

Departmental Disclosure Statement

Serious Fraud Office Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

19 February 2025.

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Part One: General Policy Statement

The Serious Fraud Office Amendment Bill (the Bill) contributes to the overall Government priority of restoring law and order by ensuring law enforcement has the necessary tools to address crime.

The Serious Fraud Office Act 1990 (the SFO Act) provides the Serious Fraud Office (SFO) with powers to investigate and prosecute serious or complex fraud.

The SFO Act has not been substantively amended since its enactment. It is now out of date, particularly with regard to technological developments and core criminal justice legislation. Outdated provisions limit the ability of the SFO to effectively investigate crimes and prosecute cases.

The Bill is intended to ensure that the SFO can more effectively carry out its role by updating specific provisions. The Bill is targeted to address the most pressing issues with the Act in two areas.

Search warrants – Changes will enable the SFO to obtain necessary digital evidence, more efficiently obtain search warrants, and better manage search sites. This will ensure more effective investigations. Amendments will bring the SFO Act into closer alignment with the more up to date provisions in the Search and Surveillance Act 2012. The amendments to search warrant provisions do not change the existing notice-making powers.

Evidence admissibility – Changes will enable the Courts to apply the more modern evidence test to determine the admissibility of unlawfully obtained evidence. This will ensure a wider range of factors can be considered, resulting in a more balanced approach to what evidence can be included in a prosecution. The test includes factors such as: the quality of the evidence; the seriousness of the offence; and whether urgency or safety was a factor in how the evidence was obtained. Amendments will bring the SFO Act into alignment with the up to date and widely applied provision in the Evidence Act 2006.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	NO
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Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
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The Ministry of Justice provided Cabinet with a Regulatory Impact Statement (RIS): 'Targeted Amendments to the Serious Fraud Office 1990' on 22 October 2025. The RIS will be published following introduction of the Bill.

2.3.1. If so, did the Ministry for Regulation provide an independent opinion on the quality of any of these regulatory impact statements?	NO
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No independent opinion was given because the RIS did not meet the threshold for the Ministry for Regulation's assessment.

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	YES
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The part of the policy not covered by the RIS is in relation to clarifying that Police may use the powers conferred on them by the Search and Surveillance Act 2012 for the purposes of attending or executing a search warrant under the SFO Act. This issue arose during the ministerial consultation stage.

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<i>Yes, the Regulatory Impact Statement provides analysis on the potential costs and benefits of the proposal.</i>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
<i>Crown Law will vet the Bill for consistency with the New Zealand Bill of Rights Act 1990 (NZBORA).</i>
<i>If the vet, or subsequently the courts, determine that there is an inconsistency, this is likely to impact New Zealand's compliance with our international commitments under the International Covenant on Civil and Political Rights (which NZBORA affirms).</i>

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
<i>Although there was no consultation with Māori on the proposals in the Bill, officials assessed the proposals in this Bill against constitutional principles, which include the Crown's Treaty obligations.</i>

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
<i>Crown Law will provide advice to the Attorney-General as part of the NZBORA vet.</i>	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
<i>The Ministry of Justice led the policy development of the Bill.</i>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<i>Clauses 6 and 7 relate to provisions about obtaining evidence in an investigation, which may include personal information.</i>	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
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The Office of the Privacy Commissioner was consulted on the proposal, the Cabinet papers, and the Bill.

The Office provided the following comment on the proposal:

Any changes to an agency's search warrant powers engage New Zealander's privacy rights and must be necessary, targeted and proportionate with appropriate checks and balances. The Privacy Commissioner supports that changes to the Serious Fraud Office's outdated warrant powers are aligned to equivalent provisions in the Search and Surveillance Act 2012 as providing appropriate thresholds and oversight. However, I note the 2016/17 Law Commission review found that the Search and Surveillance Act framework is also outdated and wider reform is needed to this area to ensure that the exercise of coercive powers by the state are subject to clear and principled rules.

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?

NO

There has been no external consultation on the Bill due to the need to work at pace, and because the SFO consider that a broader public consultation would increase legal risk to active cases (i.e. may prejudice the maintenance of the law).

The Ministry of Justice undertook targeted agency consultation with the Serious Fraud Office, the NZ Police, the Crown Law Office, the Office of the Privacy Commissioner, and the Financial Markets Authority.

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?

YES

Officials have worked with relevant agencies to address any implementation issues arising from the provisions in the Bill that give effect to the proposals.

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
<i>The transitional provisions in the Bill determine the point at which the new admissibility test would apply to cases. The Bill retains the existing test for cases where charges have already been laid, while new cases would be subject to the new test. The change is procedural, rather than substantive, and does not impose retrospective effect on rights or obligations.</i>	

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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