 312K, and 312P of the Crimes Act 1961, now transferred into the recently enacted Search and Surveillance Act 2012.

Law enforcement agencies have reporting responsibilities to their minister, Parliament, and select committees.<sup>596</sup> Both the SFO and Police are audited by the Office of the Auditor-General.<sup>597</sup>

Police and the SFO are subject to significant levels of oversight along the continuum of a criminal case. While the SFO has a broad statutory discretion covering decisions to investigate a case, Police may be subject to a complaint to the IPCA alleging a neglect of duty for failing to receive or pursue a complaint. A decision to investigate may also be complained about. A police investigation that does not result in a prosecution may similarly be complained about.<sup>598</sup>

A police or SFO investigation that proceeds to prosecution is subject to the oversight of a court. The decisions relevant to the case may be questioned in court, and consequences to the case and the officials involved may follow. For example, the case may be dismissed because of the manner in which evidence was collected.<sup>599</sup>

Procedures that override normal human rights in a police case generally attract additional supervision. For example, a search of a property in most circumstances requires judicial authority.<sup>600</sup> An arrest without warrant is subject to a court hearing. Where there is no hearing, the IPCA may investigate a complaint. Where specific authority to search without warrant exists, there is generally a requirement to report the circumstances to a higher authority in Police, and the action is always amenable to IPCA oversight.

Officials from Police and the SFO hand their investigations over to another official for the purposes of prosecution. In serious cases (including all SFO cases), the prosecutor is a barrister or solicitor drawn from a list overseen by the Solicitor-General, New Zealand's senior professional law officer (not a member of the judiciary). For minor police cases the prosecutor is drawn from police staff who serve in a semi-autonomous police prosecutions service. In each of these cases, the primary duty of the prosecutor is to the court.

Police actions and decisions can also be reviewed and challenged by the IPCA and, ultimately, when a case is before the courts.

The IPCA's main function is to receive and investigate complaints alleging misconduct or neglect of duty by any member of Police or concerning any Police practice, policy, or procedure affecting a complainant.<sup>601</sup> It has statutory independence,<sup>602</sup> and emphasises on its website that it is "fully independent – it is not part of the Police".<sup>603</sup> It says, " 'Independence' means that the [IPCA] makes its findings based on the facts and the law. It does not answer to the Police or anyone else over those findings. In this

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<sup>596</sup> For example, under section 43 of the Public Finance Act 1989 and section 101 of the Policing Act 2008.

<sup>597</sup> Public Finance Act 1989, section 45D.

<sup>598</sup> Independent Police Conduct Authority Act 1988, section 12.

<sup>599</sup> See the discussion of the Kim Dotcom and Urewera Four cases.

<sup>600</sup> There is general protection against unreasonable search in the New Zealand Bill of Rights Act 1990.

<sup>601</sup> IPCA Act 1988, section 12(1)(a).

<sup>602</sup> IPCA Act 1988, section 4AB.

<sup>603</sup> IPCA, "Independence". [www.ipca.govt.nz/Site/about/Independence.aspx](http://www.ipca.govt.nz/Site/about/Independence.aspx)

way, its independence is similar to that of a Court”.<sup>604</sup> The chair of the IPCA must be a judge or retired judge.<sup>605</sup>

The major weakness of the IPCA under its current legislation is that, unlike the Ombudsman, it cannot initiate “own motion” reviews. The IPCA can receive and take action in relation to complaints<sup>606</sup> or initiate its own inquiries into incidents involving death or serious bodily harm,<sup>607</sup> but it is limited in inquiry to that which relates to the complaint or incident.<sup>608</sup> This precludes it from conducting wide-ranging, thematic, or issues-based inquiries.

Police is subject to other inquiry and accountability authorities. For example, the Privacy Commissioner has powers to inquire into and report on breaches of the Privacy Act 1993 by Police<sup>609</sup> and could take proceedings through the Human Rights Review Tribunal. The Human Rights Commission may also investigate allegations Police has breached the Human Rights Act 1993 and proceedings may follow.<sup>610</sup>

The SFO is not covered by the IPCA, but is subject to the jurisdiction of the Ombudsman.<sup>611</sup>

Independence and accountability can conflict in practice. This is the case with the SFO. The SFO Director has independence in decisions about investigations and prosecutions, protecting him or her from political or other influences. However, the Director is not required to report his or her decisions on whether to open an investigation or take a prosecution, and these decisions cannot be challenged in court<sup>612</sup> (although there is no apparent reason why they should not be subject to investigation by the Ombudsman). In the view of the SFO, this protects it from a well-resourced criminal or politician attempting to shut down an investigation.<sup>613</sup>

The SFO Act 1990 states, “Any decision by the Director ... to investigate any case which the Director suspects may involve serious or complex fraud; or to take proceedings relating to any such case ... shall not be challenged, reviewed, quashed, or called in question in any court”.<sup>614</sup>

Police reports regularly on the implementation of the recommendations of the Commission of Inquiry into Police Conduct.<sup>615</sup>

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<sup>604</sup> IPCA, “Independence”. [www.ipca.govt.nz/Site/about/Independence.aspx](http://www.ipca.govt.nz/Site/about/Independence.aspx)

<sup>605</sup> IPCA Act 1988, section 5A(2).

<sup>606</sup> IPCA Act 1988, section 12(1)(a) and (c).

<sup>607</sup> IPCA Act 1988, section 12(1)(b).

<sup>608</sup> IPCA Act 1988, section 12(2).

<sup>609</sup> Privacy Act 1993, Part 8.

<sup>610</sup> Human Rights Act 1993, Part 3.

<sup>611</sup> Ombudsmen Act 1975, Schedule 1, Part 1.

<sup>612</sup> Serious Fraud Office Act 1990 section 20.

<sup>613</sup> Communication from Nick Paterson, General Manager Fraud and Corruption, SFO, 22 July 2013.

<sup>614</sup> Serious Fraud Office Act 1990, section 20.

<sup>615</sup> New Zealand Police, “Commission of Inquiry into Police Conduct”. [www.police.govt.nz/about-us/nz-police/commission-inquiry](http://www.police.govt.nz/about-us/nz-police/commission-inquiry). See also the Summary section and section 5.2.6.

#### 5.2.4 Accountability (practice)

**To what extent do law enforcement agencies have to report and be answerable for their actions in practice?**

Score: 3

*In most respects, law enforcement agencies are accountable in practice, but gaps and weaknesses exist.*

The Kim Dotcom case (described under question 5.2.2), was a case of multiple failures in lawful processes by Police and the GCSB, demonstrating how a lack of transparency leads to a lack of accountability. These and similar previous failures were not picked up as part of normal Police or GCSB reporting and accountability. The systems did not work. Without the judicial review case brought by Dotcom's lawyers, it is likely the actions in question would not have come to light and no accountability would have been possible.

Parliament's Law and Order Committee regularly reviews each law enforcement agency as part of the mid-year Review of the Estimates and end-of-year Finance Review.<sup>616</sup> Select committee members submit written questions, and senior law enforcement agency officials appear in person to answer questions.<sup>617</sup> The quality of the scrutiny depends on the experience, priorities, and focus of the select committee members. Ministers are also probed and challenged about law enforcement agencies in oral and written parliamentary questions.<sup>618</sup>

The IPCA appears to be operating effectively save for the restriction on its mandate described above. In 2011/12, it made 74 recommendations for improvements to Police conduct, 32 of which had been accepted by the end of the reporting year.<sup>619</sup> The Ombudsman did not report a significant number of complaints about the SFO under either the Ombudsmen Act 1975 or OIA.<sup>620</sup>

#### 5.2.5 Integrity mechanisms (law)

**To what extent is the integrity of law enforcement agencies ensured by law?**

Score: 4

*Integrity mechanisms are generally adequate and have improved in recent years.*

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<sup>616</sup> For an example, see New Zealand Parliament, *2011/12 Financial Review of the New Zealand Police*. [www.parliament.nz/en-nz/pb/sc/business-summary/00DBSCH\\_FIN\\_11763\\_1/201112-financial-review-of-the-new-zealand-police](http://www.parliament.nz/en-nz/pb/sc/business-summary/00DBSCH_FIN_11763_1/201112-financial-review-of-the-new-zealand-police)

<sup>617</sup> *Appendix C: 2012/13 Estimates for Vote Serious Fraud – Law and Order Committee – Additional questions*. [www.parliament.nz/resource/0000238943](http://www.parliament.nz/resource/0000238943)

<sup>618</sup> New Zealand Parliament, "Questions for oral answer". [www.parliament.nz/en-nz/pb/business/qa](http://www.parliament.nz/en-nz/pb/business/qa)  
New Zealand Parliament, "Questions for written answer". [www.parliament.nz/en-nz/pb/business/qwa](http://www.parliament.nz/en-nz/pb/business/qwa)

<sup>619</sup> IPCA, *Annual Report 2011/12*, 2012, p. 2. [www.ipca.govt.nz/Site/publications/Accountability/2011-Annual-Report.aspx](http://www.ipca.govt.nz/Site/publications/Accountability/2011-Annual-Report.aspx) (a large number of recommendations were made during the last three months of the year and are still under consideration).

<sup>620</sup> Office of the Ombudsman, 2012: 39, 50.

The public service must adhere to several codes and standards. The State Services Commission produced the Standards of Integrity and Conduct in 2007 to cover all public sector organisations.<sup>621</sup> The State Services Act 1988 provides guidance on matters of integrity and conduct of employees within the public service. The Office of the Auditor-General also overviews all state sector organisations in matters relating to conflict of interest, impartiality, and transparency.

The one-page Standards of Integrity and Conduct sets out the core standards to be upheld by all public sector employees and officials, including the need to be fair, impartial, responsible, and trustworthy. Being trustworthy includes “declin[ing] gifts or benefits that place [the organisation] under any obligation or perceived influence”.<sup>622</sup> The SFO is covered by this code of conduct. It has detailed internal policies and gift and hospitality records to ensure transparency and regularly publishes details of the Director’s expenses.<sup>623</sup>

Police has its own code of conduct.<sup>624</sup> While it does not explicitly refer to conduct in relation to gifts and hospitality, it covers this form of misbehaviour through broad principles of “honesty and integrity”, stating that employees must avoid any activities, either work-related or non-work-related, that may bring Police into disrepute, or damage the confidence in Police and government. Misconduct includes failing to declare a reasonably foreseeable conflict of interest, which indirectly includes receiving gifts.

Neither Police nor the SFO has post-employment restrictions, and these are not common in New Zealand’s public sector.

One result of the Commission of Inquiry into New Zealand Police Conduct was the Policing Act 2008, which replaced the Police Act 1958. The 2008 Act is based on the following principles.

- Principled, effective, and efficient policing services are a cornerstone of a free and democratic society under rule of law.
- Effective policing relies on a wide measure of public support and confidence.
- Policing services are provided under a national framework but also have a local community focus.
- Policing services are provided in a manner that respects human rights.
- Policing services are provided independently and impartially.
- In providing policing services every Police employee is required to act professionally, ethically, and with integrity.

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<sup>621</sup> State Services Commission, *Standards of Integrity and Conduct* (Wellington: State Services Commission, 2007). [www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf](http://www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf)

<sup>622</sup> State Services Commission, 2007.

<sup>623</sup> SFO, “Chief Executive expense disclosure”. [www.sfo.govt.nz/ce\\_expense\\_disclosure](http://www.sfo.govt.nz/ce_expense_disclosure)

<sup>624</sup> New Zealand Police, *New Zealand Police Code of Conduct*, 2008. [www.police.govt.nz/about-us/nz-police/code-conduct](http://www.police.govt.nz/about-us/nz-police/code-conduct)

The SFO Act 1990 includes an unusual section that removes a person's right to decline to answer questions on the ground that to do so would or might incriminate or tend to incriminate that person.<sup>625</sup> Self-incriminating evidence is not generally admissible in court, and the limited usefulness of this power raises the question whether the exception from the normal protections is justified.

### 5.2.6 Integrity mechanisms (practice)

#### To what extent is the integrity of members of law enforcement agencies ensured in practice?

Score: 3

*Progress is being made towards improved integrity, but the position is not yet satisfactory.*

In 2004, the government ordered the Commission of Inquiry into New Zealand Police Conduct after allegations of police mishandling of historic rape complaints.<sup>626</sup>

The commission's terms of reference included an examination of Police standards and procedures for handling complaints of sexual assault and the adequacy of policing in the investigation of those complaints.<sup>627</sup>

The commission concluded that public trust and confidence are fundamental to providing good quality services to the public and that any behaviour that shows lack of integrity is a risk to this trust and confidence. It produced a 600-page report that outlined evidence of police misconduct involving the protection of other police officers but concluded there was no concerted attempt across Police as a whole to cover up the unacceptable behaviour. However, it said the risk of that misconduct was significant, and Cabinet directed Police to give high priority to ensuring that risk was minimised by changing attitudes and behaviour within the organisation.<sup>628</sup>

The commission's 60 recommendations included integrity training and a new code of conduct.<sup>629</sup> Subsequent initiatives by Police include training courses about the code of conduct, leadership, ethical policing, Policing Excellence initiatives, and the Prevention First initiative that has a strong victim focus.<sup>630</sup>

The Auditor-General was charged with monitoring for 10 years the progress Police was making towards implementing the commission's recommendations and has produced three reports.<sup>631</sup>

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<sup>625</sup> Serious Fraud Office Act 1990, section 27.

<sup>626</sup> Order in Council, 18 February 2004; Order in Council, 2 May 2005.

<sup>627</sup> Bazley, 2007: Appendix 1.1'.

<sup>628</sup> See generally, New Zealand Police, "Commission of Inquiry into Police Conduct." [www.police.govt.nz/about-us/nz-police/commission-inquiry](http://www.police.govt.nz/about-us/nz-police/commission-inquiry)

<sup>629</sup> Bazley, 2007: 15–23.

<sup>630</sup> [www.police.govt.nz/sites/default/files/publications/prevention-first-strategy-2011-2015.pdf](http://www.police.govt.nz/sites/default/files/publications/prevention-first-strategy-2011-2015.pdf)

<sup>631</sup> Office of the Auditor General, *Response of the New Zealand Police to the Commission of Inquiry into Police Conduct: First monitoring report*, June 2009, *Second monitoring report*, June 2010, *Third monitoring report*, October 2012.

In February 2013, Deputy Auditor-General Philippa Smith reported to a select committee on the latest police conduct monitoring report. She said change was mostly heading in the right direction but results were not yet satisfactory: “There’s still that understandable problem that police are reluctant to complain about their peers, even when they spot poor behaviour.” In particular Police was failing in the way it dealt with adult sexual assault complaints.<sup>632</sup>

Police commissions an independent annual survey – the Citizens’ Satisfaction Survey. One survey question is about trust and confidence in Police. The survey for 2011/12 found 77 per cent of respondents felt full or “quite a lot” of confidence in Police.<sup>633</sup> For a police agency, this is a significant level of public confidence. The Global Corruption Barometer Survey 2013 showed that 24 per cent of New Zealand respondents believed Police to be corrupt or very corrupt, thus ranking the Police around the mid point of the institutions surveyed.<sup>634</sup>

In 2011, the public made 1,814 complaints to Police against Police employees. Of the 1,814 complaints, Police found 94 to be breaches of the code of conduct.<sup>635</sup> A total of 1,874 complaints were made to the IPCA (the lowest number for five years). The IPCA opened 47 new investigation files and referred less-serious complaints back to Police for investigation, monitored by the IPCA.<sup>636</sup>

### 5.3.1 Corruption prosecution and prevention

**To what extent do law enforcement agencies detect and investigate corruption cases in the country? To what extent do they engage in preventative activities? Do they engage in educational activities regarding corruption?**

Score: 3

*The SFO has a particular focus on corruption detection and prosecution. Little in the way of preventative or educational activity occurs.*

Corruption cases are routinely investigated and prosecuted in the same way as other criminal cases. Because of the low level of corruption in New Zealand, preventative and educational activities have not been a priority.

The SFO and Police signed a memorandum of understanding in September 2011, agreeing that, in the first instance, all allegations of bribery and corruption would be referred to the SFO.<sup>637</sup> The two agencies then jointly decide whether an investigation is warranted and which of them should take the lead in the investigation. The overriding criterion for opening a domestic or overseas corruption investigation is the public interest.

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<sup>632</sup> Sam Boyer, “Auditor-general: Police still not doing enough on sex assaults”, *Stuff*, 27 February 2013. [www.stuff.co.nz/dominion-post/news/8358531/Auditor-general-Police-still-not-doing-enough-on-sex-assaults](http://www.stuff.co.nz/dominion-post/news/8358531/Auditor-general-Police-still-not-doing-enough-on-sex-assaults)

<sup>633</sup> Gravitas Research and Strategy, *New Zealand Police Citizens’ Satisfaction Survey: Final report for 211/12 fiscal year* (Wellington: New Zealand Police, 2012). [www.police.govt.nz/citizens-satisfaction-survey-2012](http://www.police.govt.nz/citizens-satisfaction-survey-2012)

<sup>634</sup> [www.transparency.org/gcb2013/country/?country=new\\_zealand](http://www.transparency.org/gcb2013/country/?country=new_zealand)

<sup>635</sup> New Zealand Police, response under the Official Information Act 1982, 15 June 2012.

<sup>636</sup> IPCA, 2012: 10.

<sup>637</sup> SFO and New Zealand Police, 2011.

The SFO has a particular focus on corruption and, in particular, has made public its intention to investigate and prosecute corruption related to the Christchurch earthquake rebuild.<sup>638</sup> It has commenced investigations in the area of procurement and insurance fraud.<sup>639</sup> Canterbury police are also developing an intelligence picture of potential fraud offending.

New Zealand law enforcement agencies have prosecuted several bribery and corruption cases in the recent past. These cases involved offending in New Zealand but have not yet included overseas bribery or corruption of foreign officials.

In general, the Police Asset Recovery Unit has been active in ensuring bribery and corruption offenders forfeit their gains. All investigations have an element of asset recovery to ensure the total profits offenders gained are forfeited.

Prominent recent cases include the SFO successfully prosecuting the Accident Compensation Corporation's national property manager (on bribery and corruption charges in 2011)<sup>640</sup> and prosecuting a former Work and Income property manager.<sup>641</sup>

Police successfully prosecuted a former minister of the Crown in *R v Field*.<sup>642</sup> It has also recently prosecuted a Police employee for corruption after the employee accessed the Police computer for information on his criminal cohorts<sup>643</sup> and has commenced an electoral fraud prosecution of a political candidate.<sup>644</sup>

During 2012/13, the SFO started 40 new investigations, which were a mix of finance company cases (mostly allegations of fraud) and other investigations (for example, the NZ\$103 million Datasouth case) on top of ongoing projects.<sup>645</sup>

The SFO 2011/12 annual report said that during the year it had "charged persons with bribery, conspiracy, accepting secret commissions, attempting to pervert the course of justice, theft in a special relationship, dishonestly taking or using a document, obtaining by deception, false statements and false accounting".<sup>646</sup>

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<sup>638</sup> SFO, "Serious Fraud Office focus on Christchurch", 21 March 2013. [www.sfo.govt.nz/n345,24.html](http://www.sfo.govt.nz/n345,24.html)

<sup>639</sup> SFO, 2013.

<sup>640</sup> "SFO ends probe into ACC property deal", *Stuff*, 26 March 2013. [www.stuff.co.nz/business/8470664/SFO-ends-probe-into-ACC-property-deal](http://www.stuff.co.nz/business/8470664/SFO-ends-probe-into-ACC-property-deal)

<sup>641</sup> "Rich fraudsters get off lightly: SFO", *New Zealand Herald*, 7 October 2004. [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=3598227](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=3598227)

<sup>642</sup> *Field v R* [2010] NZCA 556; [2011] 1 NZLR 784.

<sup>643</sup> "Corrupt police employee sentenced", *Stuff*, 22 March 2012. [www.stuff.co.nz/national/crime/6619909/Corrupt-police-employee-sentenced](http://www.stuff.co.nz/national/crime/6619909/Corrupt-police-employee-sentenced)

<sup>644</sup> Ian Steward, "Eight face High Court over electoral fraud case", *Stuff*, 6 March 2013. [www.stuff.co.nz/national/crime/8388381/Eight-face-High-Court-over-electoral-fraud-case](http://www.stuff.co.nz/national/crime/8388381/Eight-face-High-Court-over-electoral-fraud-case)

<sup>645</sup> Communication from Nick Paterson, General Manager Fraud and Corruption, SFO, 22 July 2013. For a case description, see [www.sfo.govt.nz/n240,21.html](http://www.sfo.govt.nz/n240,21.html)

<sup>646</sup> SFO, *Annual Report*, 2012. For instance: SFO, "Three convicted of SFO charges", 24 June 2011. [www.sfo.govt.nz/n204,21.html](http://www.sfo.govt.nz/n204,21.html)

SFO, "SFO lays corruption charges in ACC investigation", 23 November 2010. [www.sfo.govt.nz/n150,13.html](http://www.sfo.govt.nz/n150,13.html)

In the last four years, the Department of Corrections,<sup>647</sup> Inland Revenue Department, and Accident Compensation Corporation<sup>648</sup> have referred cases to Police that have resulted in prosecutions by Police or the SFO. Other internal investigations by the Department of Corrections have resulted in the dismissal of staff because of bribery or corruption allegations that could not be proven to the necessary evidential standard.<sup>649</sup>

The Police discharge the responsibility of “National Central Bureau” under the charter of the International Criminal Police Organization (Interpol). Interpol establishes a formal communication network for police agencies and operates a number of international databases (for example, an international wanted criminal list and stolen passport lists). The charter specifically excludes political crimes. In addition, the New Zealand Police has strong bilateral operational relationships for criminal policing operations throughout the world. A critical area of corruption and bribery risk in New Zealand is donations and other benefits to political parties and to local and national politicians. There have been criticisms of police investigations in this area and suggestions that the Police have avoided politically sensitive prosecutions but the primary problem may be inadequate legislation. There is, for example, a time limit of only six months from the filing of a return for commencing a prosecution.<sup>650</sup> This should be a priority area for stronger legislation.

At present there is no legislatively-mandated anti-corruption agency unit in New Zealand. The Director of the SFO has taken a management decision to establish a separate unit dealing with bribery and corruption cases inside the SFO, but this is not separately funded and has no legislative mandate. The unit’s continuing existence is unavoidably exposed to future administrative decisions, even if there is no present intention to change the current arrangement. The SFO itself is small, so resources are limited, particularly for prevention and education activities.

Neither the SFO nor the Police are specifically tasked with education or information on corruption, although their general authority is wide enough for them to undertake this work. SFO takes the view that, while there is no specific mandate or appropriation for prevention, raising fraud awareness or education, to support detection through reporting, it is appropriate for the office to be involved in education and fraud awareness raising, so that those who encounter financial crime can recognise it and

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<sup>647</sup> For instance: “Prison guard arrested trying to leave NZ”, *TVNZ*, 29 April 2011. [tvnz.co.nz/national-news/prison-guard-arrested-trying-leave-nz-4147051](http://tvnz.co.nz/national-news/prison-guard-arrested-trying-leave-nz-4147051)

Antonio Bradley, “Prison guard accused of smuggling drugs for sex” *Stuff*, 6 November 2010.

[www.stuff.co.nz/national/crime/4315274/Prison-guard-accused-of-smuggling-drugs-for-sex](http://www.stuff.co.nz/national/crime/4315274/Prison-guard-accused-of-smuggling-drugs-for-sex)

Antonio Bradley, “Rimutaka Prison guard charged with corruption”, *Dominion Post*, 15 April 2010.

[www.stuff.co.nz/dominion-post/news/local-papers/upper-hutt-leader/3583472/Rimutaka-Prison-guard-charged-with-corruption](http://www.stuff.co.nz/dominion-post/news/local-papers/upper-hutt-leader/3583472/Rimutaka-Prison-guard-charged-with-corruption)

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<sup>648</sup> “Corrupt tax man spurs IRD probe”, *Stuff*, 11 September 2008.

[www.stuff.co.nz/national/crime/622191/Corrupt-tax-man-spurs-IRD-probe](http://www.stuff.co.nz/national/crime/622191/Corrupt-tax-man-spurs-IRD-probe)

Inland Revenue, “Woman jailed for fraud and corruption”, media release, 7 February 2013.

[www.ird.govt.nz/aboutir/media-centre/media-releases/2013/media-release-2013-02-07.html](http://www.ird.govt.nz/aboutir/media-centre/media-releases/2013/media-release-2013-02-07.html)

<sup>649</sup> Shane Cowlshaw, “Rimutaka guards face employment inquiries”, *Stuff*, 7 March 2013.

[www.stuff.co.nz/national/crime/8391838/Rimutaka-guards-face-employment-inquiries](http://www.stuff.co.nz/national/crime/8391838/Rimutaka-guards-face-employment-inquiries)

<sup>650</sup> Electoral Act 1993, section 226.

thus report it. An involvement with the promotion of ethics is similarly aimed at promoting reporting and thus detection.<sup>651</sup>

The Police does not conduct any substantial educational or informational activities in respect of bribery or corruption. The SFO provides the staff for public speaking and it has worked with Transparency International New Zealand to develop a training package on best practice for preventing or avoiding bribery, domestically and overseas. The SFO is developing a new corruption and bribery section for its website.

#### 5.4.1 Treaty of Waitangi

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What do law enforcement agencies do to partner with Māori, to respect and affirm Māori rights to make decisions and to enhance Māori participation in its field of activity? In particular, where law enforcement agencies have legal rights and obligations in this respect given to it by the Crown, how well do they honour them, including any Treaty obligations passed on by the Crown?**

*Both Police and SFO have taken action to improve their relationship with Māori, and Police actively recruit Māori, but Māori remain over-represented in the criminal justice system.*

The SFO recently had training from the Human Rights Commission on its duties under the Treaty as a public service department and an introduction to basic tikanga Māori (law, rules, and practice).<sup>652</sup>

Future SFO planning includes building a relationship with Māori organisations and the Māori business community, direct or through the accountancy profession to educate on fraud and corruption. Given the fast growth of such organisations in New Zealand, and several SFO cases involving Māori organisations and the alleged misuse of iwi funds, the SFO sees this as an important area for corruption education.<sup>653</sup> This is in line with its general focus on business and the finance sector.

The Police code of conduct requires the Commissioner of Police to “value diversity and provide equity in employment, including recognition of the aims, aspirations and employment needs of Maori”.<sup>654</sup> All police staff must “avoid discriminating behaviour or language in accordance with the Human Rights Act 1993”.<sup>655</sup>

Police has an active recruiting campaign to attract Māori into the organisation. In 2012 and 2011 the proportion of Māori police officers was 11 per cent, whereas Māori made

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<sup>651</sup> Email communication with Simon McArley, former Acting Chief Executive, SFO, 21 October 2013.

<sup>652</sup> Communication from Nick Paterson, General Manager Fraud and Corruption, SFO, 22 July 2013.

<sup>653</sup> Communication from Nick Paterson, General Manager Fraud and Corruption, SFO, 22 July 2013.

<sup>654</sup> New Zealand Police, 2008: 2.

<sup>655</sup> New Zealand Police, 2008: 6.

up over 15 per cent of the population. In 2010, Māori comprised 15 per cent of the recruits graduating from The Royal New Zealand Police College.<sup>656</sup>

Since 1996, Police has developed and implemented specific strategies to better respond to the Treaty of Waitangi. This includes the appointment of a senior adviser to the Commissioner of Police and the creation of a network of more than 35 iwi liaison officers nationally. This network has now extended to other ethnic groups.

The Commissioner of Police has a well-established Māori Focus Forum of senior Māori leaders who advise on strategy and policy and seek specific accountability for actions taken that affect Māori. Advisory committees of this nature are now a feature at district and area levels within Police. Specific policies implemented to respect Māori tikanga (law, rules, and practice) include a new approach to the deaths of Māori, the approach to the finding of human remains, and the respect offered at the scenes of death such as road crashes. Efforts to increase police understanding of the resources available within the Māori community were designed to open up alternatives to prosecution and to create avenues to carry messages about risk to that community.

Nonetheless, despite these progressive actions, the representation of Māori in criminal justice system statistics dramatically outweighs their representation in the population generally. Police, as the “gatekeeper” to the system, in that decisions to proceed against adults and children are primarily the responsibility of Police, is frequently asked whether there is a bias in the decision making of Police that results in the imbalance in the representation of Māori and Pasifika in the system. No such bias is evident in the representation of Asian peoples.

The Policy, Strategy and Research Group of the Department of Corrections published a study on this subject in September 2007. It endeavoured to answer this question: “when Māori make up just 14% of the national population, why do they feature so disproportionately in criminal justice statistics – 42% of all Police apprehensions, and 50% of the prison population?”<sup>657</sup>

The study investigated two different explanations. The first explanation was that “bias operates within the criminal justice system, such that any suspected or actual offending by Māori has harsher consequences for those Māori, resulting in an accumulation of individuals within the system”. The second was that “a range of adverse early-life social and environmental factors result in Māori being at greater risk of ending up in patterns of adult criminal conduct”.<sup>658</sup>

The report concluded that both explanations could be, and probably were, correct at the same time.<sup>659</sup> A 2011 discussion paper, *Māori Over-representation in the Criminal Justice System: Does structural discrimination have anything to do with it?*, dug

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<sup>656</sup> “Percentage of Maori police officers static”, *Radio New Zealand News*, 18 October 2011. [www.radionz.co.nz/news/te-manu-korihi/88599/percentage-of-Māori-police-officers-static](http://www.radionz.co.nz/news/te-manu-korihi/88599/percentage-of-Māori-police-officers-static) (based on figures from New Zealand Police, *2010/11 Annual Report*, 2011).

<sup>657</sup> Department of Corrections, *Over-representation of Māori in the Criminal Justice System: An exploratory report* (Wellington: Department of Corrections, 2007), p. 38

<sup>658</sup> Department of Corrections, 2007: 4.

<sup>659</sup> Department of Corrections, 2007: 5.

deeper.<sup>660</sup> The paper presented statistics and examples of police discrimination against Māori. In December 2012, the Police Commissioner launched Turning the Tide: A Whānau Ora Crime and Crash Prevention Strategy aimed at reducing “victimisation, offending, road fatalities and injuries among Māori”.<sup>661</sup> There are grounds for continuing to make this a priority area for effort by law enforcement agencies.

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**Chapter 5: Law enforcement and anti-corruption agencies (pillars 5 and 9)**

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