



SERIOUS FRAUD OFFICE

TE TARI HARA TĀWARE

Attorney-General

20 November 2008

Purpose

1. The purpose of this briefing is to:
 - a. introduce the Serious Fraud Office to you;
 - b. identify key issues facing the SFO and in relation to which you as its Minister or the Cabinet will need to make early decisions; and
 - c. invite you to agree with me communication arrangements that will best meet your needs.

The Serious Fraud Office and its operating environment

2. The Serious Fraud Office is a law enforcement agency in the form, perhaps anomalously, of a Department of State, and created under the Serious Fraud Office Act 1990. By s 29, you as Attorney are the Minister responsible for the SFO. Section 30 makes it clear that you have no operational responsibility and that decisions as to which cases to investigate and to prosecute are matters for me. That constraint has consequences in terms of the matters that I can report to you. This point is developed further below.
3. As you know, the Act confers special investigative powers on me, under ss 5 and 9, by which notices may be issued requiring the production of documents or information and enabling compulsory interviews. These powers are usually exercised under delegation. Information obtained through the exercise of powers is protected and must be kept secret, except when I exercise a discretionary power to enable its disclosure.
4. The Act has two Parts concerning investigations. Part 1 enables the use of powers to require documents in cases where I have cause to suspect that an investigation might reveal serious or complex fraud. Part 2 enables the use as well of compulsory examination powers and power to require the provision of information in cases where I have reasonable grounds to believe that an offence involving serious or complex fraud may have been committed. Where a person is interviewed under compulsory examination powers, the person cannot refuse to answer questions on the ground of self-incrimination. Any material obtained in such an interview cannot be used in evidence unless the person has made statements inconsistent with their answers in interview. As a matter of practice, the SFO does not seek to admit any material from compulsory interviews in evidence.

5. The powers conferred would be modified if the Serious Fraud Office (Abolition and Transitional Provisions) Bill is enacted, including that orders for production of documents and for compulsory interviews would be made by judges, on application.
6. The SFO has only 34 staff and a budget of just over \$5 million. Most staff are professional, operations staff, comprising 5 prosecutors, 11 investigators, 8 forensic accountants and their managers. The capability of the organisation depends on the skill, expertise, and commitment of these professional staff in particular.
7. The structure of the organisation since the departure of my predecessor has the Assistant Director responsible for the operational staff, with the Chief Prosecutor reporting to him. The Assistant Director and the Corporate Services Manager are my direct reports. The Assistant Director is Gib Beattie, who joined the organisation at its commencement in 1990 and who has been Assistant Director since 1996. The Corporate Services Manager is Marney Ainsworth, who joined the organisation in April 2008. The Chief Prosecutor, Anita Killeen, holds her role in an acting capacity, and has done so since 2 November 2007 when my predecessor set up the position and appointed her to it. I have made no changes to the organisational structure or to make the Chief Prosecutor position substantive because of the previous Government's policy that the Serious Fraud Office would be disestablished and its functions and personnel transferred to the Organised and Financial Crime Agency New Zealand, OFCANZ.
8. The workload of the Serious Fraud Office comprises cases of financial crime involving serious and complex fraud. The Act leaves as a matter of discretion for me whether a case involves serious or complex fraud. As a rule of thumb, all cases over \$500,000 are ones that we would consider investigating. A Memorandum of Understanding with the Police carries this understanding into effect. However, cases involving lesser sums are often dealt with by the Serious Fraud Office, particularly for reasons of public interest but also for reasons of complexity. Cases involving public figures have often warranted a Serious Fraud Office investigation for reasons of public interest, including the cases of Jeff Chapman, the former Auditor-General, inquiries into the Waipareira Trust, allegations relating to Aotearoa Television in 1997, two District Court judges (Judges Beattie and Hesketh), Donna Awatere Huata, and most recently the investigation into donations received by the New Zealand First Party. Our ability to investigate such cases is enhanced by what I believe is the public perception that the SFO is genuinely independent.
9. Cases are categorised as being in assessment (when I decide whether to commence an investigation using statutory powers), detection (or Part 1 cases, enabling notices for documents to be issued), investigation (Part 2 cases, using more extensive powers), prosecution and other (suspended files, applications for costs, etc), and our statistical reporting is based on this categorisation.
10. The working environment of the Serious Fraud Office has been difficult ever since the previous Government announced, slightly over 14 months ago, that the SFO was to be disestablished. The environment of uncertainty has made it difficult to maintain morale and retain staff. In the last financial year 9 of the 34 staff left and were replaced. 6 were professional staff and 3 support staff. Since then 3 more staff have resigned and have either been replaced or are in the process of being replaced. The entire legal team, with the exception of the Chief Prosecutor, will have joined the SFO since March 2008. Fortunately, there have generally been good fields from which to recruit investigators and forensic accountants, but recruiting top class lawyers has proved more difficult.

11. Even through these difficult times, the SFO has remained busy with its workload of serious and complex fraud cases. The workload is expected to increase. At financial year end, we had 36 investigations in progress and 24 prosecutions making their way through the courts. As at 12 November, we had 45 investigations under way and 23 prosecutions. There are now seven failed finance companies cases under investigation (of 25 collapsed finance companies) and the first case to be charged is expected before Christmas. These cases are resource-intensive. The expected contracting of the economy may well produce more business. If the new Government decides not to proceed with the disestablishment legislation, there will also be a volume of business associated with assistance being provided to OFCANZ for its investigations. It seems certain that the demands for resources are likely to increase over the next 12 to 24 months.
12. The organisation has operated on a very tight and small budget for many years and has delivered extremely good results for the taxpayers' contribution. The following table illustrates the comparative performance and productivity of the SFO, the English Serious Fraud Office and the Southern District (federal) and District Attorney (state) prosecution agencies in New York that also undertake serious and complex fraud work. These data were obtained from the SFO annual reports and the review of the English Serious Fraud Office carried out by Jessica De Grazia, a former New York prosecutor, in June 2008. They illustrate that New Zealand performs at world class levels and very economically in its response to serious and complex fraud. In the last reporting year, the SFO had a 100% conviction rate, and that has continued in the current year to the present day, so that the conviction rate now stands at 90.83%. (The table is in the form I presented it to an anti-corruption conference in Singapore last month, which is why the financial information is expressed in sterling).

	Resources (GBP equivalent) - FY2007	Staff	Fraud cases FY2002/3 - 2006/7	Conviction rate
SFO (Eng)	43	311	166	61%
SDNY (federal)	not public	77	810	97%
DANY (state) * = fraud work	40 (total)	19*	124*	92%*
SFO (NZ)	2	34	57	90%

13. The Serious Fraud Office operates on a very lean basis. It lacks some key capability which, if not remediated, is likely to contribute in the medium to long term to a drop off in performance, a failure of the organisation's ability to renew itself, and consequent impacts upon operational capability, recruitment and retention, and morale. The Office suffers from the problems common to small agencies. It does not

have sufficient resource to provide a comprehensive corporate service support structure. It depends on SSC to provide financial bureau services. It hires in HR support on a contract basis. It has no policy or business analysis capability. I am looking at ways to obtain better support in these functions in a way that does not commit the SFO to expensive and permanent financial commitments.

14. The organisation has been the subject of recent allegations of impropriety, all of which but one have been without substance.

a. The former Prime Minister alleged that someone from the SFO leaked information to the National Party that I had decided to open an investigation into the allegations that donations to the New Zealand First party had not been received by the party. I received assurances, which I accepted, from all staff members with knowledge of the case that they had made no such disclosure.

b. There was a regrettable lapse in professional conduct, borne probably of frustration, when an anonymous letter

was written to the Chairman of the Law and Order Select Committee, Mr Mark MP. Writing after the Committee had reported the Abolition Bill, the anonymous author expressed disappointment that Mr Mark's party was supporting the progress of the Bill. I advised your predecessor that I regarded the matter as serious and have instigated an inquiry, lead by a senior staff member and peer reviewed by a consultant to the Independent Police Conduct Authority, to ascertain the identity of the writer of the letter. Mr Mark wrote to the State Services Commissioner, Mr Rennie, after the Committee had considered the matter, asking him to investigate. Mr Rennie has advised Mr Mark that he is satisfied that I have instigated an inquiry, and he is monitoring in its progress. The inquiry has not yet concluded.

d. In the last week of the election campaign, Mr Peters alleged that the Dominion Post had obtained information from the SFO for its story on 1 November alleging that Mr Meurant had been involved in "cash for policy" dealings with potential donors. I advised the news media outlet that carried the story that the SFO had never had the information and so could not have and had not provided it to the Dominion Post. The allegation amounted to Mr Peters asserting that the SFO had committed criminal offending, by breaching the SFO Act. I do not propose to take the matter up with Mr Peters, unless he repeats the allegation or raises the matter with me.

e. Outstanding is a complaint made to the Police by Mr Peters that I breached the SFO Act in making information available to the Privileges Committee concerning the source of funds used to meet the costs order for \$40,000 Mr Peters faced from the court on the Tauranga election petition. I have advised the Police that I exercised my statutory discretion under s 36, and that I had had advice from Douglas White QC confirming the lawfulness and propriety of the disclosure.

Major issues requiring decision

15. It appears from statements made by Mr Key on Tuesday 17 November and by you on 18 November that the SFO will not be going into the Police and that the new Government intends to follow through on statements made when in opposition that if the Abolition Bill had not passed by the time Parliament rose it would not proceed with it.

Communication and reporting

22. You and I will need to agree the frequency and content of communications arrangements so that I can best serve your needs. My practice with your predecessor was to meet regularly, but only once a quarter, on account of Dr Cullen's heavy portfolio load. As well I provided written briefings on all matters requiring decision and in particular concerning policy questions as they arose through the Government's development of its policy in relation to what became the Serious Fraud Office (Abolition and Transitional Provisions) Bill.
23. I have not reported to the Attorney on cases under investigation or prosecution except in rare instances where I perceived the Attorney might be required to answer questions personally. Such cases have been those involving Ministers or other senior public figures. The key to communication of such matters was the shared perception between me and the Attorney that there needed to be the avoidance of any perception that he exercises any political influence in my decisions to take on or not to take on cases. It was for both his protection and mine. Practically, I would give the Attorney a short period of notice in relation to any public statements I might make concerning such cases so that he was aware in advance, but not so long in advance that he could be accused of any involvement in the decision. If this arrangement is satisfactory to you, I will propose to continue it.
24. You may wish closer reporting than the annual report on business trends and on organisational matters. As signalled above, I envisage that, if the SFO is retained as a separate agency, a programme of work will need to get underway that recognises the reality of OFCANZ and which best positions the SFO for the future. Such matters should be developed with your knowledge.
25. I attach a copy of the SFO's one-page strategic plan, developed in April 2008.



Grant Liddell
Director and chief executive

Encl