

Organised Crime and Anti-corruption Legislation Bill

Government Bill

As reported from the Law and Order Committee

Commentary

Recommendation

The Law and Order Committee has examined the Organised Crime and Anti-corruption Legislation Bill and recommends that it be passed with the amendments shown.

Introduction

This is an omnibus bill aimed at strengthening the law to combat organised crime and corruption. The bill would implement proposals aiming to improve New Zealand's ability to collaborate with international efforts to disrupt and respond to organised crime. The bill would enhance New Zealand's compliance with a number of international conventions and, when enacted, will allow ratification of the UN Convention against Corruption (UNCAC), to which New Zealand is a signatory.

We recommend the following amendments to the bill.

Foreign bribery penalties

We recommend amending the penalty for foreign bribery in clause 6, to include specified fines in addition to the existing term of imprisonment.

The current penalty for foreign bribery prescribed in the Crimes Act 1961, is a term of imprisonment not exceeding seven years. Although the Court is able to impose a fine as an alternative to imprisonment, it is not able to impose both imprisonment and a fine under section 105C of the Crimes Act 1961.

Including fines as penalties for foreign bribery would enhance New Zealand's compliance with the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (The Anti-Bribery Convention). The OECD Working Group on Bribery, in its 2013 evaluation of New Zealand, recommended New Zealand make fines available in addition to imprisonment on the basis that monetary sanctions are a

fundamental deterrent for economic offences. The Working Group also expressed concern about the discretionary and uncertain nature of sanctions available against legal persons for foreign bribery. We consider that this amendment would help to address their concerns.

Money-laundering acts committed outside New Zealand

We recommend amending clause 15 to ensure that where New Zealand exercises extraterritorial jurisdiction over an offence, it can be a predicate offence for money laundering regardless of whether that conduct is criminalised in the jurisdiction in which it took place.

Money-laundering involves two offences: the offence that generated proceeds (the “predicate offence”) and the subsequent act of dealing with those proceeds to hide their criminal origins (“laundering”). As the bill stands, a New Zealander operating overseas has only committed a money-laundering offence if the predicate offence is unlawful in the jurisdiction in which it was committed. However, New Zealand exercises extraterritorial jurisdiction over certain serious offences (e.g. people-trafficking), resulting in criminalisation of this conduct when it occurs overseas regardless of the laws of other jurisdictions. The amendment would clarify that these extraterritorial offences are predicate offences for money-laundering.

Transaction reporting requirements for international wire transfers

We recommend adding new clause 35A to provide a regulation-making power to exempt certain reporting entities involved in an international wire transfer from the prescribed transaction reporting requirements.

As the bill stands, all reporting entities involved in an international wire transfer must make a prescribed transaction report. This can result in inefficiencies and duplication of information. Other models, such as the Australian regime, reflect better practice in their prescribed transaction reporting systems; for example, where only the last point of transmission out of the country or the first point of transmission into the country is required to make a report. For example, if an international wire transfer passes through reporting entity A and reporting entity B before it leaves New Zealand, an appropriate option may be that only reporting entity B should have to make a prescribed transaction report. Giving effect to such detailed changes to respond to submissions is best addressed by way of regulations.

Individuals named in prescribed transaction reports

We recommend removing the requirement that individual employees be named in prescribed transaction reports. Under clause 23 of the bill, prescribed transaction reports would have to include the name of the individual who handled the transaction. However, this information is not necessary for intelligence purposes, and may be requested by New Zealand Police if necessary.

Failing to report prescribed transactions

We recommend removing clause 25(3) and providing that prescribed transaction-reporting obligations are subject to the civil enforcement regime in the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009.

We recommend that the bill be amended to clarify that failure to report a prescribed transaction is a civil liability act. This would be achieved under new clause 23B. This has the effect of providing that the existing section 91 offence will apply to these obligations. It also ensures that the full range of enforcement options including formal warnings, enforceable undertakings, injunctions and civil penalties will be available instead of prosecution in appropriate circumstances.

Foreign restraining orders

We recommend amending clause 42 to allow registration of foreign restraining orders to be extended (more than once if necessary) for a year upon application to the court, and to not be limited to extradition cases.

As the law stands, foreign restraining orders (which freeze assets derived from crime) are currently registered in New Zealand for two years, with the possibility of a one year extension. At the end of this time period, forfeiture orders (which forfeit the assets to the relevant foreign state) need to have been registered, or the assets will return to the individual. The bill would allow the court to extend the registration of a foreign restraining order, more than once, but only if an extradition request has been received. Our proposed amendment recognises that foreign states may require more than three years to obtain a forfeiture order in cases other than extradition proceedings.

Identifying particulars

We recommend adding new clause 46B to enable the New Zealand Police to take identifying particulars from a person arrested on an extradition warrant. As it stands, the law does not allow the Police to take photographs of, or fingerprints from those arrested under the Extradition Act 1999. Our amendment recognises that it is necessary for Police to be authorised to take these identifying particulars to ensure they have arrested the correct person.

Consultation with the Privacy Commissioner

We recommend inserting new section 95CA to require the Police Commissioner to consult with the Privacy Commissioner when entering into, or varying agency-to-agency agreements.

We also recommend some minor amendments of a technical or consequential nature which will not be discussed in this commentary.

Green Party of Aotearoa New Zealand minority view

The Green Party supports the majority of the Organised Crime and Anti-Corruption Legislation Bill in its current form. The Green Party intends to continue with its support of this bill; it will bring us in line with our obligations under various international

treaties and conventions dealing with national and international organised crime and corruption, and it will strengthen our ability to effectively respond to people trafficking and private sector corruption.

However, the Green Party holds the view that this bill is a missed opportunity to address the issue of facilitation payments, which will still be excepted from the foreign bribery offence under section 105C(3) of the Crimes Act 1961—

(3) This section does not apply if—

- (a) the act that is alleged to constitute the offence was committed for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action; and
- (b) the value of the benefit is small.

The Ministry of Justice departmental report refers to these payments as being for things such as “small payments relating to the grant of a permit or licence, the provision of utility services, or loading or unloading cargo.” The Ministry commented that these payments do not yield an “undue advantage”, and that measures in the bill to ensure the recording of these payments mitigate any concerns that the exception may be abused.

However, the select committee heard persuasive submissions on the issue from the Human Rights Commission, Transparency International New Zealand and Michael Macaulay, Director of the Institute for Governance and Policy Studies at Victoria University of Wellington’s School of Government. These ‘grease’ payments are bribes, no matter their size, and help breed a culture where low-level corruption is permitted and accepted, contrary to international guidance from groups like the Serious Fraud Office, the UNCAC Implementation Review Group, the Asia Pacific Economic Co-operation, and the OECD.

New Zealand is seen as a leader in public sector ethics and transparency, and we are proud of that legacy. It is disappointing that when provided an opportunity to take a strong stance on a controversial and unethical practice like facilitation payments – a stance already taken by the United Kingdom and Australia, and allegedly being pursued in China and India – we choose to split hairs about semantics and ‘balance’, leaving the door open for facilitation payments and subtly undermining our international reputation for honesty and transparency.

Appendix

Committee process

The Organised Crime and Anti-corruption Legislation Bill was referred to the Law and Order Committee on 4 November 2014. The closing date for submissions was 5 February 2015. We received and considered 20 submissions from interested groups and individuals.

We received advice from the Ministry of Justice and the New Zealand Police. The Regulations Review Committee reported to the committee on the powers contained in clause 2.

Committee membership

Kanwaljit Singh Bakshi (Chairperson)

Todd Barclay

Mahesh Bindra

David Clendon

Kelvin Davis

Hon Phil Goff

Ian McKelvie

Lindsay Tisch

Jonathan Young

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Amy Adams

Organised Crime and Anti-corruption Legislation Bill

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The Parliament of New Zealand enacts as follows:

1 Title

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

2 Commencement

- (1) This Act, except as provided in **subsection (2)**, comes into force on the earlier of the following: 5
 - (a) a date appointed by the Governor-General by Order in Council:
 - (b) **1 January 2016**.
- (2) **Subpart 10 of Part 2** comes into force on the day after the date on which this Act receives the Royal assent. 10
- (3) One or more Orders in Council may be made under **subsection (1)** appointing different dates for different provisions.

Part 1

Amendments to Crimes Act 1961

3 Principal Act 15

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

4 Section 2 amended (Interpretation)

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

~~crime involving dishonesty means any crime described in—~~

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

crime involving dishonesty means any of the crimes or offences described in—

- (a) sections 100 to **105F**;
- (b) Part 10, except sections 267 to 272, 298A, and 298B;
- (c) the Secret Commissions Act 1910

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

Replace section 98D with:

98D Trafficking in persons

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

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

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

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

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

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

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

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

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

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

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

- (i) did not in fact enter or exit the State concerned; or
 - (ii) was not in fact received, recruited, transported, transferred, concealed, or harboured in the State concerned.
 - (4) For the purposes of this section, **exploit**, in relation to a person, means to cause, or to have caused, that person, by an act of deception or coercion, to be involved in—
 - (a) prostitution or other sexual services:
 - (b) slavery, practices similar to slavery, servitude, forced labour, or other forced services:
 - (c) the removal of organs.
- 6 Section 105C amended (Bribery of foreign public official)**
- (1) In section 105C(1), insert in their appropriate alphabetical order:
 - business** includes the provision of international aid
 - employee**, in relation to a body corporate or corporation sole, means an individual who is an employee, agent, director, or officer of that body corporate or corporation sole
 - (2) In section 105C(1), definition of **routine government action**, paragraph (b), after “official”, insert “; or”.
 - (3) In section 105C(1), definition of **routine government action**, after paragraph (b), insert:
 - (c) any action that provides—
 - (i) an undue material benefit to a person who makes a payment; or
 - (ii) an undue material disadvantage to any other person
 - (3A) In section 105C(2), replace “Every one is liable to imprisonment for a term not exceeding 7 years” with “Every person commits an offence”.
 - (4) After section 105C(2), insert:
 - (2A) A body corporate or corporation sole commits an offence against subsection (2) if—
 - (a) an employee of the body corporate or corporation sole does an act that would constitute an offence under subsection (2); and
 - (b) the employee does the act, in whole or in part, with the intent to benefit the body corporate or corporation sole; and
 - (c) the employee, in doing the act, is acting within the scope of their authority as an employee of the body corporate or corporation sole.
 - (2B) A body corporate or corporation sole does not commit an offence under subsection (2) if it has taken reasonable steps to prevent the offence.

(2C)	If a body corporate or corporation sole is charged with an offence under subsection (2), it is to be presumed, unless the body corporate or corporation sole puts the matter at issue, that it did not take reasonable steps.	
(2D)	<u>Every person who commits an offence against this section is liable to imprisonment for a term not exceeding 7 years, or a fine, or both.</u>	5
(2E)	<u>A fine imposed under subsection (2D) cannot exceed the greater of—</u>	
(a)	<u>\$5 million; or</u>	
(b)	<u>if a court is satisfied that an offence occurred in the course of producing a commercial gain, and if the value of that commercial gain can be readily ascertained, 3 times the value of that commercial gain.</u>	10
(5)	Replace section 105C(4) with:	
(4)	Subsections (2A), (2B), and (2C)—	
(a)	apply only in respect of offences under subsection (2) and section 105D; and	
(b)	do not preclude the liability of a body corporate or corporation sole under any other provision of this Act.	15
6A	<u>Section 105D amended (Bribery outside New Zealand of foreign public official)</u>	
	<u>Repeal section 105D(4).</u>	
7	<u>Section 105E replaced (Exception for acts lawful in country of foreign public official)</u>	20
	Replace section 105E with:	
105E	Corruption of foreign public officials	
(1)	Every person specified in subsection (2) who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, a bribe for that person or another person in respect of any act or omission by an official in the official's official capacity (whether or not the act or omission is within the scope of the official's authority) is liable to imprisonment for a term not exceeding 7 years.	25
(2)	Subsection (1) applies to—	
(a)	any foreign public official who has committed the offence while in New Zealand:	30
(b)	any person employed as a foreign public official who has committed the offence while outside New Zealand if the person is—	
(i)	a New Zealand citizen; or	
(ii)	ordinarily resident in New Zealand; or	35
(iii)	a body corporate incorporated in New Zealand; or	
(iv)	a corporation sole incorporated in New Zealand.	

- (3) Nothing in this section limits any immunity that a foreign public official or person has under this Act or any other enactment.

105F Trading in influence

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

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8 Section 106 amended (Restrictions on prosecution)

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

9 Section 228 amended (Dishonestly taking or using document)

In section 228, insert as subsection (2):

- (2) Every ~~one person~~ is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document knowing that—

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- (a) the document was, dishonestly and without claim of right, taken, obtained, or used; and
- (b) the document was dealt with in the manner specified in **paragraph (a)** with intent to obtain any property, service, pecuniary advantage, or valuable consideration.

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10 New sections 228A to 228C inserted

After section 228, insert:

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

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

228B Possessing, selling, or disposing of goods designed, manufactured, or adapted with intent to facilitate commission of crimes involving dishonesty

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Every ~~one person~~ is liable to imprisonment for a term not exceeding 3 years who, without lawful authority or excuse, possesses, sells, or disposes of any goods designed, manufactured, or adapted to facilitate the commission of a crime involving dishonesty, with intent to use, or to enable another person to use, the goods to facilitate the commission of a crime involving dishonesty.

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228C Possessing goods capable of being used to facilitate crimes involving dishonesty with intent to facilitate commission of those offences

Every ~~one person~~ is liable to imprisonment for a term not exceeding 3 years who, without lawful authority or excuse, possesses any goods capable of being used to facilitate the commission of a crime involving dishonesty (other than those specified in sections 227, 233, and 264) with intent to use the goods to facilitate the commission of that offence.

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11 Section 240 amended (Obtaining by deception or causing loss by deception)

After section 240(1), insert:

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- (1A) Every ~~one person~~ is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document or thing capable of being used to derive a pecuniary advantage knowing that, by deception and without claim of right, the document or thing was, or was caused to be, delivered, executed, made, accepted, endorsed, or altered.

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12 Section 243 amended (Money laundering)

- (1) In section 243(1), insert in its appropriate alphabetical order:

act includes an omission

offence means an offence (or any offence described as a crime) that is punishable under New Zealand law, including any act, wherever committed, that would be an offence in New Zealand if committed in New Zealand

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- (2) In section 243(1), definition of **proceeds**, replace “a serious offence” with “an offence”.

- (3) In section 243(1), repeal the definition of **serious offence**.

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- (4) In section 243(2) and (3), replace “a serious offence” with “an offence” in each place.

- (4A) In section 243(4), replace “for the purpose of concealing any property or enabling another person to conceal any property,” with “in concealing any property or by enabling any person to conceal any property.”

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- (5) After section 243(4), insert:

- (4A) Despite anything in subsection (4), the prosecution is not required to prove that the defendant had an intent to—

(a) conceal any property; or

(b) enable any ~~other~~ person to conceal any property.

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- (6) In section 243(5), delete “serious” in each place.

- (7) After section 243(6), insert:

- (7) To avoid doubt, for the purposes of the definition of offence in subsection (1), New Zealand law includes, but is not limited to, the Misuse of Drugs Act 1975.

13 Section 243A replaced (Charges for money laundering)

Replace section 243A with:

243A Charges for money laundering

A person may be charged under section 243(2) or (3) in respect of any property that is the proceeds of an offence to which section 243(2) or (3) applies even though the person who committed the offence—

- (a) has not been charged with that offence; or
- (b) has not been convicted of that offence.

14 Section 244 amended (Defence of enforcement of enactment)

In section 244(a), replace “this section, any other provision of this Act, or any other enactment relating to a serious offence” with “section 243”.

15 ~~Section 245 amended (Section 243 not to apply to certain acts committed outside New Zealand)~~

- (1) ~~In section 245(1)(a), replace “a serious offence” with “an offence”.~~
- (2) ~~In section 245(1)(b), delete “serious”.~~
- (3) ~~In section 245(2),—~~

- ~~(a) replace “this section” with “section 243”; and~~
- ~~(b) delete “serious”.~~

15 Section 245 replaced (Section 243 not to apply to certain acts committed outside New Zealand)

Replace section 245 with:

245 Application of section 243 to acts outside New Zealand

- (1) Section 243 applies to an act that has occurred outside New Zealand and that is alleged to constitute an offence resulting in proceeds only if—
 - (a) the act was an offence under the law of the place where and when it occurred; or
 - (b) it is an act to which section 7 or 7A of this Act applies; or
 - (c) an enactment provides that the act is an offence in New Zealand, and no additional requirement exists for the act to be an offence in the place where and when it occurred.
- (2) If a person is charged with an offence under section 243 and **subsection (1)(a)** applies, it is to be presumed, unless that person puts the matter at issue,

that the act was an offence under the law of the place where and when it occurred.

16 Section 256 amended (Forgery)

After section 256(4), insert:

- (5) Every ~~one person~~ is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any false document knowing it to be false and to have been made with the intention that it be used or acted on (in New Zealand or elsewhere) as genuine. 5

17 Section 258 amended (Altering, concealing, destroying, or reproducing documents with intent to deceive) 10

After section 258(2), insert:

- (3) Every ~~one person~~ is liable to imprisonment for a term not exceeding 3 years who, without reasonable excuse, sells, transfers, or otherwise makes available any document knowing that—
- (a) the document was altered, concealed, or made, in whole or in part, as a reproduction of another document; and 15
 - (b) the document was dealt with in the manner specified in **paragraph (a)** with intent to—
 - (i) obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration; or 20
 - (ii) cause loss to any other person.

Part 2

Amendments to other enactments

Subpart 1—Amendments to Anti-Money Laundering and Countering Financing of Terrorism Act 2009 25

18 Principal Act

This **subpart** amends the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (the **principal Act**).

18A Section 4 amended (Overview)

- (1) In section 4(3), replace “6 subparts” with “7 subparts”. 30
- (2) After section 4(3)(b), insert:
- (ba) **subpart 2A** sets out requirements on reporting entities to report certain prescribed transactions:

19 Section 5 amended (Interpretation)

- (1) In section 5, insert in their appropriate alphabetical order:

domestic physical cash transaction means a transaction in New Zealand ~~that is an actual cash transaction of any currency involving the use of physical currency~~

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international wire transfer means a wire transfer where—

- (a) at least one of the following institutions is in New Zealand:

- (i) the ordering institution;
- (ii) the intermediary institution;
- (iii) the beneficiary institution; and

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- (b) at least one of the following institutions is outside New Zealand:

- (i) the ordering institution;
- (ii) the intermediary institution;
- (iii) the beneficiary institution

prescribed transaction, in relation to a reporting entity, means a transaction conducted through the reporting entity in respect of—

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- (a) an international wire transfer of a value greater than the applicable threshold value; or
- (b) a domestic physical cash transaction of a value greater than the applicable threshold value

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prescribed transaction report means a report made under **section 48A**

- (2) In section 5, definition of **law enforcement purposes**, replace paragraph (b)(iv) with:

- (iv) an offence within the meaning of section 243(1) of the Crimes Act 1961:

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20 Section 40 amended (Reporting entities to report suspicious transactions)

In section 40(1)(b)(v), replace “a serious offence” with “an offence”.

21 Section 42 amended (Privileged communication defined)

In section 42(1), replace “section 40(3)” with “sections 40(3) and **48A(2)**”.

22 Section 43 amended (Auditors may report suspicious transactions)

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In section 43(1)(e), replace “a serious offence” with “an offence”.

23 New subpart 2A of Part 2 inserted

After section 48, insert:

Subpart 2A—Prescribed transaction reports

48A Reporting entities to report certain prescribed transactions

- (1) Despite any other enactment or rule of law, but subject to any regulations made under section 154, if a person conducts a prescribed transaction through a reporting entity, the reporting entity must (as soon as practicable, but not later than 10 working days after the transaction) report the transaction to the Commissioner in accordance with **section 48B**. 5
- (2) Nothing in **subsection (1)** requires any lawyer to disclose any privileged communication (as defined in section 42).

48B Prescribed transaction reports 10

- (1) Except as provided in **subsection (2)**, a report made under **section 48A(1)** must—
- (a) be in the form or forms (if any) prescribed by regulations made under section 153(c); and
 - (b) contain the following information: 15
 - (i) a description of the nature of the transaction:
 - (ii) the amount of the transaction and the currency in which it was denominated:
 - (iii) the date on which the transaction was conducted:
 - (iv) the parties to the transaction: 20
 - (v) if applicable, the name of the facility through which the transaction was conducted, and any other facilities (whether or not provided by the reporting entity) directly involved in the transaction:
 - (vi) ~~the name of the officer, employee, or agent of the reporting entity who handled the transaction, if that officer, employee, or agent has face-to-face dealings in respect of the transaction with any party to the transaction:~~ 25
 - (vii) any other information prescribed by regulations made under section 153(c); and
 - (c) be signed by a person authorised by the reporting entity to sign prescribed transaction reports (unless the report is provided by electronic means other than an electronic copy of the signed report); and 30
 - (d) be forwarded, in writing, to the Commissioner—
 - (i) by way of secure electronic transmission specified or provided by the Commissioner for this purpose; or 35
 - (ii) by another means (including, without limitation, by way of transmission by post, fax, or email) that may be agreed from time to

	time between the Commissioner and the reporting entity concerned.	
(2)	The Commissioner may confer the authority to receive a prescribed transaction report under subsection (1) on—	
(a)	any specified Police employee; or	5
(b)	Police employees of any specified rank or class; or	
(c)	any Police employee or Police employees for the time being holding any specified office or specified class of offices.	
48C	Sections 43 to 48 apply to prescribed transactions	
	Sections 43 to 48 apply, with all necessary modifications, to prescribed transactions.	10
23A	<u>Section 57 amended (Minimum requirements for AML/CFT programmes)</u>	
	<u>After section 57(d), insert:</u>	
	<u>(da) reporting prescribed transactions; and</u>	
23B	<u>Section 78 amended (Meaning of civil liability act)</u>	15
	<u>After section 78(d), insert:</u>	
	<u>(da) fails to report transactions in accordance with subpart 2A of Part 2:</u>	
23C	<u>Section 90 amended (Pecuniary penalties for civil liability act)</u>	
	<u>In section 90(3), replace “section 78(a), (e), or (f),” with “section 78(a), (da), (e), or (f),”.</u>	20
24	Cross-heading above section 92 replaced	
	Replace the cross-heading above section 92 with:	
	<i>Offences relating to suspicious transaction reports and prescribed transaction reports</i>	
25	Section 92 amended (Failing to report suspicious transaction)	25
(1)	In the heading to section 92, replace “ suspicious transaction ” with “ suspicious transactions or prescribed transactions ”.	
(2)	In section 92(b)(v), replace “a serious offence” with “an offence”.	
(3)	In section 92, insert as subsection (2):	
(2)	A reporting entity commits an offence if—	30
(a)	a transaction is conducted through the reporting entity; and	
(b)	the reporting entity knows, or ought to know, that the transaction is a prescribed transaction; and	

	(e) the reporting entity fails to report the transaction to the Commissioner as soon as practicable, but not later than 10 days after the transaction.	
26	Section 93 amended (Providing false or misleading information in connection with suspicious transaction report)	
(1)	In the heading to section 93, replace “ suspicious transaction report ” with “ suspicious transaction reports or prescribed transaction reports ”.	5
(2)	In section 93, replace “a suspicious transaction report or in supplying information in connection with that report” with “a suspicious transaction report or a prescribed transaction report, or in supplying information in connection with a suspicious transaction report or a prescribed transaction report”.	10
27	Section 94 amended (Unlawful disclosure of suspicious transaction report)	
(1)	In the heading to section 94, replace “ suspicious transaction report ” with “ suspicious transaction reports or prescribed transaction reports ”.	
(2)	In section 94(2)(b), after “a suspicious transaction report”, insert “or a prescribed transaction report”.	15
28	Section 95 amended (Failure to keep or retain adequate records relating to suspicious transaction)	
(1)	In the heading to section 95, replace “ suspicious transaction ” with “ suspicious transactions or prescribed transactions ”.	
(2)	In section 95, after “suspicious transaction”, insert “or a prescribed transaction”.	20
29	Section 96 amended (Obstruction of investigation relating to suspicious transaction report)	
(1)	In the heading to section 96, replace “ suspicious transaction report ” with “ suspicious transaction reports or prescribed transaction reports ”.	25
(2)	In section 96, after “report”, insert “or prescribed transaction report”.	
30	Section 97 amended (Contravention of section 47(1))	
(1)	In the heading to section 97, after “ 47(1) ”, insert “or 48A(1) ”.	
(2)	In section 97, after “ 47(1) ”, insert “or 48A(1) ”.	
31	Section 99 amended (Time limit for prosecution of offences relating to civil liability act and suspicious transaction reports)	30
	In the heading to section 99, after “ reports ”, insert “or prescribed transaction reports”.	
32	Section 101 amended (Structuring transaction to avoid application of AML/CFT requirements)	35
	In section 101, insert as subsection (2):	

- (2) For the purposes of this section, **transaction** includes, but is not limited to, a suspicious transaction or a prescribed transaction.

33 Section 142 amended (Financial intelligence functions of Commissioner)

- (1) After section 142(j), insert:
- (ja) receive, analyse, and (if appropriate) refer to investigative branches of the New Zealand Police and to other law enforcement agencies, any prescribed transaction reports: 5
- (2) In section 142(f), after “reports”, insert “and prescribed transaction reports”.
- (3) In section 142(g), after “reports”, insert “and prescribed transaction reports”.
- (4) In section 142(h), after “reports”, insert “and prescribed transaction reports” in each place. 10

34 Section 143 amended (Powers relating to financial intelligence functions of Commissioner)

- (1) In section 143(a), after “report”, insert “or a prescribed transaction report”.
- (2) In section 143(b), after “suspicious transaction reports,”, insert “prescribed transaction reports,”. 15

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

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

35A Section 154 amended (Regulations relating to application of Act) 20

After section 154(1)(c), insert:

- (ca) exempting a reporting entity or a class of reporting entity from the obligation to report under **section 48A** in relation to international wire transfers:

Subpart 2—Amendments to Companies Act 1993 25

36 Principal Act

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

37 Section 194 amended (Accounting records to be kept)

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

- (e) ~~if the company engages in a transaction that constitutes an act of the kind described in section 105C(3) of the Crimes Act 1961, a record of the particulars of that transaction, including any payments made.~~ 30

37 Section 194 amended (Accounting records must be kept)

After section 194(1), insert:

(1A) For the purpose of subsection (1), the transactions of the company include any transaction that constitutes an act of the type described in section 105C(3) of the Crimes Act 1961.

37A Section 366 amended (Disclosure of information and reports)

In section 366(1B) (as inserted by section 49(3) of the Companies Amendment Act 2014), definition of **law enforcement purposes**, replace paragraph (b)(v) with:

- (v) any offence that is punishable by imprisonment for a term of 5 years or more and includes any act, wherever committed, that if committed in New Zealand would constitute an offence punishable by imprisonment for a term of 5 years or more:

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

38 Principal Act

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

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

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

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

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

40 Principal Act

This **subpart** amends the Criminal Proceeds (Recovery) Act 2009 (the **principal Act**).

41 Section 134 amended (Provisions of subpart 2 of Part 2 applying to registering foreign restraining orders)

After section 134(1)(b), insert:

- (ba) section 22 (application for restraining order without notice):

42 ~~New section 137A inserted (Extension of duration of registration of foreign restraining order where extradition request received)~~

After section 137, insert:

~~137A Extension of duration of registration of foreign restraining order where extradition request received~~

- (1) If the High Court has registered a foreign restraining order in New Zealand and the Minister of Justice has received an extradition request in respect of the respondent, the applicant for that order may, before its registration expires, apply to the High Court for an extension of its period of registration in New Zealand.
- (2) If an application is made under **subsection (1)**, the High Court may order that the period of registration of the foreign restraining order be extended for a further period not exceeding 2 years.
- (3) If an extension is granted under **subsection (2)**, the High Court may successively extend the registration of the foreign restraining order for periods that do not exceed 2 years on any 1 occasion if—
 - (a) the applicant applies before the current extension period expires; and
 - (b) the High Court is satisfied that there are reasonable grounds upon which to grant a further extension.
- (4) If an extension is not extended before it expires, the registration of the foreign restraining order in New Zealand ceases at the time specified in the order.

42 Section 137 amended (Extension of duration of registration of foreign restraining order)

After section 137(2), insert:

- (2A) The duration of the registration of a foreign restraining order may be extended more than once under this section.

Subpart 5—Amendments to Customs and Excise Act 1996

43 Principal Act

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

44 Section 54 amended (Prohibited imports)

- (1) After section 54(1)(aa), insert:
 - (ab) goods designed, manufactured, or adapted with intent to facilitate the commission of a crime involving dishonesty; or
 - (ac) goods that, having regard to all relevant circumstances, can reasonably be considered—
 - (i) part of, or involved in, an attempt to commit a crime involving dishonesty to which section 72 of the Crimes Act 1961 applies; or

- (ii) related to a conspiracy to commit a crime involving dishonesty to which section 310 of the Crimes Act 1961 applies; or
- (2) After section 54(8), insert:
- (9) In this section, **crime involving dishonesty** has the same meaning as in section 2(1) of the Crimes Act 1961. 5
- 45 Section 56 amended (Prohibited exports)**
- (1) After section 56(1)(a), insert:
- (ab) goods designed, manufactured, or adapted with intent to facilitate the commission of a crime involving dishonesty; and
- (ac) goods that, having regard to all relevant circumstances, can reasonably be considered— 10
- (i) part of, or involved in, an attempt to commit a crime involving dishonesty to which section 72 of the Crimes Act 1961 applies; or
- (ii) related to a conspiracy to commit a crime involving dishonesty to which section 310 of the Crimes Act 1961 applies; and 15
- (2) In section 56(2A), insert in its appropriate alphabetical order:
- crime involving dishonesty** has the same meaning as in section 2(1) of the Crimes Act 1961
- 46 Section 209 amended (Offences in relation to importation or exportation of prohibited goods)** 20
- (1) After section 209(1)(ca), insert:
- (cab) is knowingly concerned in any importation or exportation of—
- (i) goods that are designed, manufactured, or adapted with intent to facilitate the commission of a crime involving dishonesty; or
- (ii) goods that, having regard to all relevant circumstances, can reasonably be considered— 25
- (A) part of, or involved in, an attempt to commit a crime involving dishonesty to which section 72 of the Crimes Act 1961 applies; or
- (B) related to a conspiracy to commit a crime involving dishonesty to which section 310 of the Crimes Act 1961 applies; or 30
- (2) After section 209(2), insert:
- (2A) Every person who commits an offence against **subsection (1)(cab)** is liable on conviction to imprisonment for a term not exceeding 3 years. 35
- (3) After section 209(6), insert:
- (7) In this section, **crime involving dishonesty** has the same meaning as in section 2(1) of the Crimes Act 1961.

Subpart 5A—Amendment to Extradition Act 1999

46A Principal Act

This **subpart** amends the Extradition Act 1999 (the **principal Act**).

46B Section 82 amended (Search and seizure on arrest)

After section 82(3), insert:

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- (4) If a person is arrested on a warrant issued or endorsed under this Act, a constable may take the identifying particulars of that person in accordance with section 32 of the Policing Act 2008 as if that person is detained in lawful custody for committing an offence against New Zealand law.

Subpart 5B—Amendment to Financial Service Providers (Registration and Dispute Resolution) Act 2008

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46C Principal Act

This **subpart** amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **principal Act**).

46D Section 14 amended (Disqualified person)

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In section 14(2)(e), replace “an offence under sections 217 to 266 of the Crimes Act 1961” with “a crime involving dishonesty as defined in section 2(1) of the Crimes Act 1961”.

Subpart 6—Amendments to Financial Transactions Reporting Act 1996

47 Principal Act

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This **subpart** amends the Financial Transactions Reporting Act 1996 (the **principal Act**).

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

- (1) In section 21(2)(a)(ii), replace “any serious offence (within the meaning of section 243 of the Crimes Act 1961)” with “an offence within the meaning of section 243 of the Crimes Act 1961”. 25
- (2) In section 21(2)(a)(ii), replace “proceeds of that serious offence” with “proceeds of that offence”.

49 Section 28 amended (Application of Privacy Act 1993)

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

- (2) In section 28(b)(ii), replace “proceeds of that serious offence” with “proceeds of that offence”.

Subpart 7—Amendments to Income Tax Act 2007

50 Principal Act

This **subpart** amends the Income Tax Act 2007 (the **principal Act**). 5

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

Replace section DB 45 with:

DB 45 Bribes

When this section applies

- (1) This section applies when a person (**person A**) gives or offers, or agrees to give, a bribe in the circumstances specified in section 101, 102(2), 103(2), 104(2), 105(2), 105C, or 105D(1) of the Crimes Act 1961. 10

No deduction

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

Exclusions

- (3) This section does not apply in the circumstances specified in section 105C(3) of the Crimes Act 1961. 15

Definition

- (4) In this section, **bribe** is defined in section 99 of the Crimes Act 1961.

Link with subpart DA

- (5) This section overrides the general permission. 20

Defined in this Act: bribe, deduction, general permission, New Zealand

Compare: 2004 No 35 s DB 36

52 Section YA 1 amended (Definitions)

- (1) In section YA 1, repeal the definitions of **benefit**, **foreign public official**, **public official**, and **routine government action**. 25
- (2) In section YA 1, definition of **bribe**, delete “paid to public officials”.
- (3) In section YA 1, definition of **foreign country**, delete “paid to public officials”.

Subpart 7A—Amendment to Limited Partnerships Act 2008

52A Principal Act

This **subpart** amends the Limited Partnerships Act 2008 (the **principal Act**). 30

52B Section 79 amended (Disclosure of information and reports)

In section 79(1B), definition of **law enforcement purposes**, replace paragraph (b)(v) with:

- (v) any offence that is punishable by imprisonment for a term of 5 years or more and includes any act, wherever committed, that if committed in New Zealand would constitute an offence punishable by imprisonment for a term of 5 years or more:

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Subpart 8—Amendments to Misuse of Drugs Act 1975

53 Principal Act

This **subpart** amends the Misuse of Drugs Act 1975 (the **principal Act**).

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54 Section 12B repealed (Laundering proceeds of drug offences)

Repeal section 12B.

55 Section 12BA repealed (Charges for money laundering)

Repeal section 12BA.

56 Section 12C amended (Commission of offences outside New Zealand)

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(1) In section 12C(1)(ca), delete “; or”.

(2) Repeal section 12C(1)(d).

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

57 Principal Act

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This **subpart** amends the Mutual Assistance in Criminal Matters Act 1992 (the **principal Act**).

58 Section 31 replaced (Assistance in obtaining evidence in New Zealand)

Replace section 31 with:

31 Assistance in obtaining evidence in New Zealand

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(1) A foreign country may request the Attorney-General to assist in arranging—

- (a) the taking of evidence in New Zealand; or
- (b) the production of documents or other articles in New Zealand; or
- (c) the undertaking of a forensic comparison under the Criminal Investigations (Bodily Samples) Act 1995 and the production of a document specifying the result of that comparison.

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(2) The Attorney-General may, in writing, authorise the requested assistance if,—

- (a) in the case of receipt of a request made under **subsection (1)(a) or (b)** by a foreign country, the Attorney-General is satisfied that—
- (i) the request relates to criminal proceedings in the foreign country; and
 - (ii) there are reasonable grounds for believing that the evidence can be taken or the documents or other articles can be produced in New Zealand: 5
- (b) in the case of receipt of a request made under **subsection (1)(c)** by a foreign country, the Attorney-General is satisfied that—
- (i) the request relates to a criminal matter in the foreign country; and 10
 - (ii) the request is in respect of an offence that corresponds to an offence in New Zealand that is punishable by a term of imprisonment of more than 1 year.
- (3) If, under **subsection (2)**, the Attorney-General authorises—
- (a) the taking of evidence, a Judge may, subject to sections 32 and 33 and to any regulations made under this Act, take the evidence on oath of each witness appearing before the Judge and must, in this case,— 15
 - (i) cause the evidence to be put in writing and certify, in the prescribed form, that the evidence was taken by the Judge; and
 - (ii) cause the writing to be sent to the Attorney-General: 20
 - (b) the production of documents or other articles, a Judge may, subject to sections 32 and 33 and to any regulations made under this Act, require the production of the documents or other articles, and, unless the Judge otherwise orders, must cause the documents, or copies of the documents certified by the Judge to be true copies, or the other articles, to be sent to the Attorney-General. 25

59 Schedule 1 amended

In Schedule 1, after item 31, insert:

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

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

Subpart 10—Amendment to Policing Act 2008

60 Principal Act

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

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

After section 95, insert:

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International policing: information sharing to assist corresponding overseas agency

95A Interpretation

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

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

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

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- (a) fingerprints:
- (b) palm-prints:
- (c) an iris scan

corresponding overseas agency—

- (a) means an overseas person, body, or agency that is empowered to perform functions that correspond, wholly or partly, to any of the functions set out in section 9; and
- (b) includes Interpol and every overseas person, body, or agency appointed under article 32 of the constitution of Interpol to co-operate with Interpol

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

- (a) an international arrangement or agreement to which the Government of New Zealand is a party; or
- (b) an agency-to-agency agreement; or
- (c) the constitution of Interpol and any instrument adopted under article 44 of that constitution

Interpol means the International Criminal Police Organization

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

95B Disclosure of personal information

- (1) If the requirements of this section are met, the Commissioner may disclose any personal information held by the Police to a corresponding overseas agency.
- (2) The disclosure of the personal information must be reasonably necessary to enable the corresponding overseas agency to perform a function in its jurisdiction that the Police perform in New Zealand under section 9.
- (3) Personal information under this section may be disclosed only—
 - (a) ~~with the consent of the individual to whom the information relates; or~~
 - (b) in accordance with an international disclosure instrument; or
 - (c) in accordance with directions issued by the Commissioner under **section 95C**, ~~where the disclosure is made by a Police employee acting under delegated authority; or for the disclosure of personal information outside of an international disclosure instrument.~~
 - (d) by the Commissioner personally.
- (4) For the purposes of this section, personal information may be disclosed to a corresponding overseas agency by disclosing the information to an overseas person, body, or agency that is authorised to act on behalf of the corresponding overseas agency.
- (5) **Subsections (1) to (4)** ~~are subject to any other enactment, other than the Privacy Act 1993, that limits or restricts the disclosure of information or requires information of a particular kind to be disclosed or obtained in a prescribed manner.~~

(5)	Subsections (1) to (4) do not affect any other enactment that requires or allows disclosure of personal information (whether or not of a particular kind and whether or not disclosure is required to be made in a prescribed manner).	
(6)	For the purposes of Part 8 of the Privacy Act 1993, a person is taken to have breached an information privacy principle under section 66(1)(a)(i) of that Act if the person contravenes a provision of this section.	5
95C	Commissioner may issue directions to certain Police employees	
(1)	The Commissioner may issue written directions relating to the disclosure of personal information <u>outside of an international disclosure instrument</u> under section 95B(1) to any Police employees authorised to make that disclosure under delegated authority.	10
(2)	The directions may identify the Police employees to whom they apply by the positions that the employees hold or by the groups to which they belong.	
(2)	<u>The directions must identify authorised Police employees but need not identify particular individuals and may instead identify the positions that the employees hold or the groups to which they belong.</u>	15
(3)	Without limiting the generality of subsection (1) , the directions may do either or both of the following:	
(a)	describe the circumstances in which personal information may be disclosed without a request from the corresponding overseas agency:	20
(b)	set out any criteria in addition to those stated in section 95B for disclosing any personal information.	
95CA	<u>Agency-to-agency agreements subject to consultation with Privacy Commissioner</u>	
	<u>The Commissioner must consult the Privacy Commissioner before any agency-to-agency agreement is entered into or varied.</u>	25
95D	Publication of certain agency-to-agency agreements and directions	
(1)	As soon as practicable after an agency-to-agency agreement enters into force at any time after the commencement of this section, the Commissioner must make a copy of the agreement publicly available.	30
(2)	When an agency-to-agency agreement that is in effect before the commencement of this section is first reviewed following that commencement, the Commissioner must, as soon as practicable after that review, make a copy of the agreement (as modified or proposed to be modified by the review) publicly available.	35
(3)	As soon as practicable after issuing any directions under section 95C , the Commissioner must make a copy of the directions publicly available.	
(4)	However, this section does not apply to—	

(a)	an agency-to-agency agreement, or to any directions, that may be withheld under the Official Information Act 1982 or whose existence need not be confirmed or denied under that Act:	
(b)	any provision of an agency-to-agency agreement, or of any directions, that may be withheld under the Official Information Act 1982.	5
(5)	For the purposes of this section, a copy is publicly available if it is—	
(a)	available for inspection, free of charge, at the Police National Headquarters on any working day; and	
(b)	accessible, free of charge, on an Internet site maintained by or on behalf of the Commissioner.	10
95E	Saving for existing international disclosure instruments	
(1)	Sections 95B to 95D do not affect an international disclosure instrument that entered into force before the commencement of this section and every such instrument continues in force according to its tenor until it expires or is terminated.	15
(2)	Despite subsection (1) , an agency-to-agency agreement that entered into force before the commencement of this section becomes subject to sections 95B to 95D immediately after the conclusion of the first review of the agreement that is, in accordance with the provisions of that agreement, undertaken after that commencement.	20
(3)	Despite subsection (1) , an agency-to-agency agreement that entered into force before the commencement of this section expires on the close of the day that is the 5th anniversary of the commencement of this section if the agreement has not been reviewed before that anniversary.	
	Subpart 11— Amendment <u>Amendments</u> to Secret Commissions Act 1910	25
62	Principal Act	
	This subpart amends the Secret Commissions Act 1910 (the principal Act).	
62A	Section 2 amended (Interpretation)	
	In section 2, insert in its appropriate alphabetical order:	
	<u>child of any agent includes a child of a spouse or a civil union partner or a de facto partner of an agent and in section 5(2) child has a corresponding meaning</u>	30
63	Section 13 replaced (Penalty on conviction)	
	Replace section 13 with:	
13	Penalty on conviction	
	A person who commits an offence against this Act is liable to imprisonment for a term not exceeding 7 years.	35

Organised Crime and Anti-corruption Legislation Bill

Legislative history

25 June 2014
4 November 2014

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