SFO
SERIOUS FRAUD OFFICE
Te Tari Hara Tāware

BRIEFING TO THE INCOMING MINISTER

NOVEMBER 2020

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INTRODUCTION FROM THE DIRECTOR

Julie Read
Director

Congratulations on your appointment Minister, the Serious Fraud Office (SFO) looks forward to working with you. This briefing provides you with an introduction to the SFO, how it operates and its current priorities and challenges.

The SFO's work helps guard New Zealand's international reputation as a society where public institutions are trusted and widely respected for transparency and integrity. Our performance safeguards the country's financial system and institutions against criminal activities capable of destroying that trust.

The SFO has entered a new and challenging period. We are likely to see more serious financial crime over the coming years because of the COVID-19-related economic downturn and recovery with fraudsters seeing opportunities to defraud government emergency relief programmes and financial assistance packages rolled out in the wake of the pandemic. Additionally, economic downturns expose other fraudulent schemes because the new investments required to keep them going stop coming in, meaning that 'dividend' payments cease and investors are unable to redeem their investments. The SFO has received $3.87 million over three years from the COVID-19 Response and Recovery Fund to lead fraud and corruption prevention activities across government. Responding effectively to financial crime and corruption related to COVID-19 recovery programmes, both in terms of prevention and investigation and prosecution, is a key challenge for us. This work is well underway and we look forward to providing you with a more detailed briefing in the near future.

As an agile and forward-looking agency, we are focused on addressing the challenges that lie ahead. Our strategic priorities for the next four years are set out in our Statement of Strategic Intentions (SoSI) 2020-24. The SFO underwent a Performance Improvement Framework (PIF) review in 2019. The PIF highlighted organisational challenges for the SFO and systemic issues which must be addressed to protect all New Zealanders from serious financial crime and corruption. The PIF's findings underpin our strategic intentions and direction as set out in the SoSI for the next four years. You have been provided with copies of our SoSI and PIF review.

We are looking forward to discussing your key priorities for your tenure as Minister and how we can support you in that work.

Julie Read
The Director of the Serious Fraud Office

November 2020

MINISTERIAL GOVERNANCE

The SFO was established in 1990 under the Serious Fraud Office Act 1990 (the SFO Act) and is a separate department of government. Under the SFO Act the responsible Minister is the Attorney-General but, in 2008, ministerial responsibility was transferred to the Minister of Police. At that time the Attorney-General considered there could have been potential for conflict between his roles as Attorney-General and as Minister responsible for the SFO given the statutory responsibilities of the Attorney-General under our Act.

Under the SFO Act, the SFO is operationally independent from the Minister. This means the Minister cannot direct the SFO in relation to its investigations. The SFO is required to observe the strictest secrecy in relation to information obtained during its investigations (s36 SFO Act). This may have an impact upon the information provided to the Minister under the 'no surprises' principle. Further information about the operation of the 'no surprises' principle and our secrecy provisions appears later in this document in the *Ministerial Briefing and Communication* section.

OUR CONTEXT

Consistently rated by Transparency International as having a public service with one of the lowest levels of corruption in the world, New Zealand is viewed as a country with a well-functioning democratic system including strong public institutions and low levels of fraud and public sector corruption. New Zealanders value this reputation which brings tangible benefits. Most importantly, it delivers the economy a competitive advantage as it supports investor confidence in the integrity of the country's financial system and helps keep business costs down.

Despite New Zealand's reputation, fraud and deception is the second most common type of offence in the country. The estimated total number (incidents) of fraud and deception offences in 2018-19 was 310,000, which made up 18 percent of all crimes and 27 percent of personal crimes.[1] This equates to eight offences per 100 adults. Fraud and deception also had the highest rates of re-victimisation. Public sector corruption cases make up an increasing percentage of the SFO's cases (upwards of 40 percent). In some respects this is a positive in that overseas evidence would indicate that this is the consequence not of more offending, but of more offending being reported.

We expect to see more financial crime and corruption over the coming years because of the COVID-19 pandemic. Local and international experience shows that serious and complex financial crime increases during a significant economic downturn. For example, during the Global Financial Crisis, many finance companies in New Zealand collapsed, resulting in the investigation of 16 companies and the prosecution of 29 individuals. Disaster recovery, which is accompanied with unusually high levels of investment and often with lower levels of integrity controls on that spending, also creates opportunities for large-scale fraud.

International assessments of the scale of fraud on the public sector have concluded that between 0.05 - 5 percent of the public budget is lost to fraud. Once a fraud has occurred, it is rarely the case that the funds can be recovered making prevention of fraud an essential element of the fight against economic crime and corruption. Addressing the increased levels of offending that we expect to see as a result of the response to COVID-19 will require an innovative system-wide approach that must include both public and private sector stakeholders, together with an awareness of international trends and experiences. This will be a focus of our financial crime prevention activities.

For more information about our context please refer to our *Statement of Strategic Intentions 2020-2024*. This includes: the likely impact of COVID-19, our public sector context and our wider New Zealand context.

1 NZ Crime and Victims Survey (NZCVS) Cycle 2 2019

WHY HAVE AN SFO?

The SFO was created as a response to the fallout from the 1987 share market collapse and the ensuing economic recession, which exposed fraud on a magnitude never seen before in New Zealand. The total sum thought to be involved in corporate fraud schemes increased dramatically from $10–15 million before 1988 to $50 –$70 million in 1989.[2] At the time, there was a perception that New Zealand was not equipped to deal with the investigation and prosecution of complex financial crime.

The Hansard account of the debate surrounding the introduction of the Serious Fraud Office Bill records the following comment from the then Prime Minister, the Rt Hon. Sir Geoffrey Palmer:

"It [fraud] is a very deceitful and nefarious activity that is often conducted by people with respectable reputations in the community. It is very hard to discover and it is very difficult to prosecute successfully. Indeed, many people think that a lot of the behaviour that goes on is aided by modern technology – especially computers. People who are financially sophisticated and have great investigation skills – a multi-disciplinary team of people - are needed to deal with the problem. The Bill provides that. It provides adequate protections for people who may be subject to it, but it also provides new techniques and new ways of ensuring that those people can be brought to justice effectively."

In the years following its creation, the SFO's powers were characterised by the courts as "draconian" and "powerful and wide ranging". However, in more recent times, as other enforcement agencies have been granted substantially similar powers to investigate misconduct, the nature and extent of the SFO's powers have attracted less judicial comment.

The reality is the SFO would not be able to carry out its functions without the powers contained in the SFO Act. Fraud, bribery and corruption offences are extremely difficult to detect and successfully prosecute and require the SFO to have powers which give it access to material that is not readily available. Resolving these matters is typically not dependent on eyewitness evidence, but instead requires a detailed forensic

2 Doone P. (1990) 'Commercial Fraud in New Zealand: Contemporary Legal and Investigative Issues' in N. Cameron and S. France (eds) 'Essays on Criminal Law in New Zealand: Towards Reform?' p. 159

The SFO was created as a response to the fallout from the 1987 share market collapse and the ensuing economic recession

analysis of (primarily) electronic information and lengthy testing of both witness and suspect's version of events. As most witnesses have either been involved in the conduct to some extent or may owe a duty of confidentiality in respect of the information they have, many are reluctant or unable to speak to the SFO without being compelled to do so. Furthermore, the challenges in this area are only growing with the increasing sophistication of the technology employed by offenders. An inability to compel the production of information and documents, to execute search warrants (noting that this may not always be practical at large institutions such as banks where a physical search is unlikely to successfully locate all relevant material within the timeframe allowed for the execution of a warrant), or to compel attendance at interviews to answer questions, would mean that these matters could not be effectively investigated.

Another innovation in the establishment of the SFO, as noted by Sir Geoffrey Palmer, was the introduction of multidisciplinary teams made up of investigating lawyers, forensic accountants, and investigators (now extended to include electronic forensic investigators and document management specialists). Multidisciplinary teams are considered international best practice for the type of complex investigations the agency undertakes. The SFO has developed strong technical competence relating to forensic accounting, electronic forensics and financial investigations and prosecutions. All disciplines bring their expertise to bear on an investigation from the outset – differing from the general model of an investigation conducted by investigators with a brief being referred to a prosecutor at its conclusion. The risk for such a model when dealing with complex financial crime is that if a long and complex investigation has been in any way misconceived in legal (or accounting) terms, a prosecution may not be possible at all. In having legal and other expertise involved from the outset, hurdles to prosecution can be identified at an earlier stage and addressed or, where they are insurmountable, the investigation can be halted allowing the resources to be allocated to a viable investigation.

One further reason why a stand-alone agency is necessary is that the powers required are beyond those normally accorded to police forces and it is considered necessary to ensure that they are confined to the purposes of the investigation and prosecution of only the most serious and complex financial crime.

WHAT WE DO

The presence of an independent agency dedicated to combatting serious financial crime is integral to New Zealand's reputation for transparency, integrity and low levels of corruption.

The SFO administers the Vote: Serious Fraud appropriation with the core purpose of detecting, investigating and prosecuting cases of serious financial crime. This includes activities directed at making the commission of financial crimes more difficult, and its detection and prosecution more effective.

Investigation and prosecution

Our work includes the investigation and prosecution of financial crime, bribery and corruption, the latter of which makes up an increasing volume of our work. The SFO focuses on a relatively small number of cases that have a disproportionally high impact on the economy and the financial wellbeing of New Zealanders. We generally have about 30-40 investigations and prosecutions open at any one time. In the case of bribery or corruption, we investigate crimes that could undermine confidence in the public sector or are of significant public interest. Cases are prioritised using criteria that address the scale of the crime and its impact on victims, the complexity of the offending and the degree of public interest as prescribed by our legislation.

Our cases are typically very heavy in both electronic and documentary evidence. Current SFO cases have on average just over one million documents with the largest five cases averaging 3.19 million documents (approximately 1.23 terabytes of information). The SFO transformed its case and evidence management systems in 2017 to enable us to manage the increasing volume of evidential data – an international trend for agencies fulfilling similar roles.

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Prevention of financial crime

We undertake financial crime prevention activities. The Government approved additional funding in 2020 from the:

- Proceeds of Crime Fund for the second phase of an Anti-Corruption Work Programme, on which we are supported by the Ministry of Justice
- COVID-19 Relief and Recovery Programme to enable the SFO to lead public sector fraud prevention relating to COVID-19 relief packages.

We are also a member of the International Public Sector Fraud Forum – a five eyes group established by the UK Cabinet Office to improve the resilience of public agencies against fraud and to share best practice. We have received considerable assistance from both the UK and Australia in our COVID-19 prevention work under the umbrella of this organisation.

Within New Zealand we have established a cross agency COVID-19 response group which is actively sharing information and learning in this area and have produced fraud prevention guidelines for all public sector agencies. We have linked relevant agency staff to the International Public Sector Fraud Forum network, where they can directly share information and experience with their overseas counterparts (for example, in relation to PPE procurement).

A National Financial Crime and Corruption Strategy

A robust system-wide response to financial crime and corruption is important to the financial and economic wellbeing of all New Zealanders. In response to the PIF, we are currently in the early stages of work with partners to develop a National Financial Crime and Corruption Strategy. We have the support of our justice sector colleagues in this work. The strategy is a priority for the Justice Sector Leadership Board and features in the justice sector's joint BIM, which you will have received.

A key component of a National Financial Crime and Corruption Strategy is likely to include the design of an end-to-end financial crime and corruption education, prevention, detection and prosecution system. A more coordinated approach would mirror the approaches taken to mitigate other strategic risks, such as foreign interference and transnational organised crime, and would be expected to provide a joined-up approach with these other strategic risks and the agencies responsible for addressing them.

We anticipate providing a briefing to Justice Sector Ministers in due course on the proposed scope and timeframes of the strategy.

Bribery and corruption

We are the lead agency for the investigation and prosecution of bribery and corruption – as directed by Cabinet in 2010. About half of our current investigations and prosecutions relate to corruption of various forms, and we have seen a significant increase in public sector corruption related complaints since 2014. Given the potential impact of corruption cases on New Zealand's reputation, we have prioritised these matters.

As mentioned, the SFO is leading Phase Two of an Anti-Corruption Work Programme to further enhance New Zealand's integrity framework. This work is led by the SFO and the Ministry of Justice and is funded from the Proceeds of Crime Fund.

Meeting New Zealand's international obligations

As part of our bribery and corruption role, we provide support for New Zealand's compliance with international anti-corruption obligations, such as the OECD Working Group on Bribery, the APEC Anti-Corruption Transparency Working Group and the UN Convention Against Corruption, where operational issues are involved.

We will chair the APEC Anti-Corruption and Transparency Working Group in 2021, when New Zealand hosts APEC.

We actively participate in international law enforcement networks and counter-fraud groups to maintain New Zealand's international reputation as a country with low levels of corruption and to keep up to date with global trends in financial crime. These include:

- International Anti-Corruption Coordination Centre (IACCC), London
- International Public Sector Fraud Forum (a UK Cabinet Office initiative)
- Economic Crime Agencies Network
- International Foreign Bribery Taskforce (Five Eyes countries).

We have an employee based at the IACCC, hosted by the National Crime Agency in the UK, which coordinates requests for information and cooperation from countries which have been the victims of grand corruption.

HOW WE CONTRIBUTE TO GOVERNMENT AND JUSTICE SECTOR PRIORITIES

We contribute to the Government's priorities of:

- **Reform of the justice sector** - through supporting and contributing to policy and operational initiatives across the justice sector.
- **Tackling organised crime** - primarily through the development and implementation of an Anti-Corruption Work Programme and a National Financial Crime and Corruption Strategy. Both initiatives will impact on the ability of organised crime to engage in corrupt behaviour or commit financial crimes. We contribute to cross-government organised crime leadership groups and policy initiatives.

The SFO forms part of the justice sector. The work of the justice sector affects each of the sector partners and we recognise the need to be well connected with each other. Our Director/ Chief Executive sits on the Justice Sector Leadership Board and other senior leaders and employees contribute to various sector strategy and operational groups.

We contribute to justice sector priorities including:

- **Transformation of the criminal justice system** - through supporting and contributing to policy and operational initiatives across the justice sector. This includes being members of sector strategy and operational groups, such as innovation and victim groups, and the Auckland Justice Sector Leadership group.

The work of the justice sector affects each of the sector partners and we recognise the need to be well connected with each other

- **Strengthening the Māori-Crown relationship** - by embracing opportunities to contribute to sector initiatives and looking to develop better relationships with Māori in relation to the impacts of financial crime as part of the National Financial Crime and Corruption Strategy.
- **System Improvements** – by implementing the Anti-Corruption Work Programme and the National Financial Crime and Corruption Strategy to reduce the incidence of financial crime, together with a reduction in victimisation. This will have the benefit of reducing the entry of offenders and victims into the justice system.

THE SFO AT A GLANCE

SECTOR

Justice

LOCATION

Level 6, 21 Queen Street, Auckland

Level 4, 45 Johnston Street, Wellington

ESTABLISHED

1990 under Serious Fraud Office Act 1990

PURPOSE

To investigate and prosecute serious or complex financial crime, including bribery and corruption .

BUDGET

Vote: Serious Fraud

$13.449 million

2020/21

AVERAGE LENGTH OF INVESTIGATIONS

13 - 15 months

CURRENT WORKLOAD

15 Enquiries

14 Investigations

20 Prosecutions

(on hand at October 2020)

AVERAGE DOCUMENTS IN SFO'S FIVE LARGEST CASES (FILE SIZE IN TB)

3.19 million

(1.23 terabytes)

ANNUAL VOLUMES

900 - 1200 Complaints Received

28 - 32 Enquiries Commenced

(Part 1 of SFO Act)

10 - 14 Investigations Commenced

(Part 2 of SFO Act)

8 - 10 New Prosecutions

EMPLOYEES

56 Employees

(increasing to 76 in January 2021)

Senior Leadership Team

1 Chief Executive/Director

2 Deputy Chief Executives

6 Managers

SFO STRUCTURE

The SFO is managed by a Senior Leadership Team (SLT) of nine: a Chief Executive and Director[3], two Deputy Chief Executives and six Managers.

One Deputy Chief Executive is responsible for Business Services, Forensic Services and Strategy and Prevention. The other Deputy Chief Executive is responsible for all operational matters including investigations and prosecutions and is also the SFO's General-Counsel.

The six Managers are assigned to the following roles:

- Two Managers Investigations
- Deputy General Counsel
- Manager Strategy and Prevention
- Manager Business Services
- Manager Forensic Services.

All members of the SLT contribute to the management of the agency, which includes public and private stakeholder engagement, support for our international work and contributing to our reporting obligations.

As a result of additional funding from Budget 2020 and the COVID-19 Relief and Recovery Fund, the SFO is better placed for the future. Our resilience has been strengthened and we have more capacity to address demands for service, including the anticipated growth in complaints and investigations during the COVID-19 related economic downturn. Overall, our employee headcount will increase by about 50 percent by January 2021.

The SFO has recently expanded its organisational structure to incorporate:

- Thirteen new investigative positions
- New Wellington-based investigation team (see below)
- Increased capacity in our electronic forensics team
- New senior technical roles to lead each of our technical disciplines
- Improved organisational resilience in our business services team.

New Wellington office

The SFO opened an office in Wellington in November after 30 years of being solely based in Auckland. The office will include an investigation team and part of our Strategy and Prevention team and will enable closer links with the Wellington-based public sector - addressing one of the PIF recommendations.

3 Section 31 of the SFO Act states that the Chief Executive of the Serious Fraud Office shall be known as the Director.

MINISTERIAL BRIEFINGS AND COMMUNICATION

The current Director and her deputies have previously met fortnightly with the Minister. We provided him with a monthly dashboard of our current performance along with any relevant strategic matters. A copy of our current report is attached for your consideration. We also provided him with reports on specific issues of current interest or concern. We look forward to discussing the reports with you and any additional or different information which might assist you.

Secrecy

As you will be aware, the SFO has a statutory obligation under the SFO Act to ensure that the strictest secrecy is observed in relation to information supplied to, or obtained by the Director under, or in connection with the exercise of our powers under the Act. This is to ensure that parties to an investigation have confidence that the information we compulsorily obtain is kept in strict confidence and only used for the purposes for which it was obtained. If information about active cases was to enter the public domain, it could undermine confidence in the SFO and deter witnesses from fully cooperating with our investigations.

The Director is empowered to disclose information in certain situations as follows:

- With the consent of the person who provided the information to the SFO
- To the extent that the information is already in the public domain
- For the purposes of the SFO Act or the exercise of powers under the Act
- For the purposes of a prosecution anywhere
- To a person who the Director is satisfied has a proper interest.

The words 'a proper interest' refers to situations such as where a disclosure might prevent further losses by investors. It is not a reference to being interested in the information.

As this is a statutory provision it is legally binding on the Director and overrides the 'no surprises' principle. This does not mean that we do not try to ensure that the Minister is aware of matters which may be controversial or may become the subject of public debate, however, doing so may not be possible in all cases. The Director will be happy to discuss this with you.

UPCOMING BRIEFINGS

The SFO anticipates briefing you on the following matters in the next three months:

[redacted]

2 A progress report on the SFO's financial crime prevention activities.

APPENDIX

The SFO Executive Leadership Team

Julie Read
Director

Julie Read was appointed as the Chief Executive and Director of the SFO in October 2013.

Julie is a lawyer who was a prosecutor with the Commonwealth Director of Public Prosecutions in Australia for 13 years. She accepted a statutory appointment as Regional Commissioner for Tasmania with the Australian Securities and Investments Commission (ASIC) in 2002. Concurrently, she held a number of other national roles with ASIC at the senior executive level, including Special Counsel, Litigation, responsible for the conduct of major litigation for ASIC and prior to that Senior Executive, Major Fraud and International.

Julie represented ASIC in international fora and was responsible for the investigation and litigation of a number of high profile cases in Australia including cases against senior officers of the Australian Wheat Board who paid approximately $320 million in bribes to Saddam Hussein and the Directors of James Hardie who made misleading statements in relation to compensation for asbestos victims.

Julie studied Law at the University of Tasmania.

Graham Gill

Deputy Chief Executive Corporate and Strategy

Graham Gill was appointed as Deputy Chief Executive Corporate and Strategy in July 2020.

Graham was the General Manager Evaluation and Intelligence and Business Services prior to this. He joined the SFO in March 2012 from the Commerce Commission, where he was a manager in the Competition Branch. Graham began his career with NZ Police where he was a Detective Sergeant. He has also spent time working across Asia as a human resources manager for a Sydney-based technology company. Graham has a Bachelor of Business Studies from Massey University and a post-graduate qualification from the University of Auckland.

Paul O'Neil

Deputy Chief Executive Operations and General Counsel

Paul O'Neil was appointed as Deputy Chief Executive Operations and General Counsel in July 2020.

Paul joined the SFO as General Counsel in 2016. He was the Head of Enforcement at the Financial Markets Authority (FMA) prior to this. In this role, he was responsible for overseeing conduct of its civil and criminal proceedings and represented the FMA on the International Organisation of Securities Commission's Cooperation and Enforcement and Screening Group Committees. He previously worked in private practice as a litigator at law firms in both New Zealand and London across a wide range of practice areas, including regulatory investigations and proceedings, energy, construction and telecommunications. Paul holds an LLB (Hons) from the University of Auckland.

Our purpose is to ensure the financial and economic wellbeing of New Zealanders is protected

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About the Serious Fraud Office

The Serious Fraud Office is the lead law enforcement agency for investigating and prosecuting serious financial crime, including bribery and corruption. Detection, investigation and prosecution of serious and complex financial crime, including corruption and bribery, is at the heart of what we do. We are also committed to preventing these crimes.