

# Strengthening New Zealand's Resistance to Organised Crime

An all-of-Government Response  
August 2011

*Strengthening New Zealand's Resistance to Organised Crime: An all-of-Government Response* was prepared by the Ministry of Justice in collaboration with the New Zealand Police, the Organised & Financial Crime Agency New Zealand, Te Puni Kokiri, Serious Fraud Office, Department of Corrections, Department of Internal Affairs, Department of Labour, New Zealand Customs Service, Inland Revenue Department, Reserve Bank of New Zealand, Financial Markets Authority, Ministry for Economic Development, Ministry of Health, Ministry of Foreign Affairs and Trade, Ministry for Social Development, Ministry for Consumer Affairs, and Department of Prime Minister and Cabinet.

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Published August 2011

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ISBN 978-0-478-32404-4

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# Table of Contents

Table of Contents	3
<b>Ministers' Foreword</b>	<b>4</b>
<b>Introduction</b>	<b>6</b>
<b>Part One: Organised Crime and Current Response</b>	<b>9</b>
The International Context	9
The issues	9
The global response	10
Organised crime in New Zealand	11
The issues	11
New Zealand's current response: domestic, regional and global	14
<b>Part Two: Enhanced Response</b>	<b>17</b>
The need for an enhanced response	17
Overview of response	20
Improving domestic and international information sharing, legal assistance and coordination	21
Improving domestic information sharing	21
Improving coordination between agencies and with industry	22
Improving international information sharing, legal assistance and cooperation	23
Reducing misuse of New Zealand legal arrangements	24
Protecting against cybercrimes	26
Preventing corruption and bribery	28
Enhancing anti-money laundering and crime proceeds recovery measures	30
Disrupting identity crime	32
<b>Part Three: Next Steps</b>	<b>34</b>
<b>Appendix: Multi-agency action plan to strengthen New Zealand's resistance to organised crime</b>	<b>35</b>

# Ministers' Foreword

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**O**rganised crime is a corrupting influence worldwide, undermining community wellbeing, proper governance, economic development and national security. While New Zealand has robust domestic laws and law enforcement, low levels of corruption and high levels of international engagement, it is not immune to domestically and trans-nationally generated organised criminal activity.

We have introduced a range of initiatives and new laws recently to target and further disrupt the activities of organised criminal groups and networks. In the last few years, we have:

- Toughened sentences for participation in criminal groups
- Expanded Police surveillance powers to investigate organised crime and made it easier for them to remove intimidating gang structures
- Implemented civil-based crime proceeds recovery laws to help us confiscate criminal profits, whether or not a conviction is obtained
- Reformed anti-money laundering provisions to better detect and deter crime proceeds being processed through the financial system
- Launched a multi-agency Action Plan on Methamphetamine to disrupt supply, reduce demand and mitigate its harms
- Implemented the multi-agency Drivers of Crime programme which includes measures to divert young people and low-level offenders from long-term patterns of offending and potential recruitment into organised crime
- Built on New Zealand's strong ties with other countries' and put in place measures to better meet our security needs and those of the international system.

We can't rest on our laurels. By nature, organised crime is challenging to detect and to counter, and it is also highly adaptable and moves rapidly to take advantage of vulnerabilities in legal and market settings, technology, trade and financial systems.

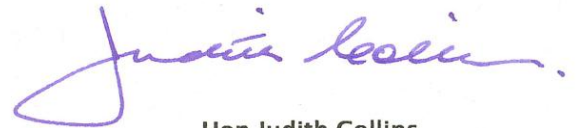
To ensure our communities remain safe from organised crime, that we continue to work closely with international partners, and that our

financial markets and economy are equipped to deal with sophisticated criminal activities, we need to be equally adaptable and broad in our approach.

This document identifies a number of areas where we will focus our attention over the next three years and sets out a coordinated all-of-government work programme to ensure we stay on top of organised crime.



**Hon Simon Power**  
Minister of Justice



**Hon Judith Collins**  
Minister of Police

# Introduction

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**O**rganised crime has a substantial global impact. It is involved in a wide array of illegal markets and offending, from trade in drugs, humans, counterfeit goods and environmental resources, to many cybercrimes and financial crimes. In many countries organised crime is a significant corrupting influence, undermining community wellbeing, proper governance, economic development and national security.

Factors impacting the current levels of organised crime in New Zealand include the country's traditionally low levels of corruption, its robust domestic law arrangements and enforcement, and its high degree of international cooperation in the area. As an open economy and society, it is clear that New Zealand is not immune from domestic and trans-nationally generated organised crime.

The New Zealand Police's most recent assessment of organised crime in the country<sup>1</sup> identifies serious threats against New Zealand's communities, borders, and economy.

Communities are especially affected through the manufacture and supply of illegal drugs, but also through burglary, theft and frauds, a proportion of which involve organised criminal groups and networks. At the border, illegal cross border movement of goods, information, people and funds are often associated with organised crime, as are many cybercrimes. Organised crime also affects commerce, such as through intellectual property crime, money laundering and a proportion of frauds against investors and businesses. The costs of such offending can be compounded by a loss of confidence in markets.

New Zealand has introduced a range of initiatives in recent years to help target and disrupt the activities of organised criminal groups and networks. Achievements notwithstanding, organised crime remains challenging to detect and to counter. It is highly adaptable and moves rapidly to take advantages of vulnerabilities in legal and

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<sup>1</sup> New Zealand Police (2010). Organised Crime in New Zealand, 2010

market settings, technology, trade and financial systems. Responses are complicated by the fact that organised criminal activities often fall under the responsibilities of more than one agency and across the jurisdictions of more than one country. This trans-national dimension means that international collaboration is critical to ensure organised crime is collectively reduced, and not displaced from one jurisdiction to another.

While progress has been made, New Zealand's response needs to evolve as organised crime does. This document outlines key areas where legislative and operational efforts can be improved including:

- Information sharing, mutual legal assistance and cooperating between domestic and international agencies
- Protections against the misuse of New Zealand legal arrangements, such as companies and trusts
- Protections against bribery and corruption
- Anti-money laundering and crime proceeds recovery measures
- Cybercrime investigation and enforcement
- Protections against identity crime

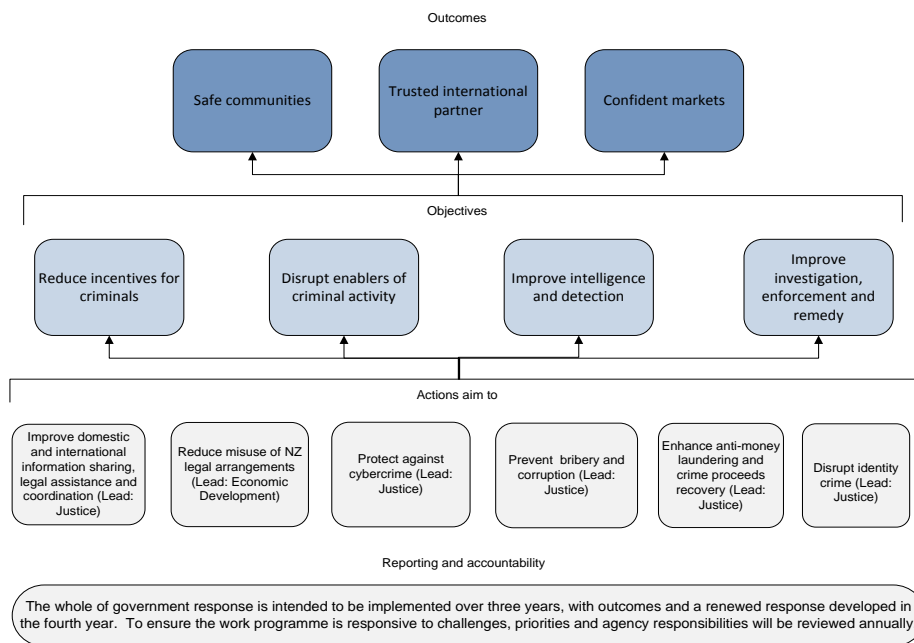
A number of legislative reforms are currently before Parliament or being developed which will address key issues. This all-of-Government response to domestic and trans-national organised crime tasks agencies with developing additional responses to the key issues identified.

The first phase of response will see the development of legislation aimed at:

- Resolving impediments to the effective combating of organised crime
- Disrupting key tools and processes used by organised criminals.

The response will be implemented over three years, with outcomes and a renewed response developed in the fourth year. Priorities, actions and agency responsibilities will be reviewed annually to ensure the work is responsive to emerging challenges.

FIGURE 1: KEY OUTCOMES, OBJECTIVES AND ACTIONS





# Part One: Organised Crime and Current Response

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## The International Context

### What is organised crime?

The United Nations Convention against Transnational Organised Crime (UNTOC) defines an organised criminal group as:

*'a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious offences... in order to obtain, directly or indirectly, a financial or other material benefit.'*

### The issues

Organised crime has a substantial global impact and is a significant issue for the international community. According to the United Nations Office on Drugs (UNODC), organised crime has<sup>2</sup>:

*'diversified, gone global and reached macro-economic proportions: illicit goods are sourced from one continent, trafficked across another, and marketed in a third... Crime is fuelling corruption, infiltrating business and politics, and hindering development. And it is undermining governance by empowering those who operate outside the law.'*

Internationally, drug trafficking is one of the main activities involving organised criminal networks, generating enormous profits. Global cocaine and heroin markets are estimated to be worth over \$100 billion a year. Trans-national organised criminal networks are also involved with international trade in humans, firearms, counterfeit goods and environmental resources (e.g. timber and waste), cybercrimes (most predominantly involving theft and falsification of

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<sup>2</sup> UNODC (2010). The Globalization of Crime: A Transnational Organized Crime Threat Assessment

identity) and financial crimes (including fraud, money laundering and tax evasion).<sup>3</sup>

The extent of organised crime involvement in economically motivated offending varies. For example, a drug supply chain will generally require many participants and therefore some form of organisation, whereas theft, cybercrime and frauds may equally be perpetrated by individuals. But even where multiple parties are not involved, economic crimes share fundamental characteristics of organised crime and many of the interventions can be equally critical to disrupting such offending.

### The global response

The United Nations Convention against Transnational Organised Crime (UNTOC), to which New Zealand is a State Party, is the main international instrument dedicated to countering organised crime.<sup>4</sup> It requires countries party to the Convention to operate within their domestic capability to combat organised crime, and cooperate internationally to protect the international system from exploitation by organised criminal groups and networks.

New Zealand is also party to other multi-lateral treaties and involved in international fora which set best practices relevant to combating organised crime – for example, the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the Financial Action Task Force (FATF) and the Asia Pacific Group on Money Laundering (APGML), concerned with anti-money laundering and countering financing of terrorism measures. New Zealand agencies share information about threats and approaches with counterparts in other countries through agency level arrangements.<sup>5</sup>

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<sup>3</sup> Ibid

<sup>4</sup> New Zealand is also Party to two of three Protocols to UNTOC, which target specific areas of organised crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air

<sup>5</sup> For example, New Zealand is involved in arrangements with the United Kingdom, Australia, Canada, and the United States of America in the Strategic Alliance Group (comprising law enforcement bodies), Border 5 (comprising customs bodies), and most recently, the Attorneys-General Quintet. Under the Quintet, a Declaration of Understanding provides for greater dialogue in developing policy, legislative responses and criminal intelligence on organised crime, and closer cooperation on capacity building and training between the countries.

# Organised crime in New Zealand

## The issues

Factors impacting the current levels of organised crime in New Zealand include the country's traditionally low levels of corruption, its robust domestic law arrangements and enforcement, and its high degree of international cooperation in the area. Some illegal markets, such as heroin, are much smaller than in some other countries.<sup>6</sup> Relatively low levels of public sector corruption may also be a positive indicator that organised crime here is at a low level and relatively immature.

However, as an open economy and society, New Zealand is not immune from domestic and trans-nationally generated organised crime. Organised criminal groups are involved across the entire supply chains of the various drug markets, and involved in a proportion of burglary, theft, kidnapping, illegal migration, financial crimes, intellectual property crimes and environmental crimes.

Estimating the costs of crime, let alone organised crime, is inherently difficult. International estimates place the cost of organised crime for most developed countries at between one and two per cent of GDP.<sup>7</sup> There have been few New Zealand studies that have attempted to quantify the impacts and profits of crime.<sup>8</sup>

Overall, best estimates indicate the scale of operation and harms of organised crime in New Zealand are substantial. The New Zealand Police's most recent assessment of organised crime in New Zealand identifies threats against New Zealand's communities, borders and economy.

Communities are especially affected through the importation, manufacture and supply of illegal drugs. Organised criminal groups are also involved in a proportion of robberies and theft.

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6 UNODC (2010). World Drug Report 2010. United National Publication

7 Australian Crime Commission (2011). Organised Crime in Australia 2011

8 Roper, T. and Thompson, A. (2006). Estimating the costs of crime in New Zealand in 2003/04. Treasury working paper 06/04.

At the border, significant illegal cross-border movement of goods, people and funds are intercepted annually. Additionally, New Zealand legal arrangements (e.g. registered companies) have been used to facilitate significant offending in other jurisdictions.

Organised crime also affects commerce, such as through intellectual property crime, some frauds against consumers, investors and businesses, and money laundering.

TABLE 1: SCALE AND IMPACT OF ORGANISED CRIMES

Offence	Estimates Scale	Impacts
<b>Illegal Drugs</b>	Annual Methamphetamine and cannabis use (at respectively 2.1% and 17.3% of 16–64 yr olds) is comparatively high by international comparison. <sup>9</sup> Sales of illegal drugs are estimated to generate between \$1.4 and \$2.2 billion per annum. <sup>10</sup>	Physical and mental ill-health, as well as violence (methamphetamine has high harm levels per use), lost productive potential and direction of public resources. <sup>11</sup>
<b>Burglary, theft and robbery</b>	21% of all recorded offences in 2009/10. <sup>12</sup>	Diverts expenditure from other consumption and investment, and in some cases causes physical harm and fear
<b>Cybercrimes</b>	In 2010, nearly a quarter of NZ organisations surveyed had IT systems infected with the Conficker virus. <sup>13</sup> 70% of New Zealand adults have been the targets of some form of cybercrime. <sup>14</sup>	Theft of identities, credit card and bank details, and intellectual property, disruption of business, and child victimisation
<b>Irregular migrations</b>	No confirmed cases of people trafficking, but numerous cases of people smuggling and organised immigration frauds	Vulnerable people are exploited. Entry gained by people that are criminal/security risks. A large scale instance of seaborne people smuggling would be costly to the public
<b>Criminal use of legal arrangements (trust and company structures)</b>	Over 1000 NZ company, and limited partnership arrangements implicated in serious offending overseas over the past five years.	Used to facilitate trafficking of illegal drugs, people and illegal arms, money laundering and large scale frauds. Also detrimental to reputation and global rule of law.

9 UNODC (2010) World Drug Report 2010. United Nations Publication

10 National Drug Intelligence Bureau (NDIB) Statistics, 2010

11 Refer 2008 Drug Harm Index, and BERL (2009). Costs of Harmful Alcohol and Other Drug Use Final Report. BERL. Reference 4577

12 Statistics NZ 2009/10 recorded crime data, excluding shoplifting

13 Quinn, KJ (2010). New Zealand Computer Crime and Security Survey. Security Research Group, University of Otago

14 Norton Cybercrime Report 2010: The Human Impact

<b>Frauds against consumers, businesses and investors</b>	In the year to December 2010, 56 large frauds cases were convicted, worth \$172 million. <sup>15</sup> New Zealanders are estimated to lose up to \$500 million annually to international scams and frauds. <sup>16</sup> Around \$1 billion of projected losses from recent finance company failures is linked to companies that are being prosecuted or been convicted for misleading investors.	Diverts expenditure and investment, undermines market trust and activity, and can increase cost of capital.
<b>Frauds against the public revenue</b>	No reliable estimate of revenue loss for New Zealand but countries with comparable systems have estimated significant losses. <sup>17</sup>	Reduced level of services and some taxpayers (including future generations) contributing disproportionately
<b>Money laundering</b>	The amount of domestic and international crime proceeds laundered through New Zealand entities is difficult to quantify, but is thought to be significant, in the order of \$1 billion to \$1.5 billion. <sup>18</sup>	A critical facilitator of economic crime. It can in its own right represent a risk to individual entities, and have a destabilising influence on economies.

15 KPMG. (2011). KPMG "Fraud Barometer" Findings. March 2011

16 Ministry of Consumer Affairs. 2010

17 Refer United Kingdom National Fraud Agency 2010 "Annual fraud indicator"

18 New Zealand Police Financial Intelligence Unity (2010). National Risk Assessment 2010: Anti-Money Laundering/Countering Financing of Terrorism

### Agencies involved in preventing and detecting organised crime:

- Organised & financial Crime Agency New Zealand (OFCANZ)
- New Zealand Police
- Serious Fraud Office
- Department of Corrections
- Department of Internal Affairs
- Department of Labour
- New Zealand Customs Service
- Ministry of Justice
- Inland Revenue Department
- Reserve Bank of New Zealand
- Financial Markets Authority
- Ministry for Economic Development
- Ministry of Health
- Ministry of Foreign Affairs and Trade
- Ministry for Social Development
- Ministry for Consumer Affairs

### New Zealand's current response: domestic, regional and global

New Zealand's current response to organised crime is both domestic and international in scope, reflecting that cross-jurisdictional cooperation is pivotal to effectively combat organised crime. Legal and operational responses to organised crime conform to international obligations and best practices established through international fora.

Set out below are key elements of New Zealand's current response to organised crime. Collectively, these measures increase the risks and efforts for criminals, remove profit from crime, and reduce exploitation of communities, borders and markets.

#### PLANNING AND COORDINATION

Prioritisation of operational activity is informed by a regular biennial cross-agency assessment of organised crime, which brings together information and intelligence from across government agencies and the private sector.

Agency intelligence and responses are coordinated at the national level by various agencies, including Police and also the Organised and Financial Crime Agency in New Zealand (OFCANZ), which targets criminal groups who work across police district boundaries, nationally and/or internationally. Regional level agency intelligence is shared and regional level responses are coordinated by the long-standing Combined Law Agency Group (CLAG) of agencies.<sup>19</sup>

Methamphetamine is a significant challenge, and a high priority for New Zealand. A targeted multi-agency Action Plan on Methamphetamine has been established which aims to disrupt supply chains, reduce demand, and mitigate the harms of the drug.

The New Zealand Police have recently implemented organised crime and methamphetamine control strategies, intended to focus police responses in those areas. Te Puni Kokiri is funding community-level efforts to raise awareness of the harms of the drug and provide better avenues into treatment to reduce demand.

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<sup>19</sup> The Combined Law Agency Group (CLAG) comprises a regional network for intelligence, enforcement and compliance officials mandated to coordinate, cooperate and communicate across government to identify and disrupt criminal threat to member agencies. The CLAG has 20 member agencies, a national oversight body and a Secretariat

## PREVENTING CRIMINAL BEHAVIOUR

A number of measures are undertaken across central and local government, and within communities, which contribute to prevention of people becoming involved in organised crime.

The multi agency Addressing the Drivers of Crime work programme includes measures to divert young people, and low-level offenders from a life of serious offending. The Ministry for Social Development's Youth Gangs: Local Response Guidelines and the Fresh Start for Young Offenders programme aim to better hold serious and persistent youth offenders accountable, address the causes of offending, and reduce the likelihood of young people adopting a life of serious offending.

The Department of Corrections is undertaking measures to reduce the influence of gangs within prisons and to reduce reoffending by gang members. Local Government New Zealand has recently issued guidelines for councils for identifying, assessing and addressing gang issues.

The 2009 Gangs and Organised Crime legislation introduced tougher penalties and sentencing for participation in a criminal group to deter participation in such groups.

## CRIME PROCEEDS DETECTION AND RECOVERY

New Zealand has also recently enacted the Crime Proceeds (Recovery) Act 2009, which is a civil-based crime proceeds forfeiture regime. Where crime instruments and proceeds are identified, the law enables the Crown to, without conviction, confiscate property from those who, according to the lesser civil standard of proof, have committed or profited from significant criminal activity.

Proceeds recovery and identification of offenders is supported through New Zealand's anti-money laundering regime provided under the Financial Transactions Reporting Act 1996. Financial institutions, casinos and other non-financial entities (e.g. lawyers, accountants and real estate agents) monitor for and report to the Financial Intelligence Unit within the Police, any suspicious transactions.

New Zealand has recently enhanced the framework with the passage of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. This will take full effect in 2013, but financial institutions and casinos are developing and implementing the required measures to enhance prevention, detection and reporting of proceeds of crime through the financial system.

**Summary of recent initiatives to combat organised crime include:**

- A regular New Zealand organised crime threat assessment
- Coordination of agency responses at the national level by the Organised and Financial Crime Agency New Zealand (OFCANZ), and at the regional level by the Combined Law Agency Group (CLAG)
- A targeted multi-agency Action Plan on Methamphetamine
- New Zealand Police organised crime and methamphetamine control strategies
- The Integrated Targeting and operations Centre established by New Zealand Customs Service to provide enhanced border protection
- The Immigration Offshore Border Operations Centre and Risk Targeting Programme focused on offshore interdiction of illegal migration and people smuggling
- National Plan of Action to Prevent Trafficking in Persons
- A National Cyber Security Strategy to deal with cyber threats
- Enhanced anti-money laundering legislation and crime proceeds recovery legislation
- Playing an active role in support of organised crime initiatives
- Capacity building in the Pacific

## BORDER AND CYBER SECURITY

To improve protection of the border, a range of targeting and intervention capabilities have been developed. The New Zealand Customs Service has established the Integrated Targeting and Operations Centre, responsible for coordinating its overall activity and effectively targeting interventions to identify risks. Immigration New Zealand has deployed the Offshore Border Operations Centre, Risk Targeting Programme, an Airline Liaison Officer network offshore and the Advance Passenger Screening System (APP) to target identity crime and people smuggling.

In response to emerging cyber threats, a National Cyber Security Strategy, released in June 2011, is being implemented to enhance cyber security awareness, resilience and protection for individual citizens, critical national infrastructure and government information.

## INTERNATIONAL COLLABORATION

The New Zealand Police works extensively with Interpol – which has a key role in coordinating international law enforcement investigation and information sharing – and other international law enforcement agency networks. New Zealand has well established mutual legal assistance in criminal matters and extradition law and bilateral arrangements with a large number of other countries.

To complement legislated and operation efforts, New Zealand is engaged in ongoing collaboration with foreign governments and regional and international organisations on organised crime policy and targeted international projects. The purpose is twofold: ensure New Zealand contributes to reducing what is a global problem, and ensure New Zealand's response is informed by relevant international developments.

Examples of New Zealand's international activity include co-sponsoring with Australia the UN Trans-National Organised Crime Threat Assessment for East Asia and the Pacific, funding of counter-terrorism capacity building (such as legislative drafting assistance) in the Pacific, and supporting organised crime initiatives within regional groupings including the Asia Pacific Economic Community (APEC), the Asia Regional Forum (ARF), and the Bali Process on people smuggling, human trafficking and related trans-national crime.



# Part Two: Enhanced Response

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**N**ew Zealand has already made significant ground in the fight against organised crime. However, organised crime remains challenging to detect and to counter. It is also highly adaptable, moving rapidly to take advantage of vulnerabilities that may appear in legal and market settings, technology, trade and financial systems. The response needs to be equally adaptable if New Zealand's success to date against organised crime is to be continued.

## The need for an enhanced response

The purpose of the enhanced measures outlined in this document is to deliver safe communities, maintain our status as a trusted international partner, and ensure the integrity of and confidence in our markets.

### SAFER COMMUNITIES

Reducing drug-related harm in New Zealand communities is of paramount importance, but a proportion of robberies, theft and fraud are also linked to organised crime.

Organised crime persists in most part because it is profitable. Individuals and businesses can knowingly and unknowingly demand illegal and illegally-sourced goods and services, offering opportunities for criminal exploitation and gain. Organised criminals can actively target the distribution and marketing of products to vulnerable populations, such as youth and those with dependencies.

Effective measures and responses will reduce people's desire for illegal and illegally sourced goods and services, reduce the price they are willing to pay, and increase the risk and effort involved with offending.

## TRUSTED INTERNATIONAL PARTNER

International cooperation and engagement are an essential component of an effective response, and reflect New Zealand's commitment to tackling organised crime as a global issue, as well as New Zealand's international obligations.

Efficiency improvements in transport, communications, and international banking, and the liberalisation of international trade, have increased both legitimate and illegitimate movement of goods, funds, people and information. Illegal trade flows towards countries offering the best demand (as reflected in prices and volume), and the lowest risks of detection and enforcement.

New Zealand has a large geographic border, with multiple physical entry points. Products that are illegal or controlled in New Zealand can be subject to limited controls and supply chains can be well established in countries with which New Zealand trades. New Zealanders make extensive use of information and communications tools, socially and for commerce. Monitoring and enforcing against illegal activities across these settings represent key challenges for New Zealand.

TABLE 2: GOODS ILLEGALLY CROSSING NEW ZEALAND BORDERS

What	Where from/to
<b>Illegal goods</b>	
Illegal drugs	Northern and Eastern Europe and Asia
<b>Controlled goods in circumvention of regulations</b>	
Firearms and components (to avoid licensing)	Eastern Europe
Drug precursors	Asia
Resources (e.g. waste and native species)	Asia
<b>Non-Controlled goods</b>	
Counterfeit products (e.g. media)	Asia
Stolen cars and car parts	Middle East

## CONFIDENT MARKETS

Criminal activities by sophisticated groups within commercial markets, while often less visible than offences such as drugs, theft and violence by individuals and visible criminal groups within the community, can impose a significant harm against our markets and economy.

Theft of physical and intellectual property, abuses of regulatory arrangements (such as disposal of hazardous waste), and various frauds (tax frauds, investment frauds, frauds against businesses and consumers) often only indirectly affect individuals, and may only become apparent well after the fact.

A significant factor in economic recovery is having effective law enforcement that minimises the direct losses to the public and private sector from financial crimes, and the indirect losses from the ensuing loss of business and investor confidence in the integrity of our markets.

## Overview of response

To realise the outcomes of safer communities, trusted international partner, and confident markets, enhanced responses need to:

- Reduce criminal incentives
- Disrupt enablers of criminal activity
- Enhance detection of organised criminal activity
- Ensure that investigations, enforcement and remedy is efficient and effective

Key areas identified where legislative and operational efforts can be further improved include:

- Information sharing and mutual legal assistance between domestic and international agencies
- Protections against the misuse of New Zealand legal arrangements, such as companies and trusts rules
- Protections against bribery and corruption in the private and public sectors
- Anti-money laundering and crime proceeds recovery measures
- Cybercrime investigation and enforcement
- Protections against identity crime

Several legislative and operational improvements are currently underway, which will address some issues in these areas.

This proposed all-of-Government response to domestic and transnational organised crime tasks agencies with developing additional responses to outstanding issues identified. The first phase of response will see the development of legislation aimed at:

- Resolving impediments to the effective combating of organised crime
- Disrupting key tools and processes used by organised criminals.

The response is intended to be implemented over three years, with outcomes and a renewed response developed in the fourth year. Actions and agency responsibilities will be reviewed annually to ensure the work programme is responsive to emerging challenges

# Improving domestic and international information sharing, legal assistance and coordination

## Improving domestic information sharing

Organised criminal operations in New Zealand, like elsewhere, take variety of forms, and are difficult to detect and disrupt. The production and delivery of goods or services to market can involve extensive supply chains. Criminal operations can involve:

- Hierarchical groups as well as loosely structured criminal networks. Activities across a supply chain can be organised simply via commercial arrangements. In some cases, groups can use what might appear to be legitimate businesses.
- Individuals from across multiple group affiliations, as well as individuals without recognised group affiliations. In some cases, important participants can have limited or no criminal history (at least within the jurisdiction) and can, in contrast to a stereotypical offender, be older, employed or principals in businesses, all of which may provide skills and market opportunities relevant to a particular criminal enterprise.
- Skills and resources drawn from legitimate enterprises. For example, goods need to be transported between production points and markets.

Activities can touch on law enforcement as well as regulatory responsibilities and industry sectors. Information sharing between domestic law enforcement and regulatory agencies, and between the public and private sectors, can be critical to the detection and investigation of criminal activity.

The Privacy Act allows domestic agencies to share between them personal information for the maintenance of the law. Other laws allow for information sharing between regulatory and law enforcement agencies. However, legislated provisions can discourage agencies from sharing critical information and preclude data matching.

Recent measures implemented to support information sharing between domestic agencies, the public and private sectors, and enhance intelligence include:

- Biennial publication of across-agency assessments of organised crime
- New obligations on financial institutions and casinos to more systematically monitor and report suspicious activity (Anti-Money Laundering and Countering Financing of Terrorism Act 2009, set to take effect in 2013)
- The collection and analysis by the Police of information on key organised crime offenders and their networks.

#### **Enhanced responses:**

It is additionally proposed to:

- Review Privacy, Tax Administration and Serious Fraud legislation to improve domestic and cross border information sharing and data matching between agencies
- Improve cross-agency threat and risk assessments through developing agreed aims, methodology and information collection plans

#### **Improving coordination between agencies and with industry**

A number of agencies have responsibilities for investigating and prosecuting financial crimes, such as frauds within various regulated settings. In the past year, the Serious Fraud Office, the Police, the Securities Commission (now Financial Markets Authority) and Ministry for Economic Development Enforcement Unit have investigated a number of major frauds, some of which are characteristic of organised crime (being financially motivated, involving multiple parties, and serious offending).

Issues identified include:

- Lack of awareness and self protection against frauds among individuals and businesses
- Duplication, and in some cases, inconsistent responses between agencies
- Significant scope for preventative actions in the areas of serious and complex frauds

#### **Enhanced responses:**

It is additionally proposed to:

- Develop a fraud landscape to identify the quantum of losses experienced on an industry sector basis and identify enablers of financial crime. This will be used to better target interventions and ensure financial crime is detected earlier
- Improve arrangements between agencies involved in investigating financial crime to ensure activity in this area is cost effective and efficient

## Improving international information sharing, legal assistance and cooperation

Various methods are used to move physical goods, funds and people across borders. International passengers, the postal and international courier systems, and containers are used to transport illegal goods. Illegal goods may be combined with legitimate goods to evade detection.

Interrupting supply before goods or illegal migrants reach the border is important to disrupting illegal markets.

Well targeted, intelligence-directed efforts and international cooperation and engagement are essential to an effective response. Intelligence and information are shared internationally through arrangements such as Interpol, formal legislated mutual legal assistance provisions, Treaty provisions and agency-level bilateral agreements (e.g. police to police).

Currently, there are some types of information that are prohibited from being shared internationally which, providing certain controls are implemented, would be of significant benefit to the maintenance of the law across jurisdictions. (e.g. serious criminal histories and associated biometric data). Legislated mutual legal assistance provisions are in certain areas inconsistent with domestic provisions, and can be administratively difficult for other countries to utilise.

Actions underway that will improve protections at and before the border include:

- The roll-out of Immigration Act 2009, including provisions allowing the capture and storage of biometric information
- Participation in the Five Country Conference data-sharing strategy and work programme
- The Customs and Excise (Joint Border Management Information Sharing and Other Matters) Amendment Bill, currently before Parliament, which will support border-sector information sharing

### Enhanced responses:

It is additionally proposed to:

- Improve interchange with overseas law enforcement agencies to gather information on techniques, methodologies, resources and enforcement approaches for dealing with criminal groups or types of offending
- Expand the scope of cross border information sharing
- Review domestic mutual legal assistance systems (including legislative provisions and operations) to ensure they are efficient and effective

# Reducing misuse of New Zealand legal arrangements

Criminals prosecuted both here and abroad have utilised what might appear to be legitimate business arrangements, comprising a legal entity or arrangements of multiple legal entities such as companies, trusts and building societies. Such arrangements are used, for example, to:

- Set up a front company to hide illegal activity and control of that activity (e.g. a firm involved in legitimate import/export activity is also involved in smuggling)
- Provide false credibility in the market place in order to fraudulently attract funds (e.g. ponzi schemes and mortgage frauds)
- Hide ownership of funds or assets (e.g. through the use of nominee directors)

Over the past five years, New Zealand agencies have been advised of cases of serious offending in overseas jurisdictions involving around 150 New Zealand registered companies. The Reserve Bank of New Zealand has identified around 1000 New Zealand registered companies and Limited Partnerships potentially involved in financial frauds in overseas jurisdictions.

Experience suggests the use of these arrangements to facilitate and hide criminal activity is internationally prevalent. In fact there is a global market for shell companies provided through trust and company service providers.

Actions underway to improve protections of New Zealand legal arrangements include:

- Development of a risk assessment framework, to identify risks on the Companies Register, and enhance monitoring of company registrations
- Improvements to information sharing between the Companies Office and Inland Revenue to identify and risk assess inactive companies
- Legislation requiring New Zealand companies to either have a New Zealand resident director or a resident agent and providing for improved ability to de-register registered companies and limited partnerships for overseas criminality.



- Regulation of New Zealand trust and company services providers under the Anti-Money Laundering and Countering Financing of Terrorism Act to improve collection of information on beneficial interests to assist investigating and prosecuting serious crimes.

**Enhanced responses:**

It is additionally proposed to:

- Consider further measures for improving New Zealand legal person transparency to assist the investigation and prosecution of serious crimes

# Protecting against cybercrimes

## What is cybercrime?

Cybercrimes include criminal activities targeted at, or which utilise, a computer or computer network. Cybercrimes include many traditional crimes, such as fraud, disruption of business, and child victimisation along with theft identities, credit card and bank details, and intellectual property. The use of a computer can also be incidental to other offending, and be an important source of information and evidence.

Cybercrime, perpetrated through rapidly expanding information and communications platforms, is growing in scale and sophistication. Modern hackers are proving adept at accessing systems within government, businesses and households. Automated applications, such as botnets<sup>20</sup>, enable the scale of offending to be greatly expanded. The anonymity that technology offers is an obvious advantage for offenders. Cyberspace also offers otherwise unconnected criminals the ability to network globally.

Offenders may be present, and cause harm, anywhere there is an internet connection, challenging countries' traditional approach to criminal law jurisdiction. A New Zealand can exercise broad jurisdiction in respect of Crimes Act offences, but obtaining evidence through entities based in other countries can entail formal, lengthy, mutual legal assistance processes via those countries. Such challenges will only grow as social and commercial use of the internet expands.

New Zealand has recently developed a number of important responses, including preventative measures through the National Cyber Security Strategy and enhanced investigations and prosecution capability through the Police National Cyber Crime Centre. The Online Reporting Button (ORB), a partnership between Netsafe and the New Zealand Government, enables internet users to report online abuses centrally and to a relevant New Zealand authority.

Maintaining an appropriate legal environment and ensuring international cooperation on cybercrime is critical. The Council of Europe Convention on Cybercrime sets out international best practice responses to cybercrime, and pushes for greater cooperation between countries that are party to the Convention in prosecuting cybercrimes.

New Zealand's legal and operational arrangements conform with many of the Convention's provisions. The Search and Surveillance Bill currently before Parliament will additionally provide for production

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<sup>20</sup> Criminals distribute malicious software (also known as malware) that can turn your computer into a bot. When this occurs, your computer can perform automated tasks over the internet, without you knowing it. Criminals use these computers to form a network, or a botnet, which are used to send out spam email messages, spread viruses, attack computers and servers, and commit other kinds of crime and fraud. Source: Microsoft

orders for data and extend New Zealand's interception warrant system in line with the terms of the Convention.

Remaining issues include New Zealand's ability to expeditiously order the preservation of computer data, in particular traffic data<sup>21</sup> that exists in some stored form at a point in time, to enable it to be obtained. The terms of the Convention would also require mutual legal assistance recognition of certain intercept warrants, production and preservation orders issued by other countries for data from New Zealand.

The Convention would improve New Zealand's ability to obtain data created or used to offend within New Zealand's legal jurisdiction but held in other countries.

#### **Enhanced responses:**

It is additionally proposed to:

- Review New Zealand's domestic law and systems with a view to adopting the Council of Europe Cybercrime Convention

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<sup>21</sup> Traffic data is defined under the Convention as "any computer data relating to a communication by means of a computer system... indicating the communication's origin, destination, route, time, date, size, duration, or type of underlying service." Traffic data is distinct from the content data of the communications.

# Preventing corruption and bribery

The corruption of public and private sector gatekeepers and decision makers can be instrumentally important in achieving organised criminal aims. For example, corruption and bribery may help to:

- Facilitate the commission of an offence in a clandestine manner (e.g. allow drug shipments to enter a country or a corrections facility 'undetected')
- Gain access to commercially sensitive information
- Influence administrative decision-making for the benefit of parties offering the bribe or their associates (e.g. awarding of public contracts)

Bribery and corruption are not visible behaviours and a bribery transaction can be difficult to detect. As the parties to the transaction each receive some form of benefit, there are limited incentives for either party to disclose the payment to authorities. Some forms of bribery and corruption involve a high degree of subtlety – the criminality (as opposed to unethical behaviour) can be potentially hard to identify (e.g. conflicts of interest).

New Zealand has benefited from well-established governance and accountability systems within the public sector which promote transparency and integrity in decision-making. By international measures, New Zealand is regarded as one of the least corrupt countries in the world<sup>22</sup> and there are few prosecutions for corruption and bribery-related offences. However, recent data suggests the level of corruption and bribery may be increasing.<sup>23</sup>

This is not surprising as similar opportunities exist in New Zealand to those that attract corruption and briber in other jurisdictions, for example, in areas of public administration of valuable contracts, and the granting of resource consents. Once a cycle of behaviour or expectation is in place it is difficult for either the payer of the bribe or recipient to alter their behaviour out of concern for their personal jeopardy.

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22 New Zealand in 2010 was ranked first equal with Denmark and Singapore as being perceived as the least corrupt countries in Transparency - International's Corruption Perceptions Index (CPI)

23 Transparency International Global Corruption Barometer 2010

New Zealand companies operate in countries with endemic corruption, and like some companies elsewhere, risk engaging in illegal activity where the benefits appear to outweigh the costs.<sup>24</sup> In some cases, this may be seen as the inevitable cost of doing business in these particular markets and the criminality becomes normalised.

Challenges include:

- Maintaining existing standards of integrity in public and private sector decision-making and avoiding complacency. The perception that New Zealand is corruption free may result in under-investment in internal controls, resulting in under-identification of risks and incidences of bribery and corruption
- Responding appropriately to incidents of corruption and ensuring that allegations are dealt with in appropriate forums (e.g. Courts as opposed to employment disciplinary processes). Treating corruption as an employment matter may downplay the seriousness of the incident and can contribute to perpetuation of the problem.
- Changing perceptions of criminality, promotion of whistle-blowing and reporting of incidents of corruption
- Gaps in legal frameworks

Actions underway to improve prevention and disruption of bribery and corruption include:

- Amending bribery and corruption offence provisions to align these with international standards and increase penalties for improved deterrence and criminal proceeds recovery
- Progressing ratification of UN Convention Against Corruption

#### **Enhanced responses:**

It is additionally proposed to:

- Develop a national anti-corruption policy covering prevention, detection, investigation and remedy of corruption and bribery across the public sector (including to local government and Crown Entities) and private sector

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<sup>24</sup> OECD (2006). New Zealand: Phase 2: Report on the application of the Convention on combating bribery of foreign public officials in international business transactions and the 1997 recommendation on combating bribery in international business transactions

# Enhancing anti-money laundering and crime proceeds recovery measures

## What is money laundering?

Money laundering involves activity undertaken for the purpose of concealing, or facilitating the concealing of, any property known or believed to be, or having reckless disregard for it being, in all or part, the proceeds of any serious offence (i.e. attracting a maximum term of imprisonment of five years or more) (refer section 243, Crimes Act) or a certain specified drug offence (refer section 12B, Misuse of Drugs Act) committed either in or outside New Zealand.

Money laundering is a significant facilitator of economic crime. Money laundering related to domestic as well as international profit-generating crime occurs in New Zealand's financial and non-financial market systems.

The Anti-Money Laundering and Counter Financing of Terrorism Act 2009 places obligations on financial institutions and casinos to more systematically identify their customers and monitor and report transactions for suspicious activity. As financial institutions and casinos implement the measures, the prevention and detection of criminal activity through the financial system will be improved. This, combined with improved protections against identity crimes and criminal use of legal arrangements, will contribute to making New Zealand a more difficult and costly environment through which to launder crime proceeds, and help to reduce the profitability of domestic crime.

Where crime instruments and proceeds are identified, the recently enacted Criminal Proceeds (Recovery) Act 2009 enables the Crown to, without conviction, confiscate property from those who, according to the civil standard of proof, have committed, or profited from, significant criminal activity.

Challenges include:

- Significant patterns of transactions, which individual financial institutions do not see, can go undetected
- Non-financial sectors are exposed to money laundering, but may be covered by limited or no anti-money laundering obligations
- As traditional avenues for money laundering and terrorism financing become restricted, criminals will look for new trading platforms and relatively unregulated areas
- The effectiveness of the money laundering offences framework. New Zealand, like many countries, has a low level of prosecutions for money laundering, particularly in respect of

third party money launderers and leaders of criminal organisations

- Agencies outside of Police currently have limited access to suspicious transaction data

#### **Enhanced responses:**

It is additionally proposed to:

- Extend industry sector coverage of AML/CFT measures (limited to relevance and proportion) to non-financial industry sectors identified as vulnerabilities to money laundering
- Establish international funds transfers and domestic high value cash transaction monitoring to enable track and trace along high risk money trails
- Increase sharing of financial intelligence, such as through providing greater access for agencies to suspicious transaction data for data matching
- Review the international alignment and effectiveness of the Crimes Act money laundering offence
- Develop a 'Financial Targeting Model' to take the profit out of crime

# Disrupting identity crime

Identity crime is an emerging issue in overseas jurisdictions.<sup>25</sup> Closely related to the expanding use of information and communications tools, it is being used as an enabler of other economic crimes, from the commission of theft and frauds, to the movement of people, goods, funds and communications. International markets have emerged for stolen and false identity documents and information.

In New Zealand, there is some evidence of identity victimisation with stolen identities being used for theft and frauds.<sup>26</sup> Stolen and false identities are also used in immigration frauds (including people smuggling). With increased delivery of services online, there is potential for identity crimes to increase. Vulnerabilities include:

- Identity document vulnerabilities
- Under-reporting of identity breaches
- Fragmentation between agency data-sets
- Gaps in the legal framework for enforcing identity crimes in some situations

A number of measures have recently been implemented or are well in train to improve protections against identity abuses. The Anti-Money Laundering and Countering Financing of Terrorism Act 2009 introduces comprehensive identity verification requirements to ensure financial institutions and casinos 'know their customers'. The Data Validation Service allows public sector entities to electronically confirm whether identity information presented by a customer is consistent with official data. The Identity Information Confirmation Bill, currently before Parliament, will extend this service to private sector entities.

To reduce vulnerabilities in identity documents, New Zealand has in recent years introduced better protections around identity data held on official registers, such as the births, deaths and marriages, and more recently the motor vehicles register. The Passport Redevelopment Programme includes enhanced protections against New Zealand Passports being forged or altered.

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25 UNODC (2010). The Globalization of Crime: A Transnational Organized Crime Threat Assessment

26 Mayhew, P. and Reilly, J (2007). The Experience of E-Crime: Findings from the New Zealand Crime & Safety Survey 2006. Ministry of Justice



To assist detection of identity crime at the border and fraudulent immigration claims, New Zealand recently signed a Memoranda of Understanding with Australia, Canada, the United Kingdom and the United States for checking fingerprint information during immigration procedures.

**Enhanced responses:**

It is additionally proposed to:

- Review legislation to resolve gaps in identity offences

# Part Three: Next Steps

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**W**e have outlined the challenges New Zealand is facing, the Government's aims and why the work that we are carrying out is important to combating organised crime.

The initial phase of work will involve development of legislation to remove impediments to effectively combating organised crime, and better disrupt key tools and processes used by organised criminals. A predominantly operationally focused second phase of work aims to improve the efficiency of agencies' efforts against organised crime.

At the end of the three year implementation period, we will develop a renewed response to organised crime. This will involve reviewing what has been done – and how successfully – and looking at what we still need to do in the context of a changing environment.

The work programme set out in the Appendix below shows who is responsible for each action and when the action is expected to be developed, as well as how they relate to our aims.

# Appendix: Multi-agency action plan to strengthen New Zealand's resistance to organised crime

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## ALL-OF-GOVERNMENT RESPONSE WORK PROGRAMME

The following table describes the Government's work programme on organised crime, and how the work links to the Government's aims.

Action	Aims	Responsibility and report back
Improving domestic and international information sharing, legal assistance and cooperation <i>Contributes to Safer Communities, Trusted International Partner, Confident Markets</i>		
Review Privacy, Tax Administration and Serious Fraud legislation to improve domestic and cross border information sharing and data matching between agencies	Greater information sharing; less administrative burden; less duplication of activity; more proportionate responses	Justice in consultation with Police, Inland Revenue and SFO  <i>Cabinet: August 2012</i>
Improve cross-agency threat and risk assessments through developing agreed aims, methodology and information collection plans	Better targeted and coordinated interventions across agencies; efficient and effective disruption of organised crime; better public awareness and self-protection	Police, in consultation with Customs, Immigration, Justice and SFO  <i>Officials committee: October 2012</i>
Develop a fraud landscape to identify the quantum of losses experienced on an industry sector basis and identify enablers of financial crime	Better targeted interventions; more efficient disruption of financial crime; better industry awareness, self-protection, and partnership with Government	SFO, in consultation with Police and Justice  <i>Officials committee: October 2012</i>

Action	Aims	Responsibility and report back
Improve arrangements between agencies involved in investigating financial crime to ensure activity in this area is cost effective and efficient	Improved prosecution rates; proceeds recovered; fines administered	Justice in consultation with MED, Police, SFO, FMA, Customs and Inland Revenue  <i>Cabinet: August 2012</i>
Improve interchange with overseas law enforcement agencies to gather information on techniques, methodologies, resources and enforcement approaches for dealing with criminal groups and offending	Improved relationship; capacity and capability developed; more effective and efficient detection and enforcement	Customs and Police  <i>Officials committee: October 2012</i>
Review domestic mutual legal assistance systems (including legislative provisions and operations) to ensure processes are efficient and the scope is sufficient	Improved response time to requests and international reputation	Justice in consultation with Crown Law and MFAT  <i>Cabinet: August 2012</i>
Reducing misuse of New Zealand legal arrangements <i>Contributes to Trusted International Partner and Confident Markets</i>		
Consider further measures for improving New Zealand legal person transparency to assist the investigation and prosecution of serious crimes	Better support for international law enforcement; international reputation; deterrence of utilisation of New Zealand legal arrangements	MED, in consultation with OFCANZ, Justice and RBNZ  <i>Cabinet: August 2012</i>
Protecting against cybercrimes <i>Contributes to Safer Communities, Trusted International Partner, Confident Markets</i>		
Review domestic law and systems with a view to adopting the Council of Europe Cybercrime Convention	Improved practice; international reputation	Justice, in consultation with MED, MFAT, DIA and Police  <i>Cabinet: April 2012</i>
Preventing corruption and bribery <i>Contributes to Trusted International Partner and Confident Markets</i>		
Develop a national anti-corruption policy covering prevention, detection, investigation, and remedy of corruption and bribery across the public sector (including to local government and Crown Entities) and private sector	UN Convention Against Corruption compliance; New Zealand reputation; enhanced corruption control - adoption of controls in agencies, local government and within industry sectors; detection; prosecution	Justice, in consultation with Police, SFO, the State Services Commission, Corrections, MFAT and additional agencies as appropriate  <i>Cabinet: 2013</i>
Enhancing anti-money laundering and crime proceeds recovery measures <i>Contributes to Safer Communities, Trusted International Partner, Confident Markets</i>		
Extend industry sector coverage of anti-money laundering and countering financing of terrorism measures (limited to relevance and proportion) to non-financial industry sectors vulnerable to money laundering	Increased suspicious transaction reporting, overall and by sector; enhanced deterrence and detection of crime; New Zealand reputation	Justice, in consultation with Police, DIA, RBNZ, FMA and Inland Revenue  <i>Cabinet: 2013</i>

Action	Aims	Responsibility and report back
Establish international funds transfers and domestic high value cash transaction monitoring to enable track and trace along high risk money trails	Enhanced detection and prosecution of economic crimes; recovered tax and crime proceeds; enhanced deterrence and detection; New Zealand reputation	Justice and Police, in consultation with Inland Revenue <i>Cabinet: August 2012</i>
Increase sharing of financial intelligence, such as through providing greater access for agencies to suspicious transaction data for data matching	Enhanced detection and prosecution of economic crimes; recovered tax; rates of agency access and utilisation of data	Police and Justice, in consultation with Customs and Inland Revenue <i>Cabinet: August 2012</i>
Review the international alignment and effectiveness of Crimes Act money laundering offence	Enhanced prosecution rates; proceeds recovered	Justice in consultation with Police <i>Cabinet: August 2012</i>
Develop a 'Financial Targeting Model' to take the profit out of crime	Increased cost and risk, and reduced profit to economically motivated crime; improved crime proceeds recovery	Police, in consultation with Customs and IRD <i>Officials committee: October 2012</i>
Disrupting identity crime <i>Contributes to Safer communities, Confident Markets</i>		
Review legislation to resolve gaps in identity offences	Contribute to improved prevention of a broad range of crimes; detection of problem identities and those associated with their use	Justice, in consultation with Department of Internal Affairs, Immigration, Customs and Police <i>Cabinet: August 2012</i>



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