



NEW ZEALAND: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

March 2016

This report, submitted by New Zealand, provides information on the progress made by New Zealand in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 10 March 2016.

The Phase 3 report evaluated New Zealand's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

Summary of findings

1. In December 2015, New Zealand presented its written follow-up report to the OECD Working Group on Bribery (Working Group), outlining its responses to the recommendations and follow-up issues identified during the Phase 3 evaluation in October 2013. New Zealand has taken considerable steps to implement the Working Group's Phase 3 recommendations, with 21 out of 29 recommendations fully implemented, seven partially implemented and one not implemented.

2. New Zealand has addressed a number of high-priority Phase 3 recommendations by passing substantial amendments to the *Crimes Act 1961*, with effect from 4 November 2015. The amendments enhance New Zealand's corporate liability system by establishing a clearer and broader statutory basis for legal person liability for foreign bribery. The Lead Examiners consider that the new regime appears to be in line with approach (a) in Annex I of the 2009 Recommendation (recommendation 3). The amendments also: remove the dual criminality exceptions for foreign bribery (recommendations 2a and 6) and for money laundering where foreign bribery is the predicate offence (recommendation 9a); clarify the routine government action exception (small facilitation payments) for foreign bribery (recommendation 2b); allow for sanctions of both imprisonment and fines for natural persons (recommendation 4a); and introduce specified fines for legal and natural persons (recommendation 4b).

3. New Zealand has demonstrated increased use of asset confiscation tools and issued guidelines on the quantification of proceeds of bribery (recommendation 4d). These measures enhance the overall effectiveness of the sanctions regime. New Zealand has also maintained adequate statistics on sanctions imposed in bribery cases (recommendation 4c), but not in relation to money laundering cases where foreign bribery is the predicate offence (recommendation 9c).

4. New Zealand has made progress in detecting and investigating foreign bribery offences, however, as of December 2015, no investigation had given rise to prosecution (recommendations 1 and 5a). At the time of Phase 3, four foreign bribery allegations had surfaced and New Zealand had two investigations. Since Phase 3, New Zealand has opened four additional investigations. In total, eight allegations have been identified since the entry into force of the Convention in New Zealand – six of these have given rise to the opening of an investigation, of which four are ongoing. These investigations have yet to progress to prosecution. New Zealand has also provided training to law enforcement authorities (recommendation 5b and 9b); has made greater efforts to obtain evidence from foreign jurisdictions (recommendation 7); and is in the process of reviewing its extradition regime, including the possibility of removing the power to refuse extradition on the basis of nationality (recommendation 8). The Working Group is encouraged by these efforts but, nevertheless, stresses the significant need for New Zealand to strengthen enforcement of its foreign bribery offence.

5. While New Zealand has taken some measures to avoid the prohibited factors in Article 5 of the Convention being taken into consideration in foreign bribery prosecutions, further steps are necessary to fully address the Working Group's concerns. New Zealand has raised awareness of Article 5 of the Convention among prosecutors and, to some extent, enhanced its implementation by notifying all Crown Solicitors that the prosecution guidelines should be read consistently with it. However, the notice to Crown Solicitors does not completely address recommendation 5c because the prosecution guidelines themselves remain unchanged and could potentially be read in the absence of the notice. Further, New Zealand has not removed the requirement of the Attorney General's consent for foreign bribery prosecutions (recommendation 5d).

6. New Zealand has taken substantial measures to raise awareness of foreign bribery risks and detection among accountants and external auditors (recommendation 10a), but has not expanded the reporting obligations of external auditors who discover indications of foreign bribery to require reporting to corporate monitoring bodies (recommendation 10b). New Zealand did consider the possibility of requiring auditors to report to competent authorities (recommendation 10b) and decided against imposing such an obligation.

7. New Zealand has fully implemented the Phase 3 recommendations related to tax measures to combat foreign bribery, which was another priority area identified in Phase 3 (recommendations 11a, 11b, 11c and 11d). The *Income Tax Act 2007* has been amended to explicitly ensure that no bribe payments (including foreign bribe payments) are tax deductible. Further, New Zealand: has developed audit guidelines on foreign bribery and a training module for tax examiners of Inland Revenue; approved a new information-sharing agreement between Inland Revenue and the New Zealand Police; and raised awareness of anti-bribery measures among a wider audience, particularly small to medium sized enterprises (SMEs).

8. New Zealand has undertaken a wide range of anti-bribery awareness raising activities for the public and private sectors (recommendation 12). This included conducting numerous presentations and establishing an online anti-corruption training module, which, among other things, encourages businesses to adopt adequate internal controls, ethics and compliance systems to detect and prevent bribery. In addition, the Ministry of Justice has launched an anti-corruption guide for New Zealand businesses that provides principles for effective anti-corruption compliance procedures and targeted information for SMEs. Further, New Zealand has raised awareness about the obligation on public servants to report credible suspicions of foreign bribery to law enforcement (recommendation 13a). New Zealand has also raised awareness of the Protected Disclosures Act among the public and private sectors (recommendations 13b). The New Zealand Export Credit Office has adopted written guidance on determining ceilings on agents' commissions and interrupting support where bribery is proven, and has provided training on its anti-bribery policy and reporting obligations to its staff (recommendation 14b).

9. Finally, regarding public advantages, New Zealand has not issued adequate guidance to its contracting authorities to ensure that exclusion from public procurement on the basis of a conviction for foreign bribery is effectively implemented in practice (recommendation 14a). While an agency may exclude a supplier in these circumstances, the Working Group has questioned the effectiveness of the regime in practice. For example, in Phase 3 the Working Group noted that there is no requirement in the public procurement process for a government agency to conduct due diligence, or for a tenderer to declare whether it has been convicted.

Conclusions of the Working Group on Bribery

10. Based on these findings, the Working Group concludes that *recommendations 2a, 2b, 3, 4a, 4b, 4c, 4d, 5b, 6, 7, 9a, 9b, 10a, 11a, 11b, 11c, 11d, 12, 13a, 13b and 14b* have been fully implemented, *recommendations 1, 5a, 5c, 8, 9c, 10b and 14a* have been partially implemented, and *recommendation 5d* has not been implemented. In line with its usual practice, the Working Group agreed that the recent legislative amendments should be fully assessed in the next evaluation, particularly with regard to legal person liability. In this context, the Working Group further agreed to reassess New Zealand's implementation of the substance of recommendation 2b (routine government action exception) and recommendation 3 (system of corporate liability) in Phase 4.

11. The Working Group also agreed to continue to monitor follow-up issues 15a, 15b and 15c as case law and practice develops and in Phase 4. Follow-up issue 15d has been fully addressed by the recent amendments to the Income Tax Act, as described above.

PHASE 3 EVALUATION OF NEW ZEALAND: WRITTEN FOLLOW-UP REPORT

Name of country:	New Zealand
Date of approval of Phase 3 evaluation report:	October 2013
Information to be submitted:	9 November 2015

PART I: RECOMMENDATIONS FOR ACTION

Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery

NB: Annex 1 provides a list of abbreviations and acronyms used throughout the report.

Text of recommendation 1:

1. The Working Group recommends that New Zealand significantly step up efforts to detect, investigate and prosecute foreign bribery. [Convention Article 1, 2009 Recommendation, V]

Action taken as of the date of the follow-up report to implement this recommendation:

The Serious Fraud Office (SFO) continues to take proactive steps to detect and investigate reports of foreign bribery. The SFO has now opened six foreign bribery investigations, four of which are ongoing. Two of these were opened in the past year.

From October 2013 to September 2015 the SFO received 44 complaints of corruption, 13 of which were made by whistleblowers. Six of the 44 complaints related to foreign bribery, one of which was made by a whistleblower. Where allegations are identified or received, they are recognised as a priority area for the SFO and investigated as far as is possible on the information available, including information sought both informally and formally from foreign law enforcement agencies.

Steps the SFO takes to detect and investigate foreign bribery include:

- The review of domestic and foreign press reports specifically relating to allegations of foreign bribery.
- Regular liaison with foreign law enforcement agencies, in particular those in the Asia Pacific region, including at meetings of the APEC Anti-Corruption Working Group, Economic Crime Agency Network and other international conferences.
- Regular informal discussions and meetings with foreign law enforcement agencies (for example, the Australian Federal Police, and Taiwan's Agency Against Corruption) with a view to identifying potential instances of foreign bribery.
- Presentations at international conferences attended by representatives from the public and private sectors, including the Hong Kong ICAC Corruption Symposium, the UK Cambridge Economic

Crime Symposium, the biennial Australian Public Sector Anti-corruption Conference, and the Annual Australian Public Sector Fraud and Corruption Congress.

- Providing training to the Pacific Prosecutors Association Annual conference in Tonga and further training to the Prosecutors' office in Samoa.
- Providing training to the Police FIU in the Cook Islands on forensic accounting investigations of fraud and corruption, including foreign bribery.

Text of recommendation 2(a):

2. Regarding the foreign bribery offence, the Working Group:

(a) Urges New Zealand to proceed, as a matter of priority with the planned amendments to remove the dual criminality exception in section 105E of the Crimes Act; [Convention Article 1, 2009 Recommendation, III (ii), V, VI and Annex I A]

Action taken as of the date of the follow-up report to implement this recommendation:

The dual criminality exception currently in section 105E of the Crimes Act was repealed by [Clause 7](#) of the Organised Crime and Anti-corruption Legislation Bill (the Bill) (**Annex 2**) which passed its third reading in Parliament on 4 November 2015. All Crimes Act amendments came into force on 7 November 2015.

As the amendments in the Bill have not yet been incorporated into their respective Acts, we have included a mock-up of the foreign bribery offence, which marks the amendments made by the Bill in tracked changes (**Annex 3**).

Text of recommendation 2(b):

2. Regarding the foreign bribery offence, the Working Group:

(b) Urges New Zealand (i) to clarify the routine government action (facilitation payments) exception in section 105C(3) of the Crimes Act, to ensure that the foreign bribery offence can apply to any bribery of a foreign public official in the conduct of international business in order to obtain discretionary or illegal acts by the official; or the granting of any improper advantage; and (ii) in its periodic review of its policies and approach on facilitation payments pursuant to the 2009 Anti-Bribery Recommendation, to consider the views of the private sector and civil society. [Convention Article 1, 2009 Recommendation, III (ii), V, VI and Annex I A]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) Clarification of facilitation payments exception

Following a review of the routine government action (facilitation payments) exception in section 105C(3) of the Crimes Act, [Clause 6](#) of the Bill clarified that the exception does not apply to any action that provides either an undue material benefit to a person who makes a payment; or an undue material disadvantage to any other person.

The Ministry of Justice (MOJ) has prepared a guidance paper for New Zealand businesses how to comply with New Zealand's narrow exception, including the new requirement for companies to record facilitation payments in their accounts (**Annex 4**). Importantly, the guidance advises that the changes made by the Bill effectively exclude illegal acts from the scope of New Zealand's exception, because an illegal payment will almost always provide an undue material advantage or disadvantage.

However, in line with the OECD's 2009 Recommendation, rather than criminalising facilitation payments, the MOJ is instead highlighting the risks involved with making them, and encouraging businesses to develop procedures and controls to prohibit their use, (including by providing staff training and conducting risk assessments to ensure the business can operate effectively and efficiently without the use of these payments).

The MOJ is currently conducting a targeted consultation with the private sector and civil society on this guidance. This includes Transparency International New Zealand (TINZ), BusinessNZ (an NGO representing New Zealand businesses), leading New Zealand law and accounting firms and industry bodies representing auditors and accountants. Once this consultation is complete, the guidance will be published on the MOJ website and linked to by other key public sector agencies including the SFO, New Zealand Trade and Enterprise (NZTE), New Zealand Export Credit Office (NZECO), State Services Commission (SSC), Inland Revenue (IR), and the Ministry of Foreign Affairs and Trade (MFAT). We expect this to occur prior to the presentation of our report to the Working Group in December and will keep you updated in this regard.

Once published, the MOJ will work with the private sector and civil society to raise awareness of the guidance among New Zealand businesses.

(ii) Consultation with private sector and civil society

Select committee process on the Bill

Following its first reading in Parliament, the Bill was referred to a Parliamentary select committee. Select committees consist of sitting members of Parliament and work on behalf of, and report their conclusions to, Parliament. As part of its consideration of the Bill, the select committee invited the public to make submissions which is standard practice in New Zealand. The submissions process enables members of Parliament to examine issues in detail and provides the public an opportunity to comment on and suggest changes to proposed legislation.

The committee received written submissions from the Human Rights Commission, Michael Macaulay (Institute for Governance and Policy Studies at Victoria University), and TINZ calling for the removal of New Zealand's facilitation payments exception. These are available on the [New Zealand Parliament website](#). TINZ also provided an oral submission to the select committee during a meeting which was open to the public, including the news media.

The MOJ considered each of these submissions when providing advice to the committee, who in turn

considered them in its report-back to the Parliament (**Annex 2**). While the select committee determined that the changes in the Bill struck the right balance, the above mentioned guidance on facilitation payments takes these submissions into account. As outlined above, the MOJ is also conducting a targeted consultation with the private sector and civil society on this guidance to ensure their views are considered.

Text of recommendation 3:

Regarding the responsibility of legal persons, the Working Group strongly urges New Zealand to review its system of liability for legal persons for foreign bribery as a matter of priority, to ensure that the criteria for such liability are broadened and that the system takes one of the approaches described in Annex 1 to the 2009 Recommendation; [Convention Article 2, 2009 Recommendation III ii), V, Annex I B]

Action taken as of the date of the follow-up report to implement this recommendation:

As outlined in our additional written follow-up report on recommendation 3, in 2014, the MOJ undertook a review of New Zealand's system of corporate liability for foreign bribery in consultation with relevant stakeholders (including the SFO, the Ministry for Business, Innovation and Employment (MBIE), the Crown Law Office (CLO), and BusinessNZ.

As a result of the review, and to address the Working Group's concerns, [Clause 6](#) of the Bill inserted a specific provision on corporate liability into the foreign bribery offence. The new provision clarifies that a company is liable for foreign bribery where:

- a) the offence is committed by an employee of the company, and
- b) the employee was acting within the scope of their authority, and
- c) the offence was committed at least in part with the intent to benefit the company, and
- d) the company failed to take reasonable steps to prevent the offence.

The proposed amendment is consistent with the approach taken in Annex 1 to the 2009 Recommendation.

To assist New Zealand businesses in complying with the new provision, the MOJ has drafted a comprehensive anti-corruption compliance guide for New Zealand businesses. Among other things, the guide sets out the above amendments to the foreign bribery offence and provides comprehensive guidance on how to establish, implement, and maintain effective procedures to ensure compliance with New Zealand's domestic and foreign bribery offences.

The guide (which is discussed further in recommendation 12) is currently out for consultation with key government stakeholders (including, the SFO, MBIE, IR, NZTE, NZECO, External Reporting Board (XRB), and New Zealand Police (NZP)). Following this, the MOJ will also conduct a targeted consultation with the private sector and civil society (again, including TINZ, BusinessNZ, leading law and accounting firms and industry bodies).

Once the Government consultation is complete (around mid-November), the MOJ would be pleased to share a draft of the guide with the Secretariat and Lead Examiners and would also be grateful for any feedback you may have.

Text of recommendation 4(a):

Regarding sanctions, the Working Group recommends that:

New Zealand consider making both imprisonment and fines available as sanctions against natural persons for foreign bribery; [Convention Article 3; 2009 Recommendation III (ii)]

Action taken as of the date of the follow-up report to implement this recommendation:

Clause 6 of the Bill amended the penalties in section 105C of the Crimes Act to make new specified fines available *in addition* to a term of imprisonment for natural persons convicted of foreign bribery (see response to 4(b) below).

Text of recommendation 4(b):

4. Regarding sanctions, the Working Group recommends that:

(b) In connection with the revision of its system of corporate criminal liability for foreign bribery, New Zealand (i) ensure that legal persons convicted of foreign bribery are subject to effective, proportionate and dissuasive sanctions; and (ii) re-visit the possibility to make available additional sanctions for legal persons to ensure effective deterrence; [Convention Article 3; 2009 Recommendation III (ii) and V]

Action taken as of the date of the follow-up report to implement this recommendation:

Clause 6 of the Bill amended the penalties for New Zealand's foreign bribery offence and introduced additional sanctions for legal persons convicted foreign bribery to ensure that they are subject to effective, proportionate and dissuasive sanctions.

Amended penalties for foreign bribery offence.

Following the select committee process on the Bill, the maximum penalties for foreign bribery were amended to address the OECD's concerns around the discretionary nature of the unlimited fine for legal persons. Section 105C of Crimes Act now provides that persons convicted of foreign bribery are liable to a term of imprisonment not exceeding seven years *and/or* a fine not exceeding the greater of:

- a. \$5 million; or
- b. if it can be readily ascertained and if the court is satisfied that the offence occurred in the course of producing a commercial gain, three times the value of any commercial gain resulting from the contravention.

This is the first 'commercial gains formula' to appear in the Crimes Act, however, we consider it appropriate given the commercial nature of foreign bribery. Further, it closely links the penalty with the offending making it less likely that companies will make a commercial decision to pay bribes or treat any potential fines as a 'cost of doing business.' We consider the new fine will act as a deterrent and highlight the amended penalty in the new anti-corruption compliance guide for New Zealand businesses.

Additional sanctions for legal persons – amendment to definition of “crime involving dishonesty”

Clause 4 of the Bill updated the definition of “crime involving dishonesty” in section 2 of the Crimes Act

to include all public and private sector bribery and corruption offences (including foreign bribery).

This amendment provides the Court with the power to prevent persons convicted of foreign bribery from being a director, promoter, or concerned (directly or indirectly) in the management of a company for 5 years ([s382 Companies Act 1993 \(CA\)](#)). The Court can also make an order prohibiting a person from acting such roles without the leave of the Court, on either a permanent basis or for a specified period of time ([s383 CA](#)). Contravention of either of these sections is an offence carrying maximum penalties of 5 years' imprisonment or a fine not exceeding \$200,000 ([s373\(4\) CA](#)).

Additional powers to de-register companies

The [Limited Partnerships Amendment Act](#) and the [Companies Amendment Act](#) came into force on 1 September 2014 and 1 May 2015 respectively. The amendments are intended to help guard against overseas entities using New Zealand's companies and limited partnerships registration systems to register legal persons for criminal activity. They include new requirements for companies and limited partnerships to:

- have a New Zealand-resident director or a director who is also a director of a company in an enforcement country (to provide an identifiable and accessible point of contact) ([s10\(d\) CA](#));
- disclose the date and place of birth of directors to enable the identification of directors ([section 12\(2\)\(b\)](#)); and
- disclose their ultimate holding company (if they have one) to identify relationships between companies ([s12\(2\)\(ca\) CA](#)).

The Registrar may disclose information relating to ultimate ownership and control to a government agency for "law enforcement purposes." This ensures that the above information can be shared with the Police and the SFO for the detection, investigation and prosecution of the foreign bribery offence ([s366 CA](#)).

The amendments have expanded the grounds for the Registrar, either by itself, or as a result of prompting by another government agency (domestic or overseas) to deregister a company if it, or its directors fail to:

- meet registration requirements ([section 318\(1\)\(aaa\)](#));
- respond to a new power to require correction or confirmation of information contained on the register ([section 318\(1\)\(ba\)](#));
- respond to the requirement to provide information on the ultimate ownership and control of a company ([section 319\(1\)\(bb\)](#)); and
- provide accurate information to the Registrar ([section 318\(1\)\(bc\)](#)).

In addition, the Registrar is able to:

- post public warnings about the company on the register ([s366A CA](#));
- prohibit persons from being directors if their companies have been removed on the grounds set out above and for an extended period of time ([section 385AA](#)); and
- collect information on the ultimate ownership and control of a company ([sections 365B-H](#)).

In so far as they are relevant, these measures applied to limited partnerships from 1 September 2014, new registrations of companies from 1 May 2015, and all existing companies from 29 October 2015.

Civil orders under the Criminal Proceeds Recovery Act 2009 (CPRA).

As outlined in our Phase 3 Report, New Zealand has extensive powers to confiscate the proceeds of foreign bribery under CPRA's civil-based asset-confiscation regime, regardless of whether a criminal

conviction has been obtained. This ensures that the proceeds of crime can be confiscated from those who distance themselves from actual offending but still profit from it. It also allows for confiscation where there is evidence of foreign bribery but no offender has been identified or convicted.

Text of recommendation 4(c):

4. Regarding sanctions, the Working Group recommends that:

(c) New Zealand maintain statistics on the criminal, civil and administrative sanctions imposed for domestic and foreign bribery in order to assess whether they are effective, proportionate and dissuasive; [Convention Article 3; 2009 Recommendation III ii) and V]

Action taken as of the date of the follow-up report to implement this recommendation:

New Zealand maintains comprehensive statistics on sanctions imposed for all domestic and foreign bribery offences. The MOJ receives quarterly reports that detail the number of prosecutions, convictions, and type and weight of sentence imposed for both legal and natural persons. Below is a summary of this data over past five years (including information on related fraud offences).

Public sector bribery and corruption (sections 100-105D of the Crimes Act)

Foreign bribery (sections 105C and 105D of the Crimes Act)

- There have been no cases of foreign bribery in New Zealand.

Domestic bribery (sections 100-105B Crimes Act)

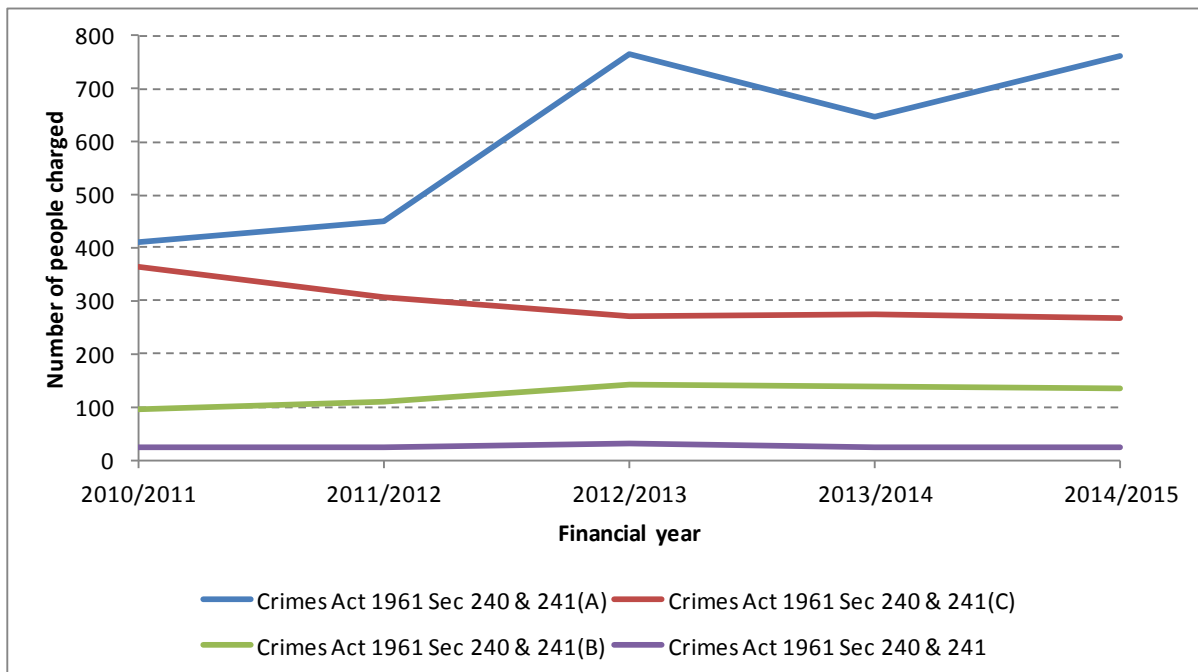
- Over the last five years, 20 people have been charged with domestic bribery and corruption offences.
- All charges laid were against natural persons.
- Fifteen of these were convicted.
- Eight were sentenced to imprisonment, five to home detention, and two to community work.
- The maximum prison sentence imposed was two years and nine months and the minimum 6 months.
- The low number of charges mean that no meaningful trends can identified

Private sector bribery and corruption (breaches of the Secret Commissions Act)

- Nine people have been charged with offences under the Secret Commissions Act over the last five years.
- Of those, seven were convicted.
- Four received a sentence of imprisonment, the longest of which was one year and eight months. The shortest prison sentence imposed was six months.
- Three people were sentenced to home detention.

Fraud (sections 240 – 242 Crimes Act)

Figure 1. Number of people charged with fraud offences by section of crimes act and financial year*



*The number of charges laid under section 242 came to 44. This number is too small to represent over the five years. Therefore charges laid under these sections of the crimes act are excluded from Figure 1.

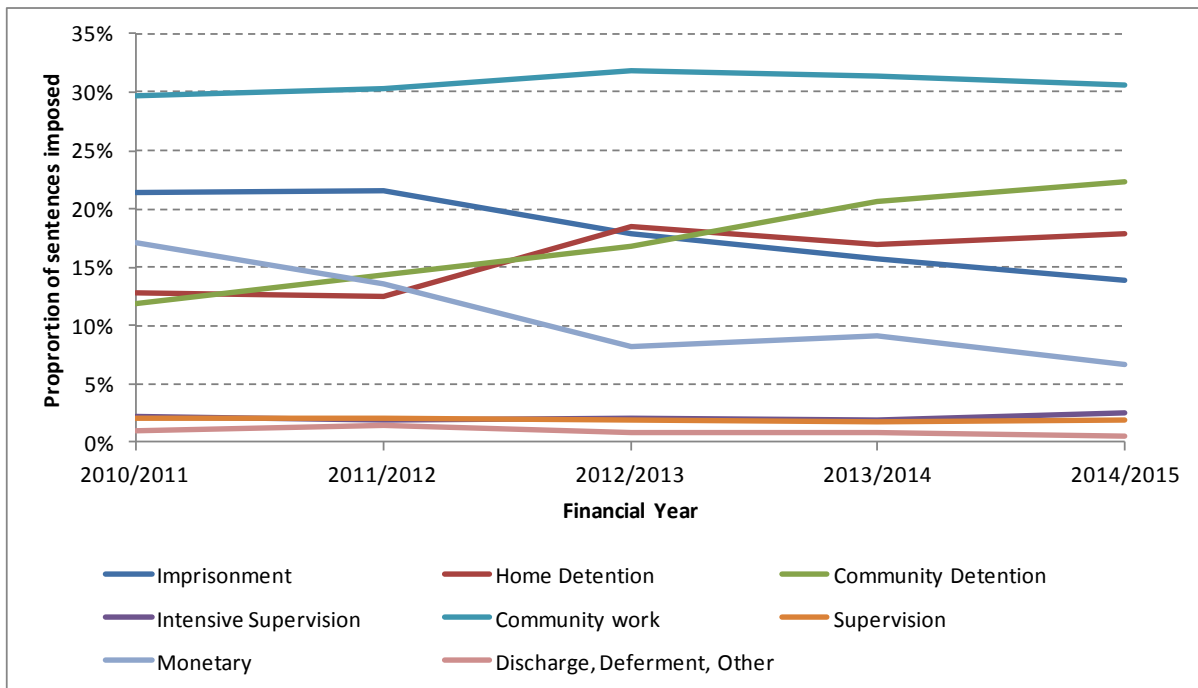
- Over the last five years, the number of people charged with fraud offences has increased.
- This is driven by charges laid under sections 240 and 241(A) ('Obtain by deception (over\$1,000)' and 'Cause loss by deception (Over \$1,000)').
- These are the most commonly prosecuted fraud offences, making up over 95% of fraud charges each year.
- The conviction rate for those charged with these offences has increased over the past five years, from 72% in 2010/2011 to 82% in 2014/2015.

Table 1. Conviction rate of people charged with fraud offences, 2010/2011 – 2014/2015

Year	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015
Conviction rate	72%	74%	80%	81%	82%

Figure 2. Sentence mix for people convicted of fraud offences, 2010/2011 to 2014/2015

Figure 2. Sentence mix for people convicted of fraud offences, 2010/2011 to 2014/2015



- Figure 2 shows the mix of sentences imposed over the last five years for people convicted of fraud offences. It shows that community work is consistently imposed in around 30% of cases.
- Imprisonment and monetary sentences have decreased over the last five years, while community and home detention sentences have increased.
- The proportion of community work sentences under 50 hours has decreased over the past five years (from 26% in 2010/2011 to 11% in 2014/2015).
- Community work sentence lengths between 50 and 150 hours have increased over the past five years (44% of community work sentences in 2010/2011 to 57% in 2014/2015).
- Sentences of longer than 150 hours have consistently made up around 30% of community work sentences imposed over the five years.
- The most common sentence of imprisonment across all five years is three months or less.

Text of recommendation 4(d):

4. Regarding sanctions, the Working Group recommends that:

(d) New Zealand make full use of the large range of asset confiscation tools offered under the Criminal Proceeds Recovery Act (2009), and to consider issuing guidelines on how to quantify the proceeds or benefits of a foreign bribery offence. [Convention Article 3; 2009 Recommendation III (ii) and V]

Action taken as of the date of the follow-up report to implement this recommendation:

The Asset Recovery Unit (ARU) continues to make full use of the broad range of asset confiscation tools at its disposal under the CPRA. Since the Act came into force, the NZP (through the ARU) has obtained forfeiture orders over assets worth an estimated NZD 64.1m (EUR 38.08). This is a substantial increase from the figures at October 2013 (NZD 28.8m (EUR 17.6m)).

The ARU continues to record statistics on predicate offending in relation to all civil actions taken under CPRA. This includes where foreign bribery is the predicate offence.

Updates to NZP Manual of Best Practice

To ensure that CPRA is used appropriately in foreign bribery cases, the NZP Manual of Best Practice has been updated to reaffirm the information sharing process between the ARU, SFO and Financial Intelligence Unit (FIU) (**Annex 5**). It notes that when commencing each investigation (which includes foreign bribery investigations), the SFO will consider whether there is potential for assets to be recovered and that all appropriate cases will be referred to the National Manager of the Financial Crime Group (FCG). The updates complement the Memorandum of Understanding (MOU) between the SFO and the NZP discussed in our Phase 3 Report.

All NZP and SFO staff are made aware of the manual which is housed on their respective intranet sites so that staff can reference it as needed.

Training on CPRA

In addition to this, the ARU has commenced training investigators throughout New Zealand's Policing Districts. Most recently, the Northern ARU ran a week long course for investigators from Northland, Auckland, Waikato and Bay of Plenty.

While these investigators don't specifically work for the ARU, they are the point of contact for all matters involving asset recovery in districts where the ARU is not housed. The intention is that those trained will work on the front end of cases involving asset recovery, generating referrals and ultimately assisting with recruitment into the ARU.

Guidelines to quantify the proceeds of foreign bribery

The ARU has recently prepared a short guidance document on quantifying the proceeds or benefits of bribery and corruption (including foreign bribery). The guide, provides examples of how CPRA will operate with respect to New Zealand's bribery and corruption offences and includes a link to the joint OECD-STAR analysis on Identification and Quantification of the Proceeds of Bribery (**Annex 6**). The document was disseminated to all staff within the ARU and SFO in October 2015 and is housed on a

sharepoint site that can be accessed by all ARU and FIU staff.

Text of recommendation 5(a)

5. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that:

(a) The SFO (i) thoroughly investigate and prosecute foreign bribery allegations; (ii) proactively gather information from diverse sources to increase the number of allegations and to enhance investigations; and (iii) make full use of special investigative techniques in foreign bribery investigations, where appropriate; [Convention Article 5; 2009 Recommendation XIII and Annex I D]

Action taken as of the date of the follow-up report to implement this recommendation:

(i) thoroughly investigate and prosecute foreign bribery allegations;

As outlined in the response to recommendation 1, the SFO continues to thoroughly investigate foreign bribery allegations. As at 31 October 2015, the SFO has opened six investigations into bribery of foreign public officials. Two of these were closed with no further action and the other four are being actively investigated. Of these four investigations, two commenced in the past year. The details of these cases are:

Case 1 - closed 2014. Allegation of the bribery of a foreign official in the middle east in order to win a contract. Formal requests for information were unsuccessful and the investigation could not be pursued.

Case 2 – closed 2013. Allegation of bribes being paid in a central African country in order to secure contracts, supported by newspaper reports and a document purporting to be a contract for services. After investigation and contact with local officials, no evidence of a criminal act was identified.

Case 3 – Ongoing investigation. Allegation of bribery and corruption in China relating to a subsidiary of a New Zealand organisation. This is an active investigation.

Case 4 – Ongoing investigation. Foreign and local newspapers reported allegations of bribes being paid to officials to obtain land for development. Leads within NZ have been investigated and formal assistance has been sought from an overseas jurisdiction.

Case 5 – Ongoing investigation. Foreign and local newspapers reported allegations of bribes being paid by an NZ company to the son of a senior public official. Formal assistance is being sought from an overseas jurisdiction.

Case 6 – Ongoing investigation. This is at its preliminary stage and relates to allegations of bribes being paid to officials in Pacific Island nations.

While not bribery of foreign public officials, in the last 12 months, the SFO has also investigated bribery of foreign corporates by New Zealand individuals or companies.

(ii) proactively gather information from diverse sources to increase the number of allegations and to enhance investigations;

The response to recommendation 1 sets out the sources used by the SFO in foreign bribery investigations.

In addition to this, the Registrar of Companies now has increased powers to disclose information relating to the ultimate ownership and control of a company to the SFO for the detection, investigation and prosecution of the foreign bribery offence (see response to recommendation 4(b) for further information).

Finally, the FIU now tracks all intelligence and STR content reports relating to corruption offences, including foreign bribery, which it shares with the SFO under the MOU discussed at paragraph 58 of New Zealand's Phase 3 Report. By way of reminder, the MOU expressly states that all allegations of bribery and corruption should be referred to the SFO. As advised in 2013, where the NZP (which includes the FIU) receives notifications of bribery or corruption, the information will be referred to the SFO to initiate a joint assessment process.

During the last 12 months, the FIU disseminated 15 reports, including 47 STRs relating to international bribery or corruption, four of which were clearly within the scope of the Convention. Of these four, three were disseminated to FIUs in foreign jurisdictions as the information related to suspected laundering of proceeds of bribery by individuals overseas. At this stage, we have not received further information from the respective overseas agencies. The fourth report was disseminated through Interpol Wellington and assisted New Zealand in its restraint of the proceeds relating to a bribery prosecution by the New South Wales Crime Commission.

In addition to this, Immigration New Zealand now receives electronic notifications (Red Notices) of persons wanted for bribery and corruption. In the event that a wanted person attempts to board a flight destined for New Zealand an alert is triggered preventing them from boarding of the flight.

(iii) make full use of special investigative techniques in foreign bribery investigations, where appropriate;

The special investigative techniques that the SFO applies to foreign bribery investigations include:

- compelling the provision of information relevant to its investigations;
- compelling attendance of individuals at interviews with the SFO;
- compelling interviewees to answer questions put to them in an interview (subject to safeguards whereby the interview cannot be used against the interviewee in criminal proceedings unless they put forward an inconsistent statement); and
- requiring the provision of computers and other electronic media so that they can be cloned and interrogated.

The SFO has worked alongside specialists from other law enforcement agencies in the investigation of domestic fraud and corruption who have carried out electronic intercepts of telephone calls to advance the joint investigation. However, to date, there has been no need to apply this tool in relation to foreign bribery investigations.

Text of recommendation 5(b):

5. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that:

(b) New Zealand provide law enforcement authorities with regular, practical training on (i) the foreign bribery offence; (ii) investigative techniques adapted to this offence; and, more generally, (iii) ways to more proactively detect, investigate and prosecute the offence of bribery of foreign public officials; [Convention Article 5; 2009 Recommendation Annex I D]

Action taken as of the date of the follow-up report to implement this recommendation:

- In June 2014 and 2015, the SFO provided training to the ARU on forensic accounting in fraud and corruption cases, including the investigation of the foreign bribery offence.
- In October 2014, the SFO sent two employees to Washington to attend the SEC Foreign Bribery and Corruption Conference.
- In June 2015, the SFO held a two day technical training conference on a number of subjects, including a session provided by a senior partner from the office of the Auckland Crown Solicitor on foreign bribery and corruption. A separate session focussed on investigative techniques, including seeking information from ‘the Cloud’, in relation to fraud and corruption cases.
- In August 2015, an SFO employee attended the three-week Singaporean Corrupt Practices Investigation Bureau Anti-corruption Executive Programme.
- In October 2015, the SFO hosted the FIU, who provided training on the work of the FIU including the detection of foreign bribery.
- The SFO also holds regular informal training discussions on the bribery and corruption offences in the Crimes Act, often specifically relating to an ongoing investigation in this area.

Text of recommendation 5(c)

5. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that:

(c) New Zealand take steps to ensure that the Solicitor General’s Guidelines cannot be interpreted contrary to Article 5 of the Convention, and that prosecutors are made aware of Article 5 of the Convention to ensure that the factors enumerated in the Article do not influence foreign bribery investigations and prosecutions; [Convention Article 5; 2009 Recommendation Annex I D]

Action taken as of the date of the follow-up report to implement this recommendation:

On 22 January 2014, the Acting Deputy Solicitor-General sent a letter to all Crown Solicitors outlining the concerns raised in our Phase 3 report around the relationship between Article 5 of the Convention and the *Solicitor-General’s Prosecution Guidelines*. The letter (**Annex 7**) provides that prosecutors are expected to read the Guidelines consistently with Article 5 when deciding whether to bring a prosecution for foreign bribery. It highlights that, as with all prosecutions, the independence of the prosecutor from political or other improper pressure is paramount. It further advises that prosecutors should ensure that the considerations identified in Article 5 are not taken into account as public interest factors that weigh against a decision to prosecute foreign bribery.

Text of recommendation 5(d):

5. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that:
- (d) New Zealand remove the requirement of the Attorney General's consent for the prosecution of foreign bribery cases. [Convention Article 5]

If no action has been taken to implement recommendation 5(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

We maintain the position expressed in previous evaluations that any potential risk of political interference with foreign bribery prosecutions is adequately mitigated by the procedural safeguards that New Zealand has in place; namely the fact that the consent function is delegated to the Solicitor-General or Deputy Solicitors-General who are senior public servants and act independently of the political process.

Removing the consent requirement for foreign bribery would be inconsistent with the general principle of New Zealand law that extraterritorial offences require the Attorney-General's consent, in particular to prevent the frivolous, vengeful or political use of private criminal prosecutions.

The consent requirement has never been refused in a corruption case and does not pose any risk of political interference in practice. For further information, see paragraphs 66-68 of New Zealand's Phase 3 Report.

Text of recommendation 6:

6. Regarding jurisdiction, the Working Group recommends that New Zealand remove or amend the dual criminality exception under section 105E of the Crimes Act in order to ensure that nationality jurisdiction for foreign bribery is applied according to the same principles applied with regard to jurisdiction for other offences committed abroad. [Convention Article 4]

Action taken as of the date of the follow-up report to implement this recommendation:

The dual criminality exception in section 105E of the Crimes Act was repealed by [Clause 7](#) of the Bill.

Text of recommendation 7:

7. With regard to mutual legal assistance, the Working Group recommends that New Zealand continue to routinely and promptly co-ordinate with foreign law enforcement authorities, and make greater efforts to obtain evidence from these authorities, including through formal treaty-based MLA, where appropriate, in foreign bribery cases. [Convention Article 9]

Action taken as of the date of the follow-up report to implement this recommendation:

Since October 2013, the CLO has sent a total of 16 formal MLA requests and received 76 from foreign jurisdictions. None of these related to foreign bribery.

The SFO also regularly liaises and works with a number of overseas law enforcement agencies. Since October 2013, the SFO has attempted to obtain evidence through formal processes from a number of foreign law enforcement authorities, including those in Australia, China, Hong Kong, Chinese Taipei, Fiji, the Cook Islands and the Solomon Islands. The SFO has also sought information from other foreign law enforcement authorities on an informal basis. These may become formal requests in the future.

Finally, the SFO has assisted a number of countries through the receipt of MLA requests, notably from China, Hong Kong and Chinese Taipei.

Text of recommendation 8:

8. With regard to extradition, the Working Group recommends that New Zealand (i) ensure that when an extradition request for foreign bribery is refused solely on the grounds of nationality, the cases would be submitted to competent authorities in New Zealand for the purposes of investigation and prosecution; and (ii) consider repealing section 101 of the Extradition Act on the refusal of extradition on the basis of nationality, in the context of its All-Government Response to Organised Crime and planned review of its Extradition Act. [Convention Article 10]

Action taken as of the date of the follow-up report to implement this recommendation:

These recommendations are being considered as part of the Law Commission's review of the Extradition Act and Mutual Assistance in Criminal Matters Act 1992 (MACMA). The purpose of the review is to ensure that these Acts contain processes that are efficient, effective, and not overly complex or unnecessarily expensive, but that also provide important checks and balances to protect those being investigated or prosecuted.

The review commenced in late 2013, and an issues paper was published in December 2014. The final report, including recommendations and draft legislation is expected early in 2016. If the Government decides to adopt the Law Commission's recommendations, legislative change will be required and the Parliamentary process will begin. More information about the review is available on the [Law Commission website](#).

(i) Referral to competent authorities where extradition request for foreign bribery is refused on grounds of nationality

Where there is no extradition treaty between the parties, New Zealand citizens can be surrendered subject to the general restrictions that apply to all individuals, and under section 30, the Minister can refuse extradition in certain circumstances on the basis of nationality. As part of its review, the Law Commission is considering whether to remove citizenship as a refusal ground altogether.

However, under the current provision, where an extradition request is made by a party to the Anti-Bribery Convention for a Convention-related offence, the request will be processed in accordance with the terms of the Convention, the Extradition Act, any relevant treaty, and the law of the requesting country.

Article 10(3) of the Convention provides that “*each Party shall take any measures necessary to assure either that it can extradite its nationals or that it can prosecute its nationals for the offence of bribery of a foreign public official. A Party which declines a request to extradite a person for bribery of a foreign public official solely on the ground that the person is its national shall submit the case to its competent authorities for the purpose of prosecution.*”

In light of Article 10(3), it is highly unlikely that New Zealand would ever exercise its discretion to refuse the request on the basis of nationality, even if permitted under an existing extradition treaty with a Convention party. Furthermore, we have no record of ever having done so. If a request *was* refused on the basis of nationality, it is anticipated that this would be submitted to domestic authorities regardless of whether this was requested by the requesting state.

(ii) Section 101 of the Extradition Act – refusal of extradition on the basis of nationality

Under section 101, extradition treaties concluded after 1999 must include a provision that the surrender of a New Zealand citizen *may* be refused on the grounds of nationality. Again, it is very unlikely that this section would be widely utilised because a treaty is not required to process an extradition request and New Zealand rarely enters into extradition treaties. The only extradition treaty concluded since 1999 is with South Korea, which expressly provides that any case refused on the basis of nationality must be submitted to domestic authorities if requested by the requesting state.

Regardless, the MOJ has raised the possibility of removing section 101 of the Extradition Act with the Law Commission, who is considering it as part of its review.

Text of recommendation 9(a):

9. Regarding money laundering, the Working Group recommends that:

(a) New Zealand pursue its efforts to amend the dual criminality exception for the money laundering offence under section 245 CA, in order to ensure that foreign bribery is always a predicate offence for money laundering, without regard to the place where the bribery occurred; [Convention, Article 7 and 2009 Recommendation, III (i)]

Action taken as of the date of the follow-up report to implement this recommendation:

[Clause 15](#) of the Bill amended section 245 of the Crimes Act to ensure that where an offence has extraterritorial effect, dual criminality is not required for it to be a predicate offence to money laundering. This means that foreign bribery will always be a predicate offence for a charge of money laundering

under section 243 of the Crimes Act, regardless of whether it is a crime in the jurisdiction where it occurred.

Text of recommendation 9(b):

9. Regarding money laundering, the Working Group recommends that:

New Zealand pursue its efforts to amend the dual criminality exception for the money laundering offence under section 245 CA, in order to ensure that foreign bribery is always a predicate offence for money laundering, without regard to the place where the bribery occurred; [Convention, Article 7 and 2009 Recommendation, III (i)]

Action taken as of the date of the follow-up report to implement this recommendation:

Training on money laundering offence, including foreign bribery as a predicate offence

The NZP runs a money laundering course twice yearly for its staff. The course provides attendees with the knowledge and skills to identify where bribery and corruption, including foreign bribery, is a predicate offence to money laundering.

In addition to NZP employees, staff also routinely attend from IR, New Zealand Customs, the SFO, the Ministry of Primary Industries, Immigration New Zealand, the Official Assignee, and international law enforcement agencies (including the Australian Federal Police, Queensland Police, Cambodia Prosecutors Office and the South Korea Prosecutors Office). The next session (taking place later this month) will include a police officer from Tonga.

Anti-corruption training for ACAMS members

On Wednesday 11 November 2015, the FIU, SFO and IR are running a joint anti-corruption training session on “adding the ABC’s to your AML” for members of the Australasian Chapter of the Association of Certified Anti-Money Laundering Specialists (ACAMS) (**Annex 8**).

The session will provide an update on anti-bribery and corruption issues for New Zealand reporting entities (e.g. banks and financial institutions), including guidance on red flags for detecting where the proceeds of bribes are being laundered. **See Annex 9** for the PowerPoint slides that deal specifically with detecting foreign bribery, including where it is a predicate offence to money laundering.

Text of recommendation 9(c):

9. Regarding money laundering, the Working Group recommends that:

(c) New Zealand maintain clearer statistics on investigations, prosecutions and sanctions related to money laundering in cases where foreign bribery is the predicate offence. [Convention Article 7 and 2009 Recommendation, III (i)]

Action taken as of the date of the follow-up report to implement this recommendation:

New Zealand keeps detailed statistics on prosecutions and convictions for money laundering offences, including the type and level of sentence imposed. Set out below is a summary of five year trends on New Zealand's money laundering offences.

While these statistics do not provide specific information on predicate offending, the FIU now tracks all intelligence and STR content reports relating to corruption offences. During the last 12 months, the FIU has disseminated 4 reports to FIUs in foreign jurisdictions that related to the suspected laundering of the proceeds of foreign bribery.

In addition to this, while not based on hard statistics, the FIU's draft National Risk Assessment advises that in New Zealand, drug offences, fraud, and tax evasion are the leading predicate offences for money laundering.

Money laundering (section 243 Crimes Act, section 12B Misuse of Drugs Act)

Number of natural persons charged with money laundering, by outcome, 2010/2011-2014/2015

Outcome	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	Total
Convicted	16	12	15	14	1	58
Not Convicted	38	30	22	11	11	112
Total	54	42	37	25	12	170

- 170 people have been charged with money laundering over the past five years.
- All charges have been laid against natural persons.
- Twenty nine of the 58 people convicted were sentenced to imprisonment.
- Sentence lengths ranged from 12 months to just over six years imprisonment. The average prison sentence imposed over the five years was two years and nine months.
- A further 20 individuals were sentenced to home detention. The most common length of home detention imposed was 12 months (six of the 20).
- The number of people convicted broken down by year and sentence are too small to be able to identify any meaningful trends.

Number of people charged for money laundering, by legislative reference, 2010/2011 – 2014/2015

Offence Description	Legislative Reference	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015
Engages In Money Laundering Transaction	Crimes Act 1961 Sec 243(2)	45	39	28	19	8
Money Laundering With Proceeds Of Drug Offences	Misuse Of Drugs Act 1975 Sec 12B	7	1	8	6	4
Obtain/Possess Property Intent To Launder	Crimes Act 1961 Sec 243(3)	2	2	1	0	0
Grand Total		54	42	37	25	12

Text of recommendation 10(a):

10. Regarding accounting and auditing, corporate compliance, internal controls and ethics, the Working Group recommends that:

(a) New Zealand raise awareness among accountants and external auditors, including by providing guidance and training on detecting red flags for foreign bribery in company accounts; [Convention Article 8; 2009 Recommendation III.i]

Action taken as of the date of the follow-up report to implement this recommendation:

Over the past two years, the SFO has made a number of presentations to groups of accountants and auditors (internal and external) that provided specific guidance on detecting red flags for foreign bribery. This includes presentations to:

- The New Zealand Chief Financial Officer Series Conference
- The Chartered Accountants of Australia and New Zealand institute (CAANZ), at their launch of its corruption report (available online [here](#)).
- The New Zealand Institute of Chartered Accountants (NZICA, the predecessor to CAANZ) Fraud and Forensics Conference
- The NZICA Chief Financial Officer special interest group
- The NZICA financial services special interest group
- The INSOL [insolvency practitioners industry group] annual conference, and
- The Institute of Internal Auditors New Zealand (IIANZ) annual conference

In addition to this, the MOJ has held meetings and discussions with representatives from various organisations, including the Office of the Auditor General (OAG), CAANZ, and IIANZ around the changes to the foreign bribery offence in the Bill. As outlined above, the MOJ is currently consulting with these groups on the facilitation payments guide, which includes advice on how businesses can comply with the new record keeping requirements introduced by the Bill. The MOJ will also consult these groups

on the wider anti-corruption compliance pack for businesses which includes guidance on detecting red flags for foreign bribery.

Once the documents are published, the MOJ will work with these groups to ensure the guidance documents are brought to the attention of auditors and accountants, including through newsletters, web-publications and presentations.

In September 2015 Auditor-General issued a reminder to all of its auditors of their responsibilities with respect to fraud under the Auditor-General's auditing standards (see section on "*Auditors Responsibilities – Fraud*" in **Annex 10**). By way of reminder, the OAG audits around 3,800 public sector entities every year. These audits must be carried out in accordance with the Auditor-General's auditing standards. The audits are carried out by the Auditor-General's own staff as well as by private sector auditors. The audit work carried out by private sector auditors on behalf of the Auditor-General is substantial, which is important as there is anecdotal evidence that the Auditor-General's standards are influential in shaping audit practice in the private sector.

The article reminds auditors that fraud includes foreign bribery and references the Convention and the 2009 Recommendations on Accounting Requirements, External Audit, and Internal Controls Ethics and Compliance, and provides advice for detecting fraud. More specifically, the article highlights that New Zealand's auditing standards include:

- An expectation that public entities will inform auditors of every fraud, irrespective of its size.
- A requirement for auditors to immediately advise the OAG of all frauds they become aware of, again, irrespective of the size.
- An expectation that public entities will consider reporting all instances of fraud to the appropriate law enforcement agency.
- In the event that the public entity fails to report the fraud to the appropriate law enforcement agency, the Auditor-General will consider doing so, for the purposes of protecting the interests of the public.

Finally, on 7 October 2015 TINZ hosted a workshop for New Zealand's "Super 16" (leading 8 New Zealand law and accounting firms) on "the business of managing corruption" (**Annex 11**). The half-day event was attended by 54 representatives from the legal and accounting professions, and various public sector agencies (including the MOJ). Key speakers from the public sector included the Attorney-General, Director of the SFO, Auditor General and CEO of the Financial Markets Authority (FMA). Topics included:

- The role of the FMA in anti-corruption
- Corruption in New Zealand
- Engaging clients to obtain advice to prevent corruption
- Business integrity tools
- Challenges for New Zealand businesses to address bribery and corruption

We are satisfied that any concerns raised around lack of awareness of the foreign bribery offence among the auditing profession are adequately addressed by the above measures.

Text of recommendation 10(b):

10. Regarding accounting and auditing, corporate compliance, internal controls and ethics, the Working Group recommends that:

(b) New Zealand (i) require external auditors who discover indications of a suspected act of foreign bribery to report the discovery to corporate monitoring bodies as appropriate; and (ii) consider requiring auditors to report to external competent authorities, including law enforcement authorities, in particular where management of the company fails to act on internal reports by the auditor, and ensure auditors making such reports reasonably and in good faith are protected from legal action as appropriate. [2009 Recommendation III(iv), (v), X.B(iii), (v)]

Action taken as of the date of the follow-up report to implement this recommendation:

External audits of public sector agencies

As outlined in our Phase 3 report, public sector auditors are subject to the International Standards on Auditing (ISA). [ISA\(NZ\) 240 and 250](#) impose a requirement on external auditors to report suspected instances of fraud (including foreign bribery) to the OAG and those charged with governance as appropriate. As outlined in the response to recommendation 10(b) above, the standard also requires public sector entities to consider reporting suspected fraud to law enforcement agencies, though this does not limit the Auditor-General from also considering whether to do this for the purpose of protecting public interests.

In New Zealand's Phase 3 Report, the Working Group expressed a concern that it was unclear what steps an auditor may take if they identify traces of bribery but not necessarily fraud. However, in June 2013, the Auditor-General amended [ISA\(NZ\) 240](#) to specifically provide that "fraud" includes bribery and corruption. As fraud is simply an umbrella term, the standard applies to foreign bribery in the same way that it does other offences involving dishonesty or deception.

External audits of private sector agencies

(i) Reporting suspected foreign bribery to corporate monitoring bodies

As stated in paragraph 97 of New Zealand's Phase 3 Report, the New Zealand Auditing and Assurance Standards Board (NZAuASB)'s revised [Professional and Ethical Standard 1: Ethical Standards for Assurance Practitioners](#) provides that where an auditor discovers fraudulent or illegal activities, he or she must "raise the matter with those charged with governance of the client" and "do all that can be done to persuade those charged with governance of the client to fulfil any legal obligations." If those charged with governance decline to fulfil their legal obligations, the auditor must consider resigning. Further, as discussed below, New Zealand's ethical and legislative framework permits the auditor to disclose the suspected wrongdoing to external competent authorities, including the Police Commissioner.

(ii) Reporting suspected foreign bribery to external competent authorities, including law enforcement

The NZAuASB continues to monitor the ongoing project by the International Standards Board for Accountants (IESBA), which considers amending the International Code of Ethics for Accountants (ICEA) to create a framework for auditors and accountants when encountering actual or suspected non-compliance with laws and regulations.

In September 2012, the IESBA issued an exposure draft proposing a requirement for auditors to report actual or suspected illegal acts to an appropriate authority in certain circumstances. In response, the NZAuASB simultaneously released an exposure draft for comment by its constituents. The overwhelming response (both nationally and internationally) was concern as to how the proposals would operate in practice and the potential for unintended consequences.

The IESBA published an updated exposure draft on this topic in May 2015 which proposes a requirement to disclose suspected illegal acts to an appropriate authority where *required* by law or regulation. If a country does not have a legal or regulatory requirement to disclose, then the revised framework would permit (rather than require) the auditor to disclose the matter to an appropriate authority in certain circumstances (determined by the extent of actual or potential harm from the matter to the wider public).

The NZAuASB supports this re-exposed framework and the general principle that auditors must act in the public interest. NZAuASB has issued a [New Zealand exposure draft](#) proposing to adopt the IESBA re-exposure draft if finalised as proposed. The period for comment closes on 10 November 2015.

The NZAuASB's strategic objective is to align with international standards, and only to modify the international requirements where there is a compelling reason to do so. At this time, there is no compelling reason for New Zealand's ethical standards for auditors and accountants to go beyond what is required internationally. Further, any requirement to report foreign bribery to third parties is better placed in law or regulation (rather than a code of ethics) as it would also need to be accompanied by legal protection for making such a disclosure.

[Section 43\(1\)](#) of the Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) Act 2009 already permits (though it does not require) an auditor to report suspicious transactions relevant to the investigation or prosecution of an offence within the meaning of [section 243\(1\) of the Crimes Act](#), which includes foreign bribery. Further, auditors that do report serious wrongdoing (such as a suspected act of foreign bribery) are afforded extensive protections under New Zealand's Protected Disclosures Act (PDA) (see discussion at paragraphs 133-135 of New Zealand's Phase 3 Report).

Therefore, while New Zealand has given due consideration to this recommendation, at this point in time, there are no plans to amend New Zealand's ethical standards or legislation to require disclosure. However, as outlined above, New Zealand legislative and ethical frameworks both permit disclosure and provide protections to auditors that do disclose in good faith.

Text of recommendation 11(a):

11. Regarding tax measures to combat bribery of foreign public officials, the Working Group:

(a) Urges New Zealand to proceed with plans to amend its legislation to ensure that no foreign bribe payments covered under criminal law are tax deductible, including in particular bribes (i) paid through intermediaries; (ii) paid for the purpose of obtaining an advantage for a third party; and (iii) paid to foreign public officials for acts or omissions in relation to the performance of official duties; [2009 Tax Recommendation]

Action taken as of the date of the follow-up report to implement this recommendation:

Clause 51 of the Bill amended the Income Tax Act 2007 to ensure that no bribe payments (including foreign bribe payments) are tax deductible. As recommended, this includes bribes (i) paid through intermediaries (ii) paid for the purpose of obtaining an advantage for a third party; and (iii) paid to foreign public officials for acts or omissions in relation to the performance of official duties.

Text of recommendation 11(b):

11. Regarding tax measures to combat bribery of foreign public officials, the Working Group:

(b) Recommends that in parallel with the planned amendments to its tax legislation, New Zealand pursue its efforts to provide guidelines, instructions and training to tax examiners on (i) the non-tax deductibility of bribes; (ii) determining whether a particular payment to a foreign public official comes under the facilitation payment exception; and (iii) detection of foreign bribery during tax audits; [2009 Tax Recommendation]

Action taken as of the date of the follow-up report to implement this recommendation:

Internal Training

In 2014, IR developed Audit Guidelines on foreign bribery for its staff. These guidelines are incorporated in a risk module entitled “International Tax Non-Deductible Bribes (IL 155”) (**Annex 12**). Such risk modules are IR’s standard methodology for guidance and on-the-job training for audit staff. They are designed to provide a line of sight between tax legislation, the revenue risk and the work of IR’s investigators as well as providing a consistent approach. The Audit Guidelines cover several topics including identification of bribes, the non-deductibility of bribes made to foreign public officials, the character of facilitation payments and internal processes to follow where bribery is suspected.

In September 2014, IR provided training to its 25 Special Audit staff who are responsible for investigating all cases of bribery identified by IR or referred to IR by third parties. This training covered all topics in the Audit Guidelines and touched on the proposed changes in the Bill. As part of this training, all Special Audit staff were provided a copy of the OECD Bribery Awareness Handbook for Tax Examiners as required reading.

In addition, on 11 September 2014 IR ran a “Keeping Current Forum” for its Investigations & Advice staff. This focused on raising awareness of general risk areas and specific indicators of bribery. Using live

streaming, it was attended by approximately 200 staff around the country. All attendees received a copy of the OECD Bribery Awareness Handbook for Tax Examiners. An electronic copy of this handbook is readily available to all IR staff.

IR has indicated that it will update the Audit Guidelines and provide further staff training now that the Bill has passed.

External Training/Awareness Raising

In 2014, IR raised awareness of the foreign bribery offence among the private sector through its “Agents Answers” newsletter (**Annex 13**). This is sent to 9,438 tax agents, most of whom are involved in advising small enterprises on their general business affairs as well as tax matters. IR also included a bribery awareness article in its September 2014 “Business Tax Update” (**Annex 14**). This publication reaches over one million self-employed sole traders or small to medium sized enterprises (SMEs) via its website. In addition, IR sends an email version to 129,500 subscribers.

As part of its awareness raising efforts IR has also updated the “Bribery Awareness” page on the Tax Agents part of its website, including links to the free online training.

On 9 November 2015, IR presented to the Auckland Tax Special Interest Group which consists of approximately 400 tax practitioners representing a wide range of businesses both large and small. The presentation included a reminder about foreign bribery including details of red flag indicators, areas of high risk, and the changes in the Bill.

Finally, IR has indicated that it will work with the MOJ to promote the facilitation payments guidance and wider anti-corruption compliance pack for businesses among tax practitioners once these documents are published, including through presentations to tax advisors and CFOs.

Text of recommendation 11(c):

11. Regarding tax measures to combat bribery of foreign public officials, the Working Group:

(c) Recommends that New Zealand proceed as a matter of priority with its proposal to allow Inland Revenue to share information with law enforcement agencies in relation to “serious crime” with a view to amending its tax legislation to require, where appropriate, Inland Revenue to provide information on request from law enforcement authorities in the context of foreign bribery investigations, and to report information regarding suspected foreign bribery uncovered in the course of their work to law enforcement authorities; [2009 Tax Recommendation]

Action taken as of the date of the follow-up report to implement this recommendation:

The [Privacy \(Information Sharing Agreement between Inland Revenue and New Zealand Police\) Order 2014](#) came into force on 26 June 2014. The Order approves a new information-sharing agreement between Inland Revenue and the New Zealand Police. Under the agreement, IR can share personal information with the NZP for the prevention, detection, investigation of, or use as evidence of, a serious crime, which includes foreign bribery.

Text of recommendation 11(d):

11. Regarding tax measures to combat bribery of foreign public officials, the Working Group:

(d) Recommends that Inland Revenue target a wider range of recipients in its anti-bribery awareness-raising measures, in particular SMEs. [2009 Recommendation, III(iii) and 2009 Tax Recommendation]

Action taken as of the date of the follow-up report to implement this recommendation:

As outlined in the responses to recommendations 9(b) and 11(b) above, IR has engaged in substantial anti-bribery awareness raising efforts over the past two years, which has targeted a wide range of recipients including, in particular, SMEs.

Text of recommendation 12:

12. Regarding awareness-raising, the Working Group recommends that: New Zealand (i) continue its foreign bribery awareness-raising efforts within the public and private sectors including, where relevant, in co-operation with business associations; and (ii) encourage companies, especially SMEs, to develop and adopt adequate internal controls, ethics and compliance systems to prevent and detect foreign bribery, including by promoting the OECD Good Practice Guidance. [2009 Recommendation III (i), X C (i) and (ii), and Annex II]

Action taken as of the date of the follow-up report to implement this recommendation:

Awareness raising with the private sector

Free online anti-corruption training module

In 2014, the SFO worked closely with TINZ and BusinessNZ to produce [free online anti-corruption training](#). This 1.5 hour learning module provides comprehensive anti-corruption training designed by leading experts in the field, and enables organisations to provide training for their personnel. The training covers topics relevant to understanding, preventing and reporting bribery and corruption when operating within domestic as well as international markets. It encourages businesses (SMEs in particular) to adopt adequate internal controls, ethics and compliance systems to prevent and detect bribery and corruption, including foreign bribery.

In June 2014 this project was formally launched by the Ministers of Police and Commerce at events in Auckland and Wellington. These sessions were attended by a wide range of government departments, businesses, business organisations and law firms. In conjunction with this, BusinessNZ, in partnership with Deloitte and Chapman Tripp (a leading New Zealand law firm), released a free downloadable guide on bribery and corruption risks & strategies for NZ businesses. Further awareness raising events and training courses were then run throughout the country by the member organisations involved.

Anti-corruption guidance for New Zealand businesses

As discussed earlier in the report, the MOJ is currently consulting with the private sector and civil society on a facilitation payments guidance paper (**Annex 4**) and will work with industry to raise awareness of this document once it is published on the MOJ website later this month.

In addition to this, the MOJ has drafted a wider anti-corruption guide for New Zealand businesses, with the aim of encouraging businesses to adopt effective anti-corruption compliance procedures to prevent and detect all forms of corruption, including foreign bribery. Among other things, the guide covers:

- The damaging effects of bribery and corruption
- Definitions of bribery and corruption along with examples
- Relevant domestic and foreign anti-corruption legislation
- Relevant international standards (including information on the OECD Anti-Bribery Convention and related documents)
- Guiding principles for effective anti-corruption compliance procedures.

The guiding principles are the key focus of the document and are intended to encourage and assist New Zealand businesses of all sizes to establish, implement, monitor, and improve their anti-corruption compliance procedures.

However, the guidance specifically acknowledges that the New Zealand business landscape is predominantly made up of SMEs with limited resources. It therefore has a particular focus on highlighting that anti-corruption compliance is equally important and beneficial for SMEs, and need not be cumbersome and expensive. To that end, the first guiding principle is ‘proportionality’. The other principles covered in the guide are top level commitment, clearly articulated policies, risk assessment, awareness raising and training, due diligence, reporting and investigation, and monitoring and review.

The MOJ has already discussed and sought input on this document in meetings with representatives from the private sector and civil society (including TINZ, Deloitte, Chapman Tripp, and BusinessNZ). Once consultation with government agencies is complete, we would be pleased to share the guide with the Secretariat and Lead Examiners. At this point, we will also conduct a targeted consultation with the private sector on the draft (again, including TINZ, BusinessNZ, leading law and accounting firms and industry bodies) and discuss how we can work together with these groups to raise awareness of the guide among New Zealand businesses, particularly SMEs.

Further awareness raising initiatives with the private sector

In 2015, a representative from the SFO participated in a panel discussion on the results of [Deloitte's 2015 bribery and corruption survey](#), where New Zealand's foreign bribery offence was discussed at length. This was also attended by representatives from wide ranging businesses, business organisations, law firms and public sector agencies. In addition, over the past two years, the SFO has made a number of presentations to wider industry groups that specifically included foreign bribery red flags and highlighted the importance of effective anti-bribery compliance programmes. These included presentations to:

- Transparency International
- The Institute of Directors
- The Bankers Association
- The Institute of Public Administration New Zealand
- The Not For Profits forum
- The Governance Risk Compliance Institute
- “Super 16” (leading 8 law and accounting firms in New Zealand).

The NZTE website also contains substantial materials for New Zealand businesses, including regular updates on foreign bribery related issues such as:

- [Bribery and Corruption - Navigating in Tricky Waters](#)
- [New Zealand Exporters Experiences with Bribery and Corruption](#)

- [Business ethics and corporate responsibility in China](#)
- [Doing due diligence and avoiding scams](#)

NZTE states on its website that it will not provide services to parties suspected of, or involved in, bribery, and that it will report all suspected incidences to government authorities. See clause 7.3 in <https://www.nzte.govt.nz/en/nzte-services-terms/>.

NZTE provides guidance on foreign bribery issues to each business it supports on request and as appropriate. This includes directing businesses in need of advice to other websites, including:

- [Business NZ Anti-Corruption Guide](#)
- [New Zealand Exporters Experiences with Bribery and Corruption](#)
- [Market Access - Combatting Bribery and Corruption\(MFAT\)](#)
- [Combating Bribery and Corruption \(MOJ\)](#)
- [Transparency International Anti-Corruption Training](#)
- [Business ethics and corporate responsibility in China](#)
- [Doing due diligence and avoiding scams](#)
- [Know your market – see Transparency International’s Corruption Perception Index](#)

NZTE has been working with the MOJ and other government agencies on the facilitation payments guidance and the wider anti-corruption compliance guide for New Zealand businesses. Once published, NZTE will assist in raising awareness of these documents among New Zealand businesses, including by providing links to the guides on its [“bribery and corruption” webpage](#).

As outlined in the response to recommendation 10(a) above, New Zealand has also undertaken substantial awareness raising efforts with the auditors, accountants, and lawyers which encourage these professions to raise awareness of the importance of adopting adequate internal controls, ethics and compliance systems to prevent and detect foreign bribery. This is critical as almost all SMEs in New Zealand will engage directly with and seek their compliance advice from one, if not all of these professions.

For further examples of awareness raising efforts with the private sector see the response to recommendations 9(b) and 13(a).

We are proud of the way New Zealand’s public and private sectors have been working together to raise awareness of foreign bribery over the past two years. The direct contact that the SFO and the MOJ in particular have had with the private sector has highlighted the increasing awareness of the importance of anti-corruption compliance among New Zealand businesses, and the need for clearer direction from the Government. We are confident that the awareness raising measures that have taken place since our Phase 3 review, combined with the guidance the MOJ will soon publish, will go a long way to addressing this need, and the concerns raised by the Working Group in our 2013 report.

Awareness raising with the public sector

This is primarily addressed in our response to recommendations 13(a) and 13(b). However, further examples are highlighted in our response to recommendations 1, 5(b), and 10(a) above.

Text of recommendation 13(a):

13. With respect to the reporting of foreign bribery, the Working Group recommends that New Zealand:

(a) Ensure that all public servants, including within NZAID, are made aware of the obligation to report all credible suspicions of foreign bribery involving New Zealand individuals or companies detected in the course of their work to New Zealand law enforcement authorities; [2009 Recommendation IX (i) and (ii)]

Action taken as of the date of the follow-up report to implement this recommendation:

At the time of New Zealand's Phase 3 Report, the Working Group was concerned that there were no general foreign bribery reporting obligations and procedures directed to all public servants in New Zealand. We advised that integrity policies are decentralised across the public sector but that each government department has its own fraud policy with obligations to report fraud (including foreign bribery) to law enforcement authorities. However, the Working Group remained concerned that this may not be consistently applied, noting that the MOJ's own fraud policy made no explicit reference to reporting of foreign bribery.

While fraud policies remain decentralised, New Zealand has taken a number of steps since 2013 to enhance the consistency of these policies across the public sector and ensure that all public servants, including those within the New Zealand Aid Programme (NZAID), are made aware of the obligation to report all credible suspicions of foreign bribery to law enforcement authorities. These measures are set out below.

Publication of Fraud and Corruption Policy Framework – “How to create a fraud and corruption policy”

Recognising that a clearly articulated and visible anti-bribery policy is a key element of any effective compliance programme, the MOJ has published guidance on its website on '[how to create a fraud and corruption policy](#).' The framework is intended to assist organisations to develop and improve their own fraud and corruption policies and therefore enhance consistency of these policies across the public and private sector.

The framework contains paragraph headings that correspond to sections that should form the basis of a fraud and corruption policy. It includes a section on reporting that highlights that all policies should set out a clear reporting chain for suspected instances of fraud and corruption (which includes foreign bribery). This must include procedures for reporting to external law enforcement authorities (see section 6). More specifically, it states that an organisation's policy should provide that:

- anyone who suspects fraudulent or corrupt conduct (including foreign bribery) **must** report it immediately;
- all reporting can be made confidentially (and that policies should include information on the protections afforded to whistleblowers under the [Protected Disclosures Act 2000](#));
- all instances of suspected corruption will be thoroughly investigated; and
- all credible suspicions of fraudulent or corrupt activity will be referred to an appropriate law enforcement authority.

The framework also highlights that organisations should periodically review their policy and raise awareness of it among staff on a regular basis (but at least twice yearly).

In preparing this framework, the MOJ consulted with risk and assurance teams across the public sector.

This in itself has operated as a good review mechanism to ensure that key agencies have effective policies in place.

In addition to the MOJ website, the framework has been published on the [SSC website](#), and the Public Sector Intranet which is accessible by staff across all public sector agencies. MOJ sent the final document to key public sector agencies, including, NZTE, NZECO, MBIE, MFAT, IR, SFO, NZP, DIA, Customs, many of whom have undertaken to publish the document on their internal and external websites.

Practical examples of awareness raising of reporting obligations across the public sector

Included below are some examples of the work that is ongoing across the public sector to raise awareness of the obligation to report all credible suspicions of foreign bribery involving New Zealand individuals or companies detected in the course of their work to New Zealand law enforcement authorities.

MFAT (including NZAID)

All MFAT staff are required to read and acknowledge their acceptance of the MFAT Code of Conduct when they commence work at MFAT and when this Code is updated. The MFAT Code of Conduct was last updated in 2013 and requires all MFAT staff, including those working on NZAID to comply with the Ministry's Fraud Prevention and Response Policy and to report any suspected fraud, including foreign bribery, to their manager. If they work at an overseas Post, they must also inform the Head of Mission.

MFAT Audit and Risk Divisions provide briefings for MFAT and other New Zealand Government agency staff that are posted overseas. These briefings include the obligation for personnel to report allegations of foreign bribery.

If credible suspicions of foreign bribery are raised by MFAT staff, then pursuant to the Ministry's Code of Conduct guidelines on bribery and corruption, these are required to be notified to the MFAT Legal Division who will advise the NZP or the SFO for follow-up investigation and action if warranted.

MFAT has undertaken to update its policies to account for relevant changes in the Bill and to update MFAT staff and other government agencies globally (including any updates to consular instructions for use at Post).

More specifically, NZAID's orientation programme includes specific training on the Fraud Prevention and Response Policy. NZAID staff and financial and procurement specialists from MFAT are also offered training on "Red Flags in Corruption" approximately every 18 months that covers various types of fraud and corruption (including foreign bribery), reporting and protected disclosures. MFAT has also provided this training to procurement specialists from other public sector agencies during an MBIE Government Procurement Group "Breakfast Briefing" session.

NZP

The NZP recently reinforced the obligation to proactively report any credible suspicions of foreign bribery involving New Zealand individuals or companies with its network of overseas-based Police Liaison Officers (through communications by the Assistant Commissioner: Investigations, National Security and International).

In addition to this, broader awareness of the offence was raised with a national bulletin board message publicised to all NZP staff on 7 October 2015 (**Annex 15**).

NZTE

NZTE has clear policies that personnel must not bribe or be involved in any form of bribery. NZTE personnel are required to:

- Report any actual or suspected incidences of bribery and corruption (committed by personnel or NZTE customers) to NZTE’s Corporate Counsel. As per the New Zealand Government procedure for handling allegations of foreign bribery, NZTE’s Corporate Counsel has escalation processes with the SFO to report all credible suspicions for investigation.
- Inform businesses that as a Government agency, it will not support or work with parties involved or suspected of bribing, and is required to report bribery incidences to the SFO.
- Recommend that the person or business seek legal advice, advice on the consequences of non-compliance (e.g. business disruption, reputation damage, criminal investigation and serious penalties).

To reinforce the policies, NZTE provides annual compliance training and regular internal communications to NZTE personnel on fraud and corruption. NZTE will also support and facilitate Government training to New Zealand businesses, and work with agencies such as MOJ and SFO on these initiatives.

MOJ

Earlier this year, the MOJ updated its fraud policy to include both domestic and foreign bribery and corruption. The updated policy reiterates the requirement that all suspected instances of bribery and corruption be reported internally and that all reasonable suspicions will be referred to external agencies for prosecution.

To assist staff to understand the new framework, the MOJ developed a number of resources including an online fraud and corruption training module. The MOJ raised awareness of the policy and related training module through an article on its intranet site (**Annex 16**). MOJ’s policy is also included as [an example](#) in the above mentioned guide on [how to create a fraud and corruption policy](#).

NZECO

See response to recommendation 14(b) below.

The above examples highlight the commitment across the public sector to ensuring that public servants are aware of the obligation to report foreign bribery detected in the course of their work. It should be noted that these are just a small number of examples. The MOJ has met with various other agencies and is aware that similar work is ongoing across the public sector.

Text of recommendation 13(b):

13. With respect to the reporting of foreign bribery, the Working Group recommends that New Zealand:

(b) Continue efforts to raise awareness of the Protected Disclosures Act in order to encourage and facilitate the reporting of suspected acts of foreign bribery in good faith and on reasonable grounds to New Zealand law enforcement authorities, in particular among private sector employees. [2009 Recommendation IX (iii)]

Action taken as of the date of the follow-up report to implement this recommendation:

As outlined in paragraphs 133-135 of our Phase 3 Report, New Zealand’s PDA affords whistle-blowers comprehensive protections. More detailed information on the PDA, when disclosures are protected and what those protections are is available on the [Ombudsman](#) and [SSC](#) websites.

Since Phase 3, various public sector agencies have taken steps to raise awareness of the Act in order to encourage reporting of suspected instances of foreign bribery to law enforcement authorities among both public and private sector employees. This includes the work conducted by agencies whose policies are cited in the response to recommendation 13(a) above. Further examples are detailed below.

SFO

The protections afforded by the PDA were discussed in various presentations made by the SFO over the past two years (see recommendations 10(a) and 12). For example, during her most recent presentation to the “Super 16” law and accounting firms, the Director of the SFO specifically discussed the importance of having clear reporting mechanisms in place for whistle-blowers. She also provided advice on how advisory firms that act as a reporting service need to treat whistle-blowers, and encouraged firms to report any suspected instances of bribery and corruption to the SFO as soon as possible.

MOJ

The importance of whistle-blower protections is also highlighted in MOJ’s [fraud and corruption policy framework](#). It provides that all fraud and corruption policies across both the public and private sector should include a clear reporting chain that leads to law enforcement authorities and advises that employees that report in good faith and on reasonable grounds can be protected by the PDA. The framework also states that organisations should have clear procedures for making and handling protected disclosures (though these may be outlined in a separate document to the fraud and corruption policy).

The MOJ has notified key private sector agencies of this guidance (including TINZ, BusinessNZ, leading law and accounting firms and industry bodies) and has encouraged them to raise awareness of it among their members/clients.

In addition to this, the draft anti-corruption compliance guide for New Zealand businesses provides that every organisation’s reporting procedures should contain clear mechanisms for protected disclosures and provide information on where individuals can go to seek advice on what to do when confronted with a potentially corrupt situation. It notes that it is critical that reporting can take place on a confidential basis, without fear of retaliatory action.

SSC

New Zealand’s Phase 3 report noted that the SSC had undertaken significant efforts to raise awareness of the PDA and encourage whistleblowing, including through workshops and funding applications to research whistleblowing policies of New Zealand and Australian Companies. Over the past two years, these efforts have continued with the SSC updating its [website](#) with further useful information about protected disclosures, whistleblowing, and the role of the SSC.

Integrity and Conduct Survey

In addition, in 2013, the SSC conducted an [Integrity and Conduct Survey](#) which included new, more detailed questions about the use of the PDA and the practical barriers to its effectiveness, providing New Zealand with new insights into this area.

The Survey results reported that a high percentage of staff rated the integrity and conduct of their immediate colleagues highly. However, there was also good scope for improvement in some areas. This included, the reporting of suspected wrongdoing and perceptions of the timeliness and protection provided to staff in relation to the reporting processes. The Survey results are now being used to inform further work by SSC, including the new “Great Workplaces Project” discussed further below.

In addition to this, New Zealand is currently participating in a further piece of research that will consider how the PDA might be strengthened. The Australian Research Council was recently awarded a grant of

approximately \$460,000 to conduct a major three-year research project into whistle-blowing in Australia and New Zealand. Both the SSC and the Ombudsman are participating in this research, which is due to commence later this year.

The project will identify the policies and rules that encourage and empower managers in both the public and private sectors to maximise the benefits and minimise the costs of employee-reporting of wrongdoing. This research includes a comparison of different laws and jurisdictions in Australia and New Zealand and practices in the public and the private sectors. It will enable New Zealand to think about how its protected disclosures legislation might better achieve its intended objectives. The SSC will provide updates on this project on its website as they become available.

Great Workplaces Project

The SSC Integrity Team also recently commenced worked on a new project under which the SSC will work alongside agencies, academic experts and union stakeholders to create support for high integrity behaviours across the public sector. The project is primarily focussed on cultivating high standards of workplace behaviour, rather than imposing compliance standards. However the SSC is working with stakeholders across the public service to improve access to the tools and training. In addition, the SSC is currently drafting policy guides on unwelcome workplace behaviours to ensure consistency across Government departments. This will include a policy guide on the PDA.

Similar to the MOJ's fraud and corruption policy framework, it is intended that public sector agencies will upgrade their own policies in accordance with these guides, with the result that agencies can better support staff to report suspected wrongdoing, and improve their reporting and investigation processes around unwelcome behaviours. This will complement related work taking place on behaviours and integrity in the workplace, including in relation to leadership, chief executive behaviours, diversity and induction programmes for employees of government agencies.

Text of recommendation 14(a):

14. Regarding public advantages, the Working Group recommends that:

(a) New Zealand issue guidance to its contracting authorities to ensure that exclusion from public procurement due to foreign bribery is effectively implemented in practice; [2009 Recommendation XI (i)]

Action taken as of the date of the follow-up report to implement this recommendation:

The 3rd edition of the [Government Rules of Sourcing](#), which came into effect on 1 July 2015, specifically states that a conviction for foreign bribery is a conviction for a serious crime or offence. A supplier that has been convicted of foreign bribery can therefore be excluded from a public procurement process. The Government Rules of Sourcing also refers procuring entities to the Guidance published by the OECD on Foreign Bribery as well as information published by the SFO (see pg.43).

MBIE publishes a range of guidance and good practice documents on procurement for agencies to encourage open, fair, transparent procurement processes across government. This includes guidance on effective due diligence procedures, including during tender evaluation. All of these documents can be found online at <http://www.business.govt.nz/procurement>.

Text of recommendation 14(b):

14. Regarding public advantages, the Working Group recommends that:

(b) NZECO (i) continue to raise awareness among its employees on its Anti-Bribery Policy and reporting obligations; and (ii) consider adopting written guidance on factors to be considered when determining ceilings on agents' commissions, and whether to interrupt support if bribery is proven after support has been approved. [2009 Recommendation XI (i); 2006 Export Credit Recommendation

Action taken as of the date of the follow-up report to implement this recommendation:

(i) continue to raise awareness among its employees on its Anti-Bribery Policy and reporting obligations

NZECO's Anti-Bribery Policy (**Annex 17**) is presented to all new employees and reviewed and discussed as part of NZECO's anti-bribery training that all staff are required to complete on an annual basis (a requirement that is recorded in individual employee work-plans).

As part of this training, staff also complete the online anti-corruption training module produced by TINZ, the SFO and BusinessNZ. On completion of the module, staff discuss their questions and answers as a team and review NZECO's internal reporting processes in the event of suspicion or credible evidence of bribery. This training is overseen by the NZECO manager.

(ii) consider adopting written guidance on factors to be considered when determining ceilings on agents' commissions, and whether to interrupt support if bribery is proven after support has been approved.

Agents' commissions

NZECO has not set maximum ceilings on agents' commissions with respect to requests to underwrite the value of these commissions as part of an export credit guarantee application. However, it always closely assesses the nature and reasonableness of such commissions, and has updated its anti-bribery policy (**Annex 17**) to include a list of actions and factors that NZECO will take into account in its assessment. These include:

- Consulting with both the New Zealand Government Embassy and Trade Development Office in the buyer's country in order to obtain their feedback on that country's practice and percentage of agents' commissions.
- Requesting a New Zealand Government official in the buyer's country to visit the agent personally to verify their role and responsibilities.
- Sharing information with the international bank that will fund the underlying export credit in order to seek their view and in-country experience with such agent fees
- Noting each Bank's own corporate rules on bribery and commissions.
- Seeking information from other export credit agencies about experiences they have had with supporting agents' commissions from the particular country / buyer, and their rationales for

supporting the commission fees, and how they benchmarked what they consider to be an acceptable commission rate.

- In the event that the commissions relate to a Government contract, requesting a copy of the Government buyer's procurement rules in order to confirm whether the role and rates of an approved broker are documented.
- Obtaining a copy of the RFP for the project in order to see if there is any official reference to using agents, and/or level of agent commission fees.
- Confirming that the agent's commission is documented and accurately quantified in the contract between the New Zealand exporter and Buyer (in order to ensure transparency)

It should be noted that, to date, NZECO has never provided official export credit support for agents' commission fees.

Interrupting support if bribery is proven after support has been approved.

NZECO's Anti-Bribery Policy lists a range of actions that it may take in the event that bribery is proven after NZECO has issued its guarantee. This includes:

- Suspending future shipments or loan disbursements
- Invalidating NZECO's cover
- Refusing to indemnify any claims
- Bringing the case to the attention of an insured lender or co-lenders for discussion on appropriate action (where applicable.)
- Seeking recourse from the exporter / applicant for any claims
- Any other action that may be considered appropriate

To respond to recommendation 14(b)(ii), NZECO has updated its policy to include guidance on which of the above actions to take, noting that this will, in part, be determined by the status of the underlying export contract and the terms of NZECO's legal documentation. For example, where the exporter is the insured party, NZECO's cover would be invalidated pursuant to clause 1.2.2 of NZECO's Supplier Credit Policy in respect of all prior and future exports.

The revised policy notes that as a general principle, proof of bribery would result in the exporter and/or individual being denied access to any future NZECO support.

Text of issue for follow-up:

15. The Working Group will follow up the issues below as case law and practice develops:

(a) The application of the “corruptly” intent requirement;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

New Zealand continues to monitor the application of the “corruptly” intent requirement. There are no relevant developments to report at this time.

Text of issue for follow-up:

15. The Working Group will follow up the issues below as case law and practice develops:

(b) Whether the sanctions imposed against natural persons for foreign bribery are effective, proportionate and dissuasive;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

New Zealand has yet to prosecute a person for foreign bribery. However, as outlined in our response to recommendation 4(b) above, the Bill amended the sanctions available against natural persons for foreign bribery to a term of imprisonment not exceeding seven years *and/or* a fine not exceeding the greater of:

- a. \$5 million; or
- b. if it can be readily ascertained and if the court is satisfied that the offence occurred in the course of producing a commercial gain, three times the value of any commercial gain resulting from the contravention.

Text of issue for follow-up:

15. The Working Group will follow up the issues below as case law and practice develops:

(c) The exercise of jurisdiction over legal persons;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

As outlined in our response to recommendation 3, [Clause 6](#) of the Bill inserts a new system of corporate liability for foreign bribery.

In addition, the MOJ receives quarterly reports on the number of prosecutions against legal persons across all offences. Included below are some key trends over the past five years.

Financial year	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015	Total
Cases*	843	696	542	406	370	2,857

*A case is counted here as a group of charges laid against a party which are given an outcome on the same date.

- Although the number of legal persons charged has decreased over the past five years, the number of people charged overall has also decreased. Therefore no conclusions should be drawn from this data as to whether the rate at which companies are charged is decreasing.
- Two hundred and sixteen different types of charges have been laid against legal persons in the last five years. Of all legal persons charged in the last five years, half of the cases are for eight offence types. The top eight offence types are:

Offence description	Number of legal persons charged	% of total legal persons charged
Breach of Health and Safety in Employment Act	357	14%
Failing to Provide Information to Commission (Tax Administration Act 1994)	300	12%
Carried on an unlicensed service (Transport Services Licensing Act)	176	7%
Discharge of Contaminants of water (Resource Management Act 1991)	151	6%
No Distance License carried (Road User Charges Act 1977)	89	3%
Breaches of Fair Trading Act	81	3%
Inaccurate recording hubodometer (owner) (Road User Charges Act 1977)	70	3%

Breach Regulations	Food (Food Regulations 1974)	Hygiene Hygiene	61	2%
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Text of issue for follow-up:

15. The Working Group will follow up the issues below as case law and practice develops:

(d) The use of the terms “bribe” and “corruptly” in the Tax Act to ensure that it is sufficiently clear that bribe payments are non-tax deductible.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

[Clause 51](#) of the Bill removes these terms from the Income Tax Act.