

FAQs – Organised Crime and Anti-corruption Legislation Bill

What is organised crime?

Organised crime normally refers to an organisation of criminals who engage in illegal activity on a large, centralised scale for the purpose of monetary profit. For example through money laundering, terrorism, bribery, identity crimes and human trafficking.

What does the Government's Organised Crime and Anti-corruption Legislation Bill propose to help tackle organised crime?

This Bill introduces a range of measures to combat the threat national and international organised crime networks pose.

These measures include –

1. **Improving the effectiveness of New Zealand's money laundering offences:** by clarifying that intent to conceal is not necessary to prove a money laundering offence. It also removes the requirement that the offence from which proceeds are derived must be punishable by imprisonment of five years or more.
2. **Improving the ability to investigate money laundering through closely monitoring funds transfers:** entities such as banks will be required to report all international wire transfers of over \$1,000 and all physical cash transactions of \$10,000 or more to the Financial Intelligence Unit within Police.
3. **Broadening the definition of identity based offences:** new offences have been added to address current gaps in the identity crime offence framework.
4. **Improving the efficiency of mutual legal assistance between countries:** by extending the time frames for foreign restraining orders and allowing those orders to be registered without notice.
5. **Improving the response to human trafficking:** by amending the offence so that it applies to such activity in New Zealand, not just when victims are moved into or out of this country.
6. **Implementing the Agreement on Enhancing Cooperation in Preventing and Combating Crime between New Zealand and the United States:** by amending the Policing Act 2008 to expressly provide Police with a power to share information with its international counterparts.
7. **Enabling New Zealand Police to share DNA databank information with overseas law enforcement agencies:** if a request is made under the Mutual Assistance in Criminal Matters Act 1992.
8. **Bringing the foreign bribery offence into line with international recommendations:** from the OECD Working Group on Bribery, this includes clarifying the circumstances in which a company is liable for foreign bribery.

9. **Further bribery and corruption amendments:** such as increasing the penalties for bribery and corruption in the private sector, to bring them into line with public sector bribery. These amendments will allow New Zealand to ratify the United Nations Convention against Corruption (UNCAC).

Why does New Zealand need this Bill?

Organised crime undermines public safety, national security, economic development and good governance.

New Zealand and its institutions are consistently perceived as the least corrupt in the world. However, this Government takes the risk of organised crime to the economy and New Zealand's reputation very seriously and understands that we must remain vigilant in order to keep this reputation.

This Bill will ensure we have the mechanisms to attack international and domestic organised crime networks and will improve New Zealand's ability to collaborate with international efforts to disrupt organised crime. It also ensures our law enforcement agencies are able to respond to any challenges.

This Bill brings New Zealand domestic law into line with the UN Convention against Corruption and the OECD Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions.

It will also provide local agencies with the enforcement tools they may require should the need to deal with organised crime or corruption arise.

Money-laundering

What happens with international wire transfers and physical cash transfers now?

Banks and other financial institutions are already required to conduct customer due diligence on all international wire transfers over \$1,000. This means that they must collect identity information from customers, such as name, date of birth and address. They must also identify the original sender and ultimate recipient of the wire transfer and include this information with the transfer.

Banks and other financial institutions are also required to collect identity information for physical cash transactions of \$10,000 or more.

What do banks do with the information they collect now?

Banks and other financial institutions are required to report suspicious activity to the Financial Intelligence Unit (FIU) within Police. Financial institutions decide whether activity is suspicious based on their own assessment of risk. In practice this means that they already report information about some, but not all, wire transfers and large cash transactions to the FIU.

What changes is the Bill making?

Banks and other financial institutions will be required to report to the FIU all international wire transfers of more than \$1,000 and all physical cash transactions of \$10,000 or more.

Why are we making those changes?

International wire transfers and large physical cash transfers are commonly used to commit crime or launder the proceeds of crime. For this reason, New Zealand's National Risk Assessment conducted by Police in 2010 identified them as inherently high risk transactions.

The changes will add transparency to these transactions, enhance Police intelligence and assist law enforcement to interrupt organised criminal activity. In particular, the changes will make it more difficult for criminals to use multiple small transactions, multiple senders or multiple recipients to avoid detection.

What impact will these changes have on people (including those who regularly send large amounts of money home to their family in the Pacific Islands for example)?

These changes should have no practical impact on people who send large amounts of money regularly or conduct large transactions in cash. Customers' identity information is already collected by banks and other financial institutions. The changes mean that the information that is already collected will be automatically forwarded to the FIU.

Does this mean that if I transfer money the Police will start investigating me?

No. The mere fact of an international funds transfer or large physical cash transaction will not, itself, give rise to suspicion of money laundering or other criminal activity. The Police make the decision whether to launch an investigation based on intelligence from a number of sources.

What does the Financial Intelligence Unit do with information it receives from banks and other financial institutions?

The FIU collates information provided by financial institutions, analyses it, and creates intelligence products. This intelligence is used by other units within Police and other domestic and international law enforcement agencies.

Is the information sent to the FIU secure?

The FIU has protocols and procedures in place to safeguard the personal information it receives from banks and other financial institutions. These protocols and procedures will continue to apply.

The Office of the Privacy Commissioner was consulted on the proposals and considered that they were justified based on the nature of the information to be forwarded and the types of transactions for which automatic reporting would apply.

Why was the threshold set at over \$1,000 for reporting international wire transfers?

The threshold is based on an international obligation imposed by the Financial Action Task Force (FATF, the international standard setting body on combating money laundering and terrorist financing). Countries are required to ensure that information about the originator and beneficiary of wire transfers is immediately available.

The FATF recommends a minimum threshold of at least USD/EUR 1000 for the collection of customer information. The \$1,000 NZD threshold provides certainty and ensures that New Zealand complies with its international obligations even if there are fluctuations in the currency.

How does this threshold compare internationally?

The threshold is designed to align New Zealand law with international best practice and is consistent with a similar regime in Canada. However, the \$1,000 threshold is less onerous than that in place in Australia, which requires all international wire transfers to be routinely reported.

In the New Zealand context, the \$1,000 threshold is consistent with current obligations under anti-money laundering legislation for wire transfers which do not require reporting entities to collect and record party information for transactions of less than this amount.

Why is intent to conceal no longer required?

This has never been a specific legislative requirement. Early case law on the money-laundering offence in New Zealand did not read in this requirement. Over recent years, however, the courts have required the prosecution to prove intent to conceal property.

This has drawn criticism that New Zealand is out of step with international best practice for dealing with money-laundering and that the law should be clarified by ensuring this is not a necessary requirement.

What will the new identity offences be?

A range of new offences are included in the Crimes Act and Customs and Excise Act to address gaps in the law relating to two general areas:

- Selling and distributing unlawfully obtained or manufactured identity information; and
- Making, possessing, and selling goods intended to facilitate the commission of identity-related crime.

The full list of new offences is:

- Selling or transferring a dishonestly taken or used document
- Designing, manufacturing, or adapting goods to facilitate the commission of crimes involving dishonesty
- Possessing, selling, or disposing of goods designed, manufactured, or adapted to facilitate crimes involving dishonesty
- Possessing goods capable of being used to facilitate crimes involving dishonesty with intent to facilitate commission of those offences
- Selling or transferring documents to obtain or cause loss by deception
- Selling or transferring false documents
- Selling or transferring altered documents with intent to deceive
- Importing or exporting goods designed to facilitate the commission of a crime involving dishonesty (Customs and Excise Act)

Will the amendments to the Policing Act 2008 allow for the sharing of DNA information between countries?

This Bill amends the Criminal Investigations (Bodily Samples) Act 1995 and the Mutual Assistance in Criminal Matters Act 1992 to allow DNA information to be shared for criminal investigations or proceedings, on a case-by-case basis, subject to the Attorney-General's authorisation.

The amendments to the Policing Act allow New Zealand Police to share other types of personal information (for example, names, criminal history and fingerprint information) with international counterparts without case-by-case authorisation by the Attorney-General. This will allow implementation of the Preventing and Combating Crime Agreement with the US Government. These amendments do not allow DNA information to be shared.

The PCC Agreement allows NZ and the US to agree, in the future, to share DNA on an automated basis. Currently there are technical, as well as legislative, barriers preventing NZ agreeing to share DNA on an automated basis. This does not preclude NZ meeting its obligations under the PCC agreement.

Is people trafficking really a problem in New Zealand?

There has never been a prosecution in New Zealand for human trafficking – but we remain alert to the possibility. Current New Zealand law is out of step with other like-minded jurisdictions because it imposes a transnational requirement that the victim must enter or leave this country before an offence is committed. To reflect international best practice, that requirement is removed.

What will the increased penalties be for bribery in the private sector and why are these changes necessary?

The penalty for bribery and corruption type offences under the Secret Commissions Act 1910 will increase from a maximum of two years' imprisonment to a maximum of seven years' imprisonment, to bring the penalties for this private sector offending into line with that for corresponding public sector offences. This is a necessary amendment to allow New Zealand to ratify the United Nations Convention against Corruption.

What else is this Government doing to prevent organised crime and corruption?

New Zealand law enforcement agencies are committed to ensuring our nation retains its world-class reputation as a country free from - and intolerant of – corruption and organised crime.

A number of other pieces of Government legislation assist this, including:

- *Criminal Proceeds (Recovery) Act 2009* (commenced December 2009): allows law enforcement agencies to recover the proceeds of crime, this money is then used to fund other law enforcement initiatives
- *Anti-Money Laundering and Countering Financing of Terrorism Act 2009* (commenced June 2013): helps law enforcement agencies detect and deter serious crimes such as drug dealing, tax evasion and fraud. The Act makes it easier to recover money gained illegally and helps close the loopholes that criminals use to launder money

To enforce this legislation, New Zealand has a dedicated law enforcement agency: Police's Organised and Financial Crime Agency. In addition, the Serious Fraud Office is responsible for investigating and prosecuting complex cases involving fraud, bribery and corruption. New Zealand also fosters strong partnerships with other governments and overseas agencies to ensure we are as well prepared as possible to deal with organised crime here and overseas.