

SERIOUS FRAUD OFFICE BILL

EXPLANATORY NOTE

THIS Bill contains provisions arising from the establishment of a Serious Fraud Office. The Serious Fraud Office became a Department of the Public Service in September 1989 as a result of the making of the State Sector Order (No. 3) 1989.

The objectives of the Bill are—

- (a) To facilitate the detection and investigation by the Serious Fraud Office of cases of serious or complex fraud. The Bill confers various powers on the Director of the Serious Fraud Office for this purpose, i.e., powers to gather information and to search premises; and
- (b) To enable proceedings relating to serious or complex fraud to be taken expeditiously. This is to be achieved principally by the establishment of a Serious Fraud Prosecutors Panel; and
- (c) To provide for matters incidental upon the establishment of the Serious Fraud Office. These consist largely of administrative matters relating to the day to day running of the Serious Fraud Office.

The term “serious or complex fraud” is not defined in the Bill. However, some guidance is given as to its interpretation. *Clause 2* provides that it includes a series of connected incidents of fraud which, if taken together, amount to serious or complex fraud. *Clause 12* provides that, in determining whether any suspected offence involves serious or complex fraud, the Director may, among other things, have regard to—

- (a) The suspected nature and consequences of the fraud;
- (b) The suspected scale of the fraud;
- (c) The legal, factual, and evidential complexity of the matter;
- (d) Any relevant public interest considerations.

The principal features of the Bill may be summarised as follows:

Part I confers various powers on the Director of the Serious Fraud Office which are intended to assist the Office in the detection of serious or complex fraud. The Director may exercise the powers where he or she has reason to suspect that an investigation into the affairs of any person may disclose serious or complex fraud. It is, therefore, envisaged that these powers could be used at an early stage in an investigation.

The powers conferred by this Part include—

- (a) A power to conduct an investigation with the Police or other agencies:

- (b) A power to appoint outside investigators:
- (c) A power to require the production of documents which the Director has reason to believe may be relevant to any suspected case of serious or complex fraud. It is not an offence to fail to comply with any such requirement:
- (d) A power to apply to a Judge for a search warrant. A warrant could be issued under this Part only in certain limited circumstances, and only in respect of a place specified in the application where there are reasonable grounds for believing that there may be documents or other things that may be relevant to an investigation or may be evidence of any offence involving serious or complex fraud.

Part II confers further powers of investigation on the Director of the Serious Fraud Office. These powers are more extensive than the powers conferred by *Part I*. The circumstances in which the powers in *Part II* can be exercised are therefore more restricted. The Director may exercise the powers only where he or she—

- (a) Believes that any offence may have been committed; and
- (b) Has reasonable grounds to believe that any such offence involves serious or complex fraud.

It is, therefore, envisaged that these powers would ordinarily be used at a later stage in an investigation, rather than as a preliminary means of detecting fraud.

The powers conferred by this Part include—

- (a) A power to require any person whose affairs are being investigated, or any other person who the Director has reason to believe may have information or documents relevant to an investigation,—
 - (i) To attend before the Director:
 - (ii) To answer certain questions:
 - (iii) To supply certain information:
 - (iv) To produce certain documents for inspection.

It is an offence to refuse or fail without reasonable excuse to comply with any such requirement. The offence carries a maximum penalty, in the case of an individual, of 12 months' imprisonment or a \$15,000 fine, and in the case of a corporation, of a \$40,000 fine:

- (b) A power to apply to a Judge for a search warrant. A warrant could be issued under this Part only in certain limited circumstances, and only in respect of a place specified in the application where there are reasonable grounds for believing that there may be documents or other things that may be relevant to an investigation or may be evidence of any offence involving serious or complex fraud:
- (c) A power to assume from the Police the responsibility for investigating any case that the Director believes on reasonable grounds to involve serious or complex fraud. This power may be exercised by notice in writing to the Commissioner of Police. Where the power is exercised, the Director may require the Commissioner of Police to provide any information, including Police records, that is held by the Commissioner and that is relevant to the investigation of the case.

Clause 4 places a constraint on the exercise of the powers conferred by *Parts I and II* of the Bill on the Director of the Serious Fraud Office. It provides that those powers are to be exercised only where he or she considers it reasonable to do so for the purposes of—

- (a) Detecting and investigating any suspected case of serious or complex fraud or any offence against the Bill; or
- (b) Taking any such proceedings which relate to any such fraud or offence.

Part III contains provisions relating to—

- (a) Search warrants:
- (b) The exercise of the powers conferred by *Parts I and II*:
- (c) Any challenge to the exercise of the Director's powers:
- (d) The effect of the Director's powers on duties of confidentiality. Persons such as bankers who are under a duty of confidentiality to clients or customers are to be bound to comply in certain respects with the provisions of *Parts I and II* of the Bill. Legal professional privilege is protected by the Bill, but a solicitor or barrister may be required to disclose the name and address of his or her client:
- (e) The application of the Bill to officers of the Inland Revenue Department, the Police, and the Statistics Department. The clauses enabling the Director to require the production of documents, etc., will not apply to such persons in their official capacity:
- (f) Matters in relation to the admissibility of evidence obtained during Serious Fraud Office investigations.

Part IV contains miscellaneous provisions relating, among other things, to—

- (a) The secrecy of certain information. Members of the Serious Fraud Office are required to maintain strict secrecy in relation to certain Serious Fraud Office business, protected inland revenue information, and information that is protected under other Acts, and may disclose the information only in certain prescribed circumstances. The Bill also prescribes the circumstances in which such information may be disclosed by persons who receive that information from members of the Serious Fraud Office:
 - (b) Offences and penalties:
 - (c) The Serious Fraud Prosecutors Panel. This panel is to be appointed by the Solicitor-General after consultation with the Director of the Serious Fraud Office, and is to consist of such barristers and solicitors as the Solicitor-General considers appropriate. The Director is required to refer to a member of the panel any suspected case of serious or complex fraud in respect of which the Director considers that criminal proceedings should be taken:
 - (d) Amendments to other Acts to enable, among other things, the disclosure to the Serious Fraud Office of certain information that is protected under the Inland Revenue Department Act 1974 and to provide for access to certain information that is stored on the Wanganui Computer
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SERIOUS FRAUD OFFICE

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A BILL INTITULED

An Act—

- (a) To facilitate the detection and investigation by the Serious Fraud Office of cases of serious or complex fraud; and 5
- (b) To enable proceedings relating to such fraud to be taken expeditiously; and
- (c) To provide for matters incidental upon the establishment of the Serious Fraud Office

BE IT ENACTED by the Parliament of New Zealand as follows: 10

1. Short Title—This Act may be cited as the Serious Fraud Office Act 1989.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Corporation” means a body of persons, whether 15
incorporated or not, and whether incorporated or
established in New Zealand or elsewhere:

“Director” means the Director of the Serious Fraud Office:

“Document” means a document in any form whether 20
signed or initialled or otherwise authenticated by its
maker or not; and includes—

(a) Any writing on any material:

(b) Any information recorded or stored by means
of any tape-recorder, computer, or other device; and
any material subsequently derived from information 25
so recorded or stored:

(c) Any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:

(d) Any book, map, plan, graph, or drawing:

5 (e) Any photograph, film, negative, tape, or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced:

“Information” includes data, documents, and forecasts:

10 “Inland Revenue offence” means—

(a) Any offence against any Act specified in the First Schedule to the Inland Revenue Department Act 1974; and

15 (b) Any offence against any Act in relation to any tax imposed or payable, or any refund made or claimed, under any of the Acts specified in the First Schedule to the Inland Revenue Department Act 1974:

20 “Judge” means any Judge of the High Court or the District Court:

“Member”, in relation to the Serious Fraud Office,—

(a) Means the Director and any other officer and employee of the Serious Fraud Office; and

25 (b) Includes, for the period of his or her secondment, any officer or employee seconded to the Serious Fraud Office from any other Department or other employer; and

30 (c) Includes, for the purposes of any particular investigation, any person deemed to be a member in accordance with **section 8** of this Act:

“Person” includes a body of persons whether incorporated or not:

“Place” means any premises, building, aircraft, ship, carriage, vehicle, box, receptacle, or other place:

35 “Prescribed” means prescribed by regulations made under this Act:

“Protected information” means any information that is protected from disclosure—

(a) Under **section 37** of this Act; or

40 (b) Under the Inland Revenue Department Act 1974; or

(c) Under any other Act,—

but does not include—

45 (d) Information that has been lawfully released under any other Act in circumstances where the

person to whom it has been released is under no obligation to maintain secrecy in respect of the information; or

(e) Information that has ceased to be protected information in accordance with **section 44** of this Act: 5
 “Serious or complex fraud” includes a series of connected incidents of fraud which, if taken together, amount to serious or complex fraud.

3. Act to bind the Crown—This Act shall bind the Crown.

4. Purposes for which powers under this Act may be exercised—The Director may exercise any of the powers conferred by this Act only where he or she considers it reasonable to do so for the purposes of—

- (a) Detecting and investigating any suspected case of serious or complex fraud or any offence against this Act; or 15
- (b) Taking any proceedings which relate to any such fraud or offence.

PART I

DETECTION OF SERIOUS OR COMPLEX FRAUD

5. Exercise of powers where serious or complex fraud suspected—Where the Director has reason to suspect that an investigation into the affairs of any person may disclose serious or complex fraud, the Director may exercise any power conferred by this Part of this Act. 20

6. Power of investigation—The Director may investigate 25 the affairs of any person who the Director has reason to suspect may have been involved in serious or complex fraud.

7. Power of joint investigation with other agencies—The Director may conduct any investigation in conjunction with the Police, or with any other person who is, in the opinion 30 of the Director, a proper person to be concerned in it.

8. Power to appoint outside investigators—(1) The Director may authorise in writing any person (other than a member of the Police) who is not a member of the Serious Fraud Office to investigate the affairs, or any aspect of the 35 affairs, of a person specified in the authority.

(2) For the purposes of that investigation, any such authorised person—

- (a) Shall be deemed to be a member of the Serious Fraud Office; and
- (b) May, if authorised to do so in accordance with **section 24** of this Act, exercise certain of the powers conferred by this Act on members of that Office.

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9. Power to require production of documents—(1) The Director may, by notice in writing, require any person—

- (a) To produce for inspection any documents which are specified in the notice and which the Director has reason to believe may be relevant to any suspected case of serious or complex fraud;
- (b) To answer, to the best of that person's knowledge and belief, questions with respect to the whereabouts or existence of any further documents that may be relevant to the investigation.

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(2) Where any document is produced pursuant to this section, the Director may do any one or both of the following things:

- (a) Take copies of the document, or of extracts from the document;
- (b) Where necessary, require the person producing the document to reproduce, or to assist any person nominated by the Director to reproduce, in usable form, any information recorded or stored in the document.

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(3) Nothing in this section requires any person to attend before the Director or to supply any other information or to answer any other questions.

(4) **Section 22** of this Act shall apply to any notice given under this section.

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10. Power to obtain search warrant—(1) The Director, or any person authorised by the Director, may, on application in writing made on oath, apply for a warrant to search any place specified in the application.

(2) Any Judge who, on such an application, is satisfied—

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- (a) That there are reasonable grounds for believing—
 - (i) That a person has failed to produce all of the documents specified in a notice given pursuant to **section 9 (1) (a)** of this Act; or
 - (ii) That any answer given to any question asked in a notice given pursuant to **section 9 (1) (b)** of this Act is false or misleading in a material particular or is incomplete; or

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- (iii) That it is not practicable to serve a notice under section 9 of this Act by reason of the fact that the person cannot be located or is absent from New Zealand or other good cause; and
- (b) That there are reasonable grounds for believing that there may be, at the place specified in the application, any documents or other thing that may be relevant to an investigation or may be evidence of any offence involving serious or complex fraud,—
- may issue a warrant in the prescribed form.
- (3) Part III of this Act shall apply to any such warrant.

PART II

POWERS OF INVESTIGATION WHERE SUSPECTED OFFENCE BELIEVED ON REASONABLE GROUNDS TO INVOLVE SERIOUS OR COMPLEX FRAUD

11. Exercise of powers under this Part—Where the Director—

- (a) Believes that any offence may have been committed; and
- (b) Has reasonable grounds to believe that any such offence involves serious or complex fraud,—
- the Director may exercise any power conferred by this Part of this Act.

12. Factors to which Director may have regard—For the purpose of determining whether any suspected offence involves serious or complex fraud, the Director may, among other things, have regard to—

- (a) The suspected nature and consequences of the fraud:
- (b) The suspected scale of the fraud:
- (c) The legal, factual, and evidential complexity of the matter:
- (d) Any relevant public interest considerations.

13. Power to require attendance before Director, production of documents, etc.—(1) The Director may, by notice in writing, require—

- (a) Any person whose affairs are being investigated; or
- (b) Any other person who the Director has reason to believe may have information or documents relevant to an investigation,—
- at the time and place specified in the notice, to do any one or more of the following things:
- (c) To attend before the Director:

- (d) To answer questions with respect to any matter that the Director has reason to believe may be relevant to the investigation:
- 5 (e) To supply any information specified in the notice with respect to any matter that the Director has reason to believe may be relevant to the investigation:
- (f) To produce for inspection any documents which are specified in the notice and which the Director has reason to believe may be relevant to the investigation.
- 10 (2) Where any document is produced pursuant to this section, the Director may do any one or more of the following things:
- (a) Retain the original document produced, provided that a copy of the document is taken and returned as soon as practicable thereafter:
- 15 (b) Take copies of the document, or of extracts from the document:
- (c) Require the person producing the document to provide an explanation of the history, subject-matter, and contents of the document and to answer any other questions which arise from that explanation and which the Director has reason to believe may be relevant to the investigation:
- 20 (d) Where necessary, require the person producing the document to reproduce, or to assist any person nominated by the Director to reproduce, in usable form, any information recorded or stored in the document.
- 25 (3) Where any person is required to produce any document pursuant to this section and fails to do so, the Director may require that person to state, to the best of his or her knowledge and belief, where the document is.
- 30 (4) Where any person is required to supply any information under this section, and does so by producing a document containing that information, the powers conferred by **subsection (2)** of this section shall apply in all respects to that document.
- 35 (5) Any person who is required to attend before the Director under this section, shall, before being required to comply with any requirements imposed under this section, be given a reasonable opportunity to arrange for a barrister or solicitor to accompany him or her.
- 40 (6) **Section 22** of this Act shall apply to any notice given under this section.

14. Power to obtain search warrant—(1) The Director, or any person authorised by the Director, may, on application in writing made on oath, apply for a warrant to search any place specified in the application.

(2) Any Judge who, on such an application, is satisfied— 5

(a) That there are reasonable grounds for believing—

(i) That any information supplied pursuant to **section 13** of this Act is false or misleading in a material particular; or

(ii) That a person has failed to comply with any obligation imposed pursuant to **section 13** of this Act; or 10

(iii) That it is not practicable to serve a notice under **section 13** of this Act by reason of the fact that the person cannot be located or is absent from New Zealand or other good cause; or 15

(iv) That the service of a notice under **section 13** of this Act might seriously prejudice the investigation; and

(b) That there are reasonable grounds for believing that there may be, at the place specified in the application, any documents or other thing that may be relevant to an investigation or may be evidence of any offence involving serious or complex fraud,— 20

may issue a warrant in the prescribed form. 25

(3) **Part III** of this Act shall apply to any such warrant.

15. Power to assume from Police the responsibility for investigating certain cases of fraud—(1) The Director may, by notice in writing to the Commissioner of Police,—

(a) Assume the responsibility for investigating any case that the Director believes on reasonable grounds to involve serious or complex fraud: 30

(b) Require the Commissioner of Police to provide, as soon as reasonably practicable, any information, including Police records, that is held by the Commissioner of Police and that is relevant to the investigation of any case in respect of which the Director has assumed responsibility under this section. 35

(2) If the Commissioner of Police declines to provide any information that is relevant to the investigation of any such case,— 40

(a) The Commissioner shall forthwith inform the Director of the general nature of the information withheld and the reasons for withholding it; and

- (b) The Director may refer the matter to the Solicitor-General for determination; and
- (c) The determination of the Solicitor-General shall be binding on the Director and the Commissioner of Police.

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PART III

GENERAL PROVISIONS RELATING TO WARRANTS
AND EXERCISE OF POWERS UNDER PARTS I AND II

General Provisions Relating to Warrants

- 10 **16. Effect of warrant**—(1) Every warrant issued under this Act shall authorise the person executing the warrant—
 - 15 (a) To enter and search the place specified in the warrant on one occasion within 14 days of the date of issue of the warrant at any time which is reasonable in the circumstances:
 - 15 (b) To use such assistance as is reasonable in the circumstances:
 - 20 (c) To use such force both for gaining entry and for breaking open anything in or on the place searched as is reasonable in the circumstances:
 - 20 (d) To search for and remove any documents or other thing that the person executing the warrant believes on reasonable grounds may be relevant to the investigation or may be evidence of any offence involving serious or complex fraud:
 - 25 (e) Where necessary, to take copies of any documents, or extracts from documents, that the person executing the warrant believes on reasonable grounds may be relevant to the investigation:
 - 30 (f) Where necessary, to require any person to reproduce, or to assist any person executing the warrant to reproduce, in usable form, any information recorded or stored in any such documents.
- 35 (2) Every person called upon to assist the person or persons executing the warrant shall have the powers contained in paragraphs (c) and (d) of subsection (1) of this section.
- (3) Any warrant shall be subject to such reasonable conditions as the issuer may specify in the warrant.

- 40 **17. Removal of documents**—Any person who, in executing any warrant issued under this Act, removes any document from the place specified in the warrant, shall return a copy of that document as soon as practicable to the person

who previously had the document in his or her possession or under his or her control.

18. Disclosure of previous applications—Any person applying for a warrant under this Act shall, having made reasonable enquiries, disclose on the application— 5

- (a) Details of any other applications for a warrant which that person knows to have been made within the previous 28 days by a member of the Serious Fraud Office in respect of the place specified; and
- (b) The result of that application or those applications. 10

19. Persons by whom warrant may be executed—Every search warrant issued under this Act shall be directed to all or any of the following:

- (a) Any designated constable, class of constable, or generally every constable; or 15
 - (b) Any designated member, class of member, or generally every member of the Serious Fraud Office,—
- and may be executed by all or any of the persons to whom it is directed.

20. Production of warrant—Every person authorised to enter upon and search any place pursuant to a warrant issued under this Act shall,— 20

- (a) On first entering that place, and, if requested, at any subsequent time during the search, produce—
 - (i) Evidence of that person's authority to enter the place; and 25
 - (ii) Evidence of that person's identity; and
- (b) If requested at any time, provide a copy of the warrant within 7 days of the request being made.

Cf. 1989, No. 11, s. 22 (3) 30

21. Notice that warrant has been executed, etc.—(1) Any person executing any warrant issued under this Act shall, before departing from the place searched, leave in a prominent position at that place a written notice stating,—

- (a) In the case of a search carried out at a time when the owner or occupier is not present,— 35
 - (i) The date and time of the execution of the warrant; and
 - (ii) The name of the person in charge of the search; and 40

- (b) In the case of a search where any document or other thing is removed from the place being searched, an inventory of documents or other things removed from the place during the search.
- 5 (2) If it is not practicable to prepare such an inventory before departing, or if the owner or occupier of the place being searched consents, the person executing the warrant—
- (a) May, instead of leaving an inventory in accordance with subsection (1) (b) of this section, leave a notice stating the effect of paragraph (b) of this subsection; and
- 10 (b) Shall, within 7 days of the search, deliver an inventory by—
- (i) Delivering it to the owner or occupier of the place searched; or
- 15 (ii) Leaving it in a prominent position at the place searched; or
- (iii) Sending it by registered mail to the owner or occupier of the place searched.
- (3) Every inventory required under this section shall state—
- 20 (a) Which documents or other things were removed in the course of executing the warrant; and
- (b) From where those documents or things were removed; and
- (c) Where those documents or things are now held.

25 *General Provisions Relating to Exercise of Powers under Parts I and II*

- 22. Form and content of notices**—(1) Every notice under section 9 or section 13 of this Act shall be in the prescribed form.
- (2) Any information or document shall be sufficiently
- 30 specified in any such notice if the information or document is described—
- (a) In a general rather than a specific way; or
- (b) By reference only to its class, nature, content, or effect.
- (3) The time at which any thing is required to be done shall
- 35 be sufficiently specified in any such notice if the time is described as—
- (a) Forthwith; or
- (b) Any other stated time.
- (4) Every such notice that requires attendance before the
- 40 Director shall inform the person to whom it is addressed that that person may, if that person so wishes, be accompanied by a barrister or a solicitor.
- (5) Every notice under section 9 of this Act shall inform the person to whom it is addressed that that person is under no

legal obligation to comply with the notice, but that the Director may apply for a search warrant in accordance with **section 10** of this Act.

23. Possession of documents—Any documents that are in a person's possession or under a person's control shall be, for the purposes of this Act, documents which that person may be required to produce or in respect of which the powers conferred by this Act may be exercised. 5

24. Exercise of powers by outside investigator—(1) Any person appointed under **section 8** of this Act may, for the purpose of investigating any suspected offence involving serious or complex fraud, be authorised by the Director, in writing,— 10

(a) To exercise all or any of the powers conferred by **section 9** or **section 13** of this Act; and

(b) To obtain and execute any warrant under this Act. 15

(2) Any such person shall, if requested to do so, at any time, produce—

(a) Evidence of that person's authority to exercise the power; and

(b) Evidence of that person's identity. 20

(3) No person shall be bound to comply with any requirement imposed by any other such person who fails to comply, on request, with **subsection (2)** of this section at the time of imposing the requirement.

Challenge to Exercise of Director's Powers 25

25. Effect of proceedings—(1) Where any person commences any proceedings in any court in respect of—

(a) The exercise of any power conferred by this Act; or

(b) The discharge of any duty imposed by this Act,— until a final decision in relation to those proceedings is given, the power or duty may be, or may continue to be, exercised or discharged as if no such proceedings had been commenced, and no person shall be excused from fulfilling any obligation under this Act by reason of those proceedings. 30

(2) This section shall apply notwithstanding any other provision of any Act or rule of law or equity. 35

Cf. 1989, No. 11, s. 26

26. Effect of final decision that exercise of powers unlawful—(1) In any case where it is declared, in a final decision given in any proceedings in respect of the exercise of any powers conferred by this Act, that the exercise of any 40

powers conferred by this Act is unlawful, to the extent to which the exercise of those powers is declared unlawful—

(a) The Director shall ensure that forthwith after the decision of the court is given—

5 (i) Any information obtained pursuant to the exercise of powers declared to be unlawful, and any record of such information, is destroyed:

10 (ii) Any documents, or extracts from documents, or other things removed pursuant to the exercise of powers declared to be unlawful are returned to the person previously having possession of them, or previously having them under his or her control, and any copies of such documents or extracts are destroyed:

15 (iii) Any information derived from or based upon such information, documents, extracts, or things is destroyed:

(b) Except as otherwise provided by **subsection (3)** of this section, no information obtained, and no documents or extracts from documents or other things removed, pursuant to the exercise of powers declared to be unlawful and no record of any such information or documents, shall be—

20 (i) Admissible as evidence in any proceedings:
25 (ii) Used in connection with the exercise of any power conferred by this Act.

(2) Notwithstanding **subsection (1) (a)** of this section, the court may, in the court's discretion, order that any information, record, or copy of any document or extract may, instead of
30 being destroyed,—

(a) Be returned to the person from whom it was obtained; or
(b) Be retained by the Serious Fraud Office subject to such terms and conditions as the court may impose.

(3) Notwithstanding **subsection (1) (b)** of this section, the court
35 may, in the court's discretion, declare that any information, documents, extracts, things, or record may be admissible as evidence in any proceedings, or used in connection with the exercise of any power conferred by this Act, if the court is satisfied—

40 (a) That the exercise of the powers declared to be unlawful was unlawful only by reason of a defect of form or an irregularity of procedure; and

(b) That there was no unfairness or improper behaviour in obtaining the evidence; and

- (c) That the admission of the evidence would not bring the administration of justice into disrepute.

Cf. 1989, No. 11, ss. 27, 28

Effect of Powers on Duty of Confidentiality

- 27. Act to apply to persons with duty of confidentiality to clients**—(1) The Director may require any person who claims to have a duty of confidentiality to his or her client or customer (including, without limiting the generality of the foregoing, any person carrying on the business of banking)—
- (a) To comply with any requirement imposed under **Part I or Part II** of this Act; and
- (b) In particular, but without limiting the generality of the foregoing, to answer questions, supply information, and produce documents relating to any person whose affairs are being investigated under this Act,—
- and **sections 9, 10, 13, and 14** of this Act shall apply in all respects to any such person, and to the registers, records, accounts, books, or papers of any such person in so far as the Director has reason to believe that they may be relevant to the investigation.
- (2) This section shall apply subject to **section 28** of this Act, but notwithstanding any other enactment or rule of law or equity.

- 28. Legal professional privilege**—(1) Except as provided in **subsection (2)** of this section, nothing in this Act shall require any person who has acted as a solicitor or a barrister for any person to disclose any privileged communication made to him or her in that capacity.
- (2) The Director may, by notice in writing to any solicitor or barrister who the Director has reason to believe may have acted for any person who may be connected with any investigation, require that solicitor or barrister to supply to the Director the last known name and address of that client.

Miscellaneous Provisions

- 29. Application of sections 9 and 13 to Police, Inland Revenue, and Statistics Department officers**—Nothing in **section 9** or **section 10** or **section 13** or **section 14** of this Act shall require—
- (a) Any person in his or her capacity as an officer of the Inland Revenue Department; or
- (b) Any person in his or her capacity as a member of the Police or the Police Department; or

(c) Any person in his or her capacity as a member of the Department of Statistics,—
to comply with any requirement imposed pursuant to any of those sections.

5 **30. Admissibility of evidence**—Subject to **section 32** of this Act, no evidence that is lawfully obtained under **section 9** or **section 10** or **section 13** or **section 14** of this Act shall be inadmissible by reason only of the fact that it was so obtained.

10 **31. Privilege against self-incrimination no excuse**—No person shall be excused from answering any question, supplying any information, producing any document, or providing any explanation pursuant to **section 13** of this Act on the ground that to do so would or might incriminate or tend to incriminate that person.

15 **32. Limited admissibility of self-incriminating statements**—(1) A self-incriminating statement made by a person—

- (a) In the course of answering any question; or
- (b) In the course of supplying any information; or
- 20 (c) In any document produced by that person for inspection; or
- (d) In the course of providing any explanation,—
as required pursuant to **section 9** or **section 13** of this Act, may be used in evidence against that person only in a prosecution for
25 an offence where the person gives evidence inconsistent with the statement.

(2) Notwithstanding **subsection (1)** of this section, any statement made in relation to—

- 30 (a) A refusal or failure to answer any question, supply any information, produce any document, provide any explanation, or comply with any other requirement may be used in evidence against that person in any prosecution for any offence under **section 46 (d)** of this Act arising from that refusal or failure:
- 35 (b) The answering of any question in a way that is false or misleading in a material particular, or the supply of any information, or the production of any document, or the providing of any explanation that is false or misleading in a material particular, may be used in
40 evidence against that person in any prosecution for any offence under **section 46 (e)** of this Act arising from that act.

PART IV

MISCELLANEOUS PROVISIONS

Provisions Relating to State Sector Act 1988 and Other Matters

33. Chief Executive of Serious Fraud Office—The chief executive of the Serious Fraud Office shall be known as the Director. 5

34. Judicial notice of signature of Director—Judicial notice shall be taken of the signature of the Director and of the fact that the person whose signature it purports to be holds office as the Director. 10

35. Delegation of functions or powers—(1) The provisions of the State Sector Act 1988 relating to the delegation of functions or powers shall apply in all respects to the Serious Fraud Office: 15

Provided that no delegation of—

- (a) Any power conferred by Part I or Part II of this Act; or
- (b) Any power to authorise, under section 37 (2) or section 38 (3) (b) or section 40 (2) (b) of this Act, the disclosure of protected information,—

shall be valid unless it is in writing. 20

(2) For the purposes of the provisions of the State Sector Act 1988 relating to the delegation of functions or powers, any person who is seconded to the Serious Fraud Office shall be treated as if that person were an employee of the Serious Fraud Office. 25

36. Indemnity—(1) The Serious Fraud Office and every member of the Serious Fraud Office shall be indemnified by the Crown in respect of any liability relating to the exercise of, or purported exercise of, or the omission to exercise, any power conferred by this Act unless it is shown that the exercise or purported exercise of, or the omission to exercise, the power was in bad faith. 30

(2) Any money required for the purposes of this section shall be paid out of the Crown Bank Account without further appropriation than this section. 35

(3) The indemnity conferred by subsection (1) of this section extends to legal costs incurred in defending a proceeding.

(4) No reference in this section to a liability relating to any omission to exercise any power shall limit the provisions of section 50 of this Act. 40

Secrecy

37. Secrecy of certain information relating to Serious Fraud Office business—(1) Every member of the Serious Fraud Office shall observe the strictest secrecy in relation to—

5 (a) Information supplied to or obtained by the Director under or in connection with the exercise of any power conferred by **section 9 or section 13** of this Act or in the course of executing any search warrant issued under this Act:

10 (b) Information derived from or based upon any such information:

(c) Information relating to the exercise or possible exercise of any power conferred by **Part II** of this Act,—
and, except as provided in **subsection (2)** of this section, shall not
15 disclose any such information in any way whatever to any person who is not a member of the Serious Fraud Office.

(2) Notwithstanding **subsection (1)** of this section, the Director may disclose such information, or authorise any other member of the Serious Fraud Office to disclose such information,—

20 (a) If the person who disclosed the information to the Serious Fraud Office consents to that disclosure; or

(b) To the extent that the information is available to the public under any Act; or

25 (c) For the purposes of this Act or in connection with the exercise of powers under this Act; or

(d) For the purposes of any prosecution anywhere; or

(e) To any person who the Director is satisfied has a proper interest in receiving such information.

(3) This section is subject to **section 38 and section 40** of this Act.

30 (4) Every member of the Serious Fraud Office commits an offence, and is liable on summary conviction to a fine not exceeding \$5,000, who knowingly contravenes this section.

Cf. S.R. 1985/259, reg. 33; 1988, No. 2, s. 32; 1989, No. 11, s. 23

35 **38. Secrecy of information protected under Inland Revenue Department Act 1974**—(1) Every member of the Serious Fraud Office shall observe the strictest secrecy in relation to revenue information.

(2) For the purposes of this section, “revenue information”
40 means any information—

(a) That is subject to an obligation of secrecy under the Inland Revenue Department Act 1974; and

- (b) That has been disclosed by the Commissioner of Inland Revenue to a member of the Serious Fraud Office.
- (3) Notwithstanding **subsection (1)** of this section or anything in the Inland Revenue Department Act 1974,—
- (a) Any member of the Serious Fraud Office may disclose any revenue information to any other member of the Serious Fraud Office for the purpose of investigating or prosecuting any inland revenue offence; and 5
- (b) The Director may disclose any revenue information, or authorise any other member of the Serious Fraud Office to disclose any revenue information,— 10
- (i) With the consent of the Commissioner of Inland Revenue, to any person; or
- (ii) To any Judge for the purpose of obtaining a search warrant under this Act for the purpose of investigating or prosecuting any inland revenue offence; or 15
- (iii) To any person commencing or conducting any proceedings relating to any suspected inland revenue offence; or 20
- (iv) To any court hearing any proceedings relating to any suspected inland revenue offence.
- (4) Every member of the Serious Fraud Office commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$15,000, who knowingly contravenes this section. 25

39. Disclosure to Serious Fraud Office of information protected under other Acts—(1) Any information which is protected under any Act other than the Inland Revenue Department Act 1974 or the Statistics Act 1975 may, notwithstanding any provision of that Act, be disclosed to any member of the Serious Fraud Office for the purpose of investigating or prosecuting any offence involving serious or complex fraud. 30

(2) No person shall be liable to prosecution for an offence by reason of disclosing information pursuant to this section. 35

(3) Every person who discloses any such information to a member of the Serious Fraud Office shall, at the time of making the disclosure, inform the member that the information is so protected. 40

40. Secrecy of information protected under other Acts—(1) Every member of the Serious Fraud Office shall observe the strictest secrecy in relation to any information

which is protected under any Act other than the Inland Revenue Department Act 1974.

(2) Notwithstanding **subsection (1)** of this section or anything in the Act that protects the information,—

- 5 (a) Any member of the Serious Fraud Office may disclose any such information to any other member of the Serious Fraud Office for the purpose of investigating or prosecuting any offence involving serious or complex fraud; and
- 10 (b) The Director may disclose any such information, or authorise any other member of the Serious Fraud Office to disclose any such information,—
 - (i) With the consent of the person who disclosed the information to the Serious Fraud Office, to any other
 - 15 person:
 - (ii) To any Judge for the purpose of obtaining a search warrant under this Act;
 - (iii) To any person commencing or conducting any proceedings relating to any suspected offence
 - 20 involving serious or complex fraud;
 - (iv) To any court hearing any proceedings relating to any suspected offence involving serious or complex fraud.

(3) Every member of the Serious Fraud Office commits an offence, and is liable on summary conviction to a fine not exceeding \$5,000, who knowingly contravenes this section.

41. Obligation to inform that protected information is secret—(1) Every person who discloses any protected information pursuant to this Act shall inform the recipient of

- 30 the information—
 - (a) That the recipient is, in accordance with **section 42** of this Act, under an obligation to observe the strictest secrecy in relation to the information; and
 - (b) That, if the recipient discloses the information pursuant to
 - 35 **section 42** of this Act, the recipient will be bound by the obligation that is imposed by **paragraph (a)** of this subsection.

(2) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$1,000, who

40 knowingly contravenes this section.

42. Secrecy to be observed by other persons to whom protected information is disclosed under this Act—(1) No person to whom any protected information is disclosed

pursuant to this Act (whether by a member of the Serious Fraud Office or by any other person) shall disclose that information in any way whatever to any other person unless the disclosure is,—

- (a) In the case of information protected under **section 37** of this Act,—
- (i) Authorised by the Director; or
 - (ii) Necessary or desirable for the purposes of commencing or conducting any proceedings relating to any suspected offence involving serious or complex fraud: 10
- (b) In the case of any revenue information protected under the Inland Revenue Department Act 1974,—
- (i) Authorised by the Commissioner of Inland Revenue; or 15
 - (ii) Necessary for the purposes of commencing or conducting any proceedings relating to any suspected inland revenue offence:
- (c) In the case of any information protected under any Act other than the Inland Revenue Department Act 1974,— 20
- (i) Authorised by the person who disclosed the information to the Serious Fraud Office; or
 - (ii) Necessary for the purposes of commencing or conducting any proceedings relating to any suspected offence involving serious or complex fraud. 25
- (2) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$5,000, who knowingly contravenes **subsection (1) (a)** or **subsection (1) (c)** of this section. 30
- (3) Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$15,000, who knowingly contravenes **subsection (1) (b)** of this section.

43. Authorisations to disclose protected information— 35

Every authorisation given pursuant to **section 37 (2)** or **section 38 (3) (b)** or **section 40 (2) (b)** of this Act—

- (a) Shall be in writing; and
- (b) May be given subject to such conditions as the Director thinks fit; and 40
- (c) May authorise the disclosure of information to any person or class of persons, or, subject to **paragraph (d)** of this subsection, may authorise the general disclosure of information; and

- (d) In the case of an authorisation given pursuant to **section 38 (3) (b) or section 40 (2) (b)** of this Act, shall only authorise the disclosure of specified information; and
- 5 (e) Shall expire at the time when the person to whom it is given ceases to be a member of the Serious Fraud Office.

44. Protected information may cease to be secret—

- (1) For the purposes of this Act, protected information shall cease to be protected information if—
- 10 (a) It is lawfully released in any court proceedings; or
- (b) It is lawfully released under **section 37 or section 38 (3) (b) (i) or section 40 (2) (b) (i)** of this Act in circumstances where the Director informs the person to whom the information is disclosed, by notice in writing, that the
- 15 information is no longer protected information.
- (2) The Director shall not serve any such notice in respect of information that is released under **section 38 (3) (b) (i) or section 40 (2) (b) (i)** of this Act unless the person who disclosed the information to the Serious Fraud Office consents.

20 **45. Persons ceasing to be members of Serious Fraud Office under continuing obligation of secrecy—**Every person who ceases to be a member of the Serious Fraud Office—

- 25 (a) Shall continue to observe the strictest secrecy in relation to any protected information that was disclosed to him or her in his or her capacity as a member of the Serious Fraud Office; and
- (b) May be charged and convicted of any offence against **section 37 (4) or section 38 (4) or section 40 (3) or section 41 (2)**
- 30 of this Act in all respects as if he or she had not ceased to be a member of the Serious Fraud Office.

Miscellaneous Offences and Penalties

46. Offence to obstruct investigation, etc.—Every person commits an offence, and is liable on conviction on

35 indictment,—

- (a) In the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$15,000;
- 40 (b) In the case of a corporation, to a fine not exceeding \$40,000,—
- who,—

- (c) Without lawful justification or excuse, resists, obstructs, or delays any member of the Serious Fraud Office in the exercise of any power conferred by **section 13** of this Act; or
- (d) Without lawful justification or excuse, refuses or fails to— 5
- (i) Attend before the Director; or
 - (ii) Answer any question; or
 - (iii) Supply any information; or
 - (iv) Produce any document; or
 - (v) Provide any explanation; or 10
 - (vi) Comply with any other requirement,—
- as required pursuant to the exercise of any power conferred by **section 13** of this Act; or
- (e) In the course of complying with any requirement imposed pursuant to **section 9** or **section 13** of this Act, gives an answer to any question, or supplies any information, or produces any document, or provides any explanation, knowing that it is false or misleading in a material particular or being reckless as to whether it is so false or misleading. 15 20

Cf. 1989, No. 11, ss. 20, 70

47. Offence to destroy, alter, or conceal records, etc.—

(1) Every person commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$50,000, who, with intent to 25 defeat any investigation being carried out or likely to be carried out by the Serious Fraud Office, or with intent to prevent the Serious Fraud Office exercising any power under this Act,—

(a) Destroys, alters, or conceals any book, document, or record; or 30

(b) Sends any book, document, or record out of New Zealand.

(2) If, in any prosecution for any such alleged offence, it is proved that the person charged with the offence has—

(a) Destroyed, altered, or concealed any book, document, or record; or 35

(b) Sent any book, document, or record out of New Zealand,—

the onus of proving that in so doing that person had not acted in contravention of this section shall lie on that person.

Cf. 1989, No. 11, s. 68

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48. Offence to resist search—Every person commits an offence, and is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding

\$5,000, who intentionally resists, obstructs, or delays any person executing, or assisting in the execution of, any warrant issued under this Act.

Miscellaneous Provisions

5 **49. Serious Fraud Prosecutors Panel**—(1) There shall be a Serious Fraud Prosecutors Panel for the purpose of enabling proceedings relating to serious or complex fraud to be taken expeditiously.

10 (2) That panel shall be appointed by the Solicitor-General after consultation with the Director, and shall consist of such barristers or solicitors of the High Court as the Solicitor-General considers appropriate.

15 (3) The Director shall refer to a member of that panel any suspected case of serious or complex fraud in respect of which the Director considers criminal proceedings should be taken.

50. No obligation to investigate, etc.—Nothing in this Act shall be regarded as imposing on the Director or any other person any duty or obligation—

- 20 (a) To investigate any particular case of fraud; or
 (b) To take proceedings relating to any particular case of fraud; or
 (c) To otherwise exercise any power conferred by this Act in respect of any particular case of fraud.

25 **51. Exercise of powers not precluded by certain matters**—The Director may exercise any power conferred by this Act notwithstanding—

- 30 (a) That the Police or any other person may also be investigating the suspected offence;
 (b) That any criminal or other proceedings have been commenced in respect of any matter related to the investigation;
 (c) That the suspected offence occurred before the date on which the Serious Fraud Office was established or before the date on which this Act comes into force.

35 **52. Agreements with overseas agencies**—(1) The Director may enter into any agreement or agreements with any person in any other country whose functions are or include the detection and investigation of cases of fraud or the prosecution of any proceedings which relate to fraud, if—

- 40 (a) The agreement relates to a particular case or cases of fraud; and

- (b) In the case of an agreement providing for the supply of information by the Serious Fraud Office,—
- (i) The Director is satisfied that compliance with the agreement will not substantially prejudice the performance of the Serious Fraud Office's functions in relation to any other investigations; and
- (ii) The Director has recommended to the Minister in charge of the Serious Fraud Office that the agreement be entered into and that Minister accepts the recommendation.
- (2) Any such agreement—
- (a) May be made orally or in writing;
- (b) May provide for the supply or the receipt of information by the Serious Fraud Office;
- (c) Shall contain a condition that no person who receives information pursuant to the agreement shall disclose the information except for any purpose specified in the agreement or with the consent of all of the parties to the agreement.
- (3) Nothing in this section shall limit the general powers of the Director to enter into agreements.
- (4) This section is subject to the provisions of sections 38 and 40 of this Act.

53. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for any of the following purposes:

- (a) Prescribing the form of notices required under this Act;
- (b) Providing for the maintenance of secrecy in respect of, and for the disclosure of, any information received by the Serious Fraud Office;
- (c) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

Amendments to Other Acts

54. Amendment to Summary Proceedings Act 1957— The Summary Proceedings Act 1957 is hereby amended by inserting in Part II of the First Schedule, before the item relating to the Shipping and Seamen Act 1952, the following item:

“The Serious Fraud Office Act 1989 46 Offences as to obstructing investigation, etc. 40

47 Offence to destroy, alter, or
conceal records, etc.”

5 **55. Amendment to Inland Revenue Department Act
1974**—Section 13 (4) of the Inland Revenue Department Act
1974 (as amended by section 4 of the Inland Revenue
Department Amendment Act 1976 and section 3 of the Inland
Revenue Department Amendment Act (No. 2) 1988) is hereby
amended by inserting, after paragraph (aa), the following
paragraph:

10 “(ab) Divulging or communicating any matter or thing to the
Director of the Serious Fraud Office, or producing in
any Court any book or document, that the
Commissioner considers desirable for the purposes
15 of any investigation or prosecution in relation to any
suspected inland revenue offence, and any such
matter or thing shall be deemed to be divulged or
communicated, and any such book or document
shall be deemed to be produced, for the purpose of
20 carrying into effect the Acts referred to in
subparagraphs (i) and (ii) of section 13 (1) (a) of this
Act or any other enactment imposing taxes or duties
payable to the Crown.”

**56. Amendments to Wanganui Computer Centre Act
1976**—(1) The Title of the Wanganui Computer Centre Act
25 1976 is hereby amended by inserting, after the word “Justice”,
the words “and the Serious Fraud Office”.

(2) The Wanganui Computer Centre Act 1976 is hereby
further amended in the manner indicated in the Schedule to
this Act.

30 (3) Section 8 of the Wanganui Computer Centre Amendment
Act 1989 is hereby consequentially repealed.

Section 56 (2)

SCHEDULE

AMENDMENTS TO WANGANUI COMPUTER CENTRE ACT 1976

Part of Act Affected	Amendment
Section 2	By inserting in the definition of the term "user departments" (as enacted by section 2 of the Wanganui Computer Centre Amendment Act 1989), after the word "Justice", the words "the Serious Fraud Office,".
Section 4	By inserting in subsection (3) (as substituted by section 3 of the Wanganui Computer Centre Amendment Act 1989), after the word "Justice", the words "the Serious Fraud Office,".
Section 4c	By inserting in subsection (1) (a) (as so substituted), after the word "Justice," the words "the Serious Fraud Office,".
Section 19	By adding to subsection (2) (as amended by section 3 of the Wanganui Computer Centre Amendment Act 1986 and section 7 (1) and (2) of the Wanganui Computer Centre Amendment Act 1989) the following paragraph: "(k) The Director of the Serious Fraud Office."
Section 21	By inserting in subsection (3) (as substituted by section 7 (3) of the Wanganui Computer Centre Amendment Act 1989), after the word "Police," the words "the Director of the Serious Fraud Office,".
Section 23	By omitting from subsection (2) (as amended by section 8 of the Wanganui Computer Centre Amendment Act 1989) the expression "(h), (i), and (j)", and substituting the expression "(h), (i), (j), and (k)".
Section 23	By adding to subsection (2) (as amended by section 10 (1) of the Wanganui Computer Centre Amendment Act 1989), the following paragraph: "(f) The Director of the Serious Fraud Office."
Section 23	By inserting in subsection (3) (as substituted by section 10 (3) of the Wanganui Computer Centre Amendment Act 1989), after the word "Police", the words "the Director of the Serious Fraud Office,".

SCHEDULE—*continued*

AMENDMENTS TO WANGANUI COMPUTER CENTRE ACT 1976—*continued*

Part of Act Affected	Amendment
Schedule	<p>By adding to the third column of the Part headed <i>Department of Justice Records</i>, in the item relating to details of hearings, the following:</p> <p>“Serious Fraud Office (access is limited so as to exclude details relating to young persons, being persons over the age of 14 years but under the age of 17 years, where the offence did not carry a liability to imprisonment)”.</p> <p>By adding to the third column of the Part headed <i>Department of Justice Records</i>, in the item relating to details of hearings, the words “Serious Fraud Office”.</p> <p>By adding to the third column of the Part headed <i>Ministry of Transport Records</i>, in the item relating to drivers’ licences register, the words “Serious Fraud Office”.</p> <p>By adding to the third column of the Part headed <i>Ministry of Transport Records</i>, in the item relating to motor vehicles register, the words “Serious Fraud Office”.</p>