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Serious Fraud Office Act 1990

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Justice.

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An Act—

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

1 Short Title

This Act may be cited as the Serious Fraud Office Act 1990.

2 Interpretation

In this Act, unless the context otherwise requires,—

corporation means a body of persons, whether incorporated or not, and whether incorporated or established in New Zealand or elsewhere

designated member means the Director and any other employee of the Serious Fraud Office who is designated by the Director as a person whose position in the Office enables him or her to exercise the powers conferred by this Act

Director means the Director of the Serious Fraud Office

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

- (a) any writing on any material:
- (b) any information recorded or stored by means of any tape recorder, computer, or other device; and any material subsequently derived from information so recorded or stored:
- (c) any label, marking, or other writing that identifies or describes any thing of which it forms part, or to which it is attached by any means:
- (d) any book, map, plan, graph, or drawing:
- (e) any photograph, film, negative, tape, or other device in which 1 or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced

employee, in relation to the Serious Fraud Office,—

- (a) means the Director and any other person employed by the Serious Fraud Office, whether paid by salary, wages, or otherwise:
- (b) includes, for the period of his or her secondment, any person seconded to the Serious Fraud Office from any other department or other employer:
- (c) does not include a person appointed under section 34

information includes data, documents, and forecasts

inland revenue offence means—

- (a) any offence against any Act specified in Schedule 1 of the Tax Administration Act 1994; and
- (b) any offence against any Act in relation to any tax imposed or payable, or any refund made or claimed, under any of the Acts specified in Schedule 1 of the Tax Administration Act 1994

Judge means any Judge of the High Court or the District Court

member, in relation to the Serious Fraud Office,—

- (a) means any employee of the Serious Fraud Office; and
- (b) includes, for the purposes of any particular investigation, any person who is deemed to be a member in accordance with section 34(2)

person includes a body of persons whether incorporated or not

place includes any premises, building, aircraft, ship, carriage, vehicle, box, or receptacle

prescribed means prescribed by regulations made under this Act

protected information means any information that is protected from disclosure—

- (a) under section 36; or
- (b) under the Tax Administration Act 1994; or
- (c) under any other Act,—

but does not include—

- (d) information that has been lawfully released under any other Act in circumstances where the person to whom it has been released is under no obligation to maintain secrecy in respect of the information; or
- (e) information that has ceased to be protected information in accordance with section 43

serious or complex fraud includes a series of connected incidents of fraud which, if taken together, amount to serious or complex fraud.

Section 2 **inland revenue offence** paragraph (a): amended, on 23 March 2020, by section 277 of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020 (2020 No 5).

Section 2 **inland revenue offence** paragraph (a): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 2 **inland revenue offence** paragraph (b): amended, on 23 March 2020, by section 277 of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020 (2020 No 5).

Section 2 **inland revenue offence** paragraph (b): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 2 **protected information** paragraph (b): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

3 Act to bind the Crown

This Act shall bind the Crown.

Part 1

Detection of serious or complex fraud

4 Exercise of powers under this Part

Where the Director has reason to suspect that an investigation into the affairs of any person may disclose serious or complex fraud, the Director may exercise any power conferred by this Part.

5 Power to require production of documents

- (1) The Director may, by notice in writing, require any person, at the time and place specified in the notice,—
 - (a) to produce for inspection any documents which are specified in the notice and which the Director has reason to believe may be relevant to any suspected case of serious or complex fraud;
 - (b) to answer, to the best of that person's knowledge and belief, questions with respect to the whereabouts or existence of any further documents that may be relevant to the investigation.
- (2) Where any document is produced pursuant to this section, the Director may do any one or both of the following things:
 - (a) take copies of the document, or of extracts from the document;
 - (b) where necessary, require the person producing the document to reproduce, or to assist any person nominated by the Director to reproduce, in usable form, any information recorded or stored in the document.
- (3) Nothing in this section requires any person to supply any other information or to answer any other questions.
- (4) Section 18 shall apply to any notice given under this section.

6 Power to obtain search warrant

- (1) The Director may, on application in writing made on oath, apply for a warrant to search any place specified in the application.
- (2) Any Judge who, on such an application, is satisfied—
 - (a) that there are reasonable grounds for believing—
 - (i) that a person has failed to produce all of the documents specified in a notice given pursuant to section 5(1); or
 - (ii) that a person has failed to answer any question asked pursuant to section 5(1) or that any answer given to any such question is false or misleading in a material particular or is incomplete; or
 - (iii) that it is not practicable to serve a notice under section 5 by reason of the fact that the person cannot be located or is absent from New Zealand or other good cause; and

- (b) that there are reasonable grounds for believing that there may be, at the place specified in the application, any documents or other thing that may be relevant to an investigation or may be evidence of any offence involving serious or complex fraud,—
may issue a warrant in the prescribed form.
- (3) Part 3 shall apply to any such warrant.

Part 2

Investigation of suspected offences involving serious or complex fraud

7 Exercise of powers under this Part

Where the Director has reasonable grounds to believe that an offence involving serious or complex fraud may have been committed, the Director may exercise any power conferred by this Part.

8 Factors to which Director may have regard

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

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

9 Power to require attendance before Director, production of documents, etc

- (1) The Director may, by notice in writing, require—
 - (a) any person whose affairs are being investigated; or
 - (b) any other person who the Director has reason to believe may have information or documents relevant to an investigation,—
at the time and place specified in the notice, to do any 1 or more of the following things:
 - (c) to attend before the Director;
 - (d) to answer questions with respect to any matter that the Director has reason to believe may be relevant to the investigation;
 - (e) to supply any information specified in the notice with respect to any matter that the Director has reason to believe may be relevant to the investigation;
 - (f) to produce for inspection any documents which are specified in the notice and which the Director has reason to believe may be relevant to the investigation.

- (2) Where any document is produced pursuant to this section, the Director may do any 1 or more of the following things:
 - (a) retain the original document produced, provided that a copy of the document is taken and returned as soon as practicable thereafter:
 - (b) take copies of the document, or of extracts from the document:
 - (c) require the person producing the document to provide an explanation of the history, subject matter, and contents of the document and to answer any other questions which arise from that explanation and which the Director has reason to believe may be relevant to the investigation:
 - (d) where necessary, require the person producing the document to reproduce, or to assist any person nominated by the Director to reproduce, in usable form, any information recorded or stored in the document.
- (3) Where any person is required to produce any document pursuant to this section and fails to do so, the Director may require that person to state, to the best of his or her knowledge and belief, where the document is.
- (4) Where any person is required to supply any information under this section, and does so by producing a document containing that information, the powers conferred by subsection (2) shall apply in all respects to that document.
- (5) Any person who is required to attend before the Director under this section, shall, before being required to comply with any requirements imposed under this section, be given a reasonable opportunity to arrange for a barrister or solicitor to accompany him or her.
- (6) Section 18 shall apply to any notice given under this section.

10 Power to obtain search warrant

- (1) The Director may, on application in writing made on oath, apply for a warrant to search any place specified in the application.
- (2) Any Judge who, on such an application, is satisfied—
 - (a) that there are reasonable grounds for believing—
 - (i) that any information supplied pursuant to section 9 is false or misleading in a material particular; or
 - (ii) that a person has failed to comply with any obligation imposed pursuant to section 9; or
 - (iii) that it is not practicable to serve a notice under section 9 by reason of the fact that the person cannot be located or is absent from New Zealand or other good cause; or
 - (iv) that the service of a notice under section 9 might seriously prejudice the investigation; and
 - (b) that there are reasonable grounds for believing that there may be, at the place specified in the application, any documents or other thing that may

be relevant to an investigation or may be evidence of any offence involving serious or complex fraud,—

may issue a warrant in the prescribed form.

- (3) Part 3 shall apply to any such warrant.

11 Power to assume from Police the responsibility for investigating certain cases of fraud

- (1) The Director may, by notice in writing to the Commissioner of Police,—
- (a) assume the responsibility for investigating any case that the Director believes on reasonable grounds to involve serious or complex fraud:
 - (b) require the Commissioner of Police to provide, as soon as reasonably practicable, any information, including Police records, that is held by the Commissioner of Police and that is relevant to the investigation of any case in respect of which the Director has assumed responsibility under this section.
- (2) If the Commissioner of Police declines to provide any information that is relevant to the investigation of any such case,—
- (a) the Commissioner shall forthwith inform the Director of the general nature of the information withheld and the reasons for withholding it; and
 - (b) the Director may refer the matter to the Solicitor-General for determination; and
 - (c) the determination of the Solicitor-General shall be binding on the Director and the Commissioner of Police.

Part 3

General provisions relating to warrants and exercise of powers under Parts 1 and 2

General provisions relating to warrants

12 Effect of warrant

- (1) Every warrant issued under this Act shall authorise the person executing the warrant—
- (a) to enter and search the place specified in the warrant on 1 occasion within 14 days of the date of issue of the warrant at any time which is reasonable in the circumstances:
 - (b) to use such assistance as is reasonable in the circumstances:
 - (c) to use such force both for gaining entry and for breaking open anything in or on the place searched as is reasonable in the circumstances:

- (d) to search for and remove any documents or other thing that the person executing the warrant believes on reasonable grounds may be relevant to the investigation or may be evidence of any offence involving serious or complex fraud:
 - (e) where necessary, to take copies of any documents, or extracts from documents, that the person executing the warrant believes on reasonable grounds may be relevant to the investigation:
 - (f) where necessary, to require any person to reproduce, or to assist any person executing the warrant to reproduce, in usable form, any information recorded or stored in any such documents.
- (2) Every person called upon to assist the person or persons executing the warrant shall have the powers contained in paragraphs (c) and (d) of subsection (1).
- (3) Any warrant shall be subject to such reasonable conditions as the issuer may specify in the warrant.

13 Return of documents

Any person who, in executing any warrant issued under this Act, removes any document from the place specified in the warrant, shall return the document or a copy of that document as soon as practicable to the person who previously had the document in his or her possession or under his or her control.

14 Disclosure of previous applications

Any person applying for a warrant under this Act shall, having made reasonable enquiries, disclose on the application—

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

15 Persons by whom warrant may be executed

Every search warrant issued under this Act shall be directed to all or any of the following:

- (a) any constable by name or generally every constable; or
- (b) any designated member by name or generally every designated member of the Serious Fraud Office,—

and may be executed by all or any of the persons to whom it is directed.

16 Production of warrant

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

- (a) on first entering that place, and, if requested, at any subsequent time during the search, produce—

- (i) evidence of that person's authority to enter the place; and
- (ii) evidence of that person's identity; and
- (b) if requested at any time, provide a copy of the warrant within 7 days of the request being made.

Compare: 1989 No 11 s 22(3)

17 Notice that warrant has been executed, etc

- (1) Any person executing any warrant issued under this Act shall, before departing from the place searched, leave in a prominent position at that place a written notice stating,—
 - (a) in the case of a search carried out at a time when the owner or occupier is not present,—
 - (i) the date and time of the execution of the warrant; and
 - (ii) the name of the person in charge of the search; and
 - (b) in the case of a search where any document or other thing is removed from the place being searched, an inventory of documents or other things removed from the place during the search.
- (2) If it is not practicable to prepare such an inventory before departing, or if the owner or occupier of the place being searched consents, the person executing the warrant—
 - (a) may, instead of leaving an inventory, leave a notice stating that an inventory will be given within 7 days of the search; and
 - (b) shall, within 7 days of the search, give the inventory to the owner or occupier of the place searched.
- (3) Every inventory required under this section shall state—
 - (a) which documents or other things were removed in the course of executing the warrant; and
 - (b) from where those documents or things were removed; and
 - (c) where those documents or things are now held.
- (4) Notwithstanding subsection (3), any such inventory—
 - (a) need not refer to any document or thing that is returned to the owner or occupier of the place searched before the inventory is given;
 - (b) may refer to groups of documents or things removed, rather than to each document and thing.

General provisions relating to exercise of powers under Parts 1 and 2

18 Form and content of notices

- (1) Every notice under section 5 or section 9 shall be in the prescribed form.

- (2) Any information or document shall be sufficiently specified in any such notice if the information or document is described—
 - (a) in a general rather than a specific way; or
 - (b) by reference only to its class, nature, content, or effect.
- (3) The time at which any thing is required to be done shall be sufficiently specified in any such notice if the time is described as—
 - (a) forthwith; or
 - (b) any other stated time.
- (4) Every such notice that requires attendance before the Director shall inform the person to whom it is addressed that that person may, if that person so wishes, be accompanied by a barrister or a solicitor.
- (5) Every notice under section 5 or section 9 shall inform the person to whom it is addressed—
 - (a) of the relevant circumstances in which the Director may apply for a search warrant pursuant to section 6 or section 10 (as appropriate):
 - (b) of any relevant offences that are set out in section 45 or section 46.

19 Possession of documents

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

Challenge to exercise of Director's powers

20 Review of Director's decisions

Any decision by the Director—

- (a) to investigate any case which the Director suspects may involve serious or complex fraud; or
- (b) to take proceedings relating to any such case; or
- (c) to take proceedings relating to any offence which the Director suspects may have been committed against this Act,—

shall not be challenged, reviewed, quashed, or called in question in any court.

21 Effect of proceedings

- (1) Where any person commences any proceedings in any court in respect of—
 - (a) the exercise of any power conferred by this Act; or
 - (b) the discharge of any duty imposed by this Act,—until a final decision in relation to those proceedings is given, the power or duty may be, or may continue to be, exercised or discharged as if no such pro-

ceedings had been commenced, and no person shall be excused from fulfilling any obligation under this Act by reason of those proceedings.

- (2) This section shall apply notwithstanding any other provision of any Act or rule of law or equity.
- (3) The expression **final decision** in subsection (1) does not include a decision in proceedings for an interim order under section 15 of the Judicial Review Procedure Act 2016.

Compare: 1989 No 11 s 26

Section 21(3): amended, on 1 March 2017, by section 24 of the Judicial Review Procedure Act 2016 (2016 No 50).

22 Effect of final decision that exercise of powers unlawful

- (1) In any case where it is declared, in a final decision given in any proceedings in respect of the exercise of any powers conferred by this Act, that the exercise of any powers conferred by this Act is unlawful, to the extent to which the exercise of those powers is declared unlawful the Director shall ensure that forthwith after the decision of the court is given—
 - (a) any information obtained pursuant to the exercise of powers declared to be unlawful, and any record of such information, is destroyed:
 - (b) any documents, or extracts from documents, or other things removed pursuant to the exercise of powers declared to be unlawful are returned to the person previously having possession of them, or previously having them under his or her control, and any copies of such documents or extracts are destroyed:
 - (c) any information derived from or based upon such information, documents, extracts, or things is destroyed.
- (2) Notwithstanding subsection (1), the court may, in the court's discretion, order that any information, record, or copy of any document or extract may, instead of being destroyed,—
 - (a) be returned to the person from whom it was obtained; or
 - (b) be retained by the Serious Fraud Office subject to such terms and conditions as the court may impose.
- (3) No information obtained, and no documents or extracts from documents or other things removed, pursuant to the exercise of any powers declared to be unlawful, and no record of any such information or documents, shall be—
 - (a) admissible as evidence in any proceedings unless the court hearing the proceedings in which the evidence is sought to be adduced is satisfied that there was no unfairness in obtaining the evidence:

- (b) used in connection with the exercise of any power conferred by this Act unless the court that declared the exercise of the powers to be unlawful is satisfied that there was no unfairness in obtaining the evidence.

Compare: 1989 No 11 ss 27, 28

Effect of powers on duty of confidentiality

23 Act to apply to persons with duty of confidentiality to clients

- (1) The Director may require any person who claims to have a duty of confidentiality to his or her client or customer (including, without limiting the generality of the foregoing, any person carrying on the business of banking)—
 - (a) to comply with any requirement imposed under Part 1 or Part 2; and
 - (b) in particular, but without limiting the generality of the foregoing, to answer questions, supply information, and produce documents relating to any person whose affairs are being investigated under this Act,—and sections 5, 6, 9, and 10 shall apply in all respects to any such person, and to the registers, records, accounts, books, or papers of any such person in so far as the Director has reason to believe that they may be relevant to the investigation.
- (2) This section shall apply subject to section 24, but notwithstanding any other enactment or rule of law or equity.

24 Legal professional privilege

- (1) Except as provided in subsection (2), nothing in this Act shall require any legal practitioner to disclose any privileged communication.
- (2) The Director may, by notice in writing to any legal practitioner who the Director has reason to believe may have acted for any person who may be connected with any investigation, require that legal practitioner to supply to the Director the last known name and address of that client.
- (3) For the purposes of this section, a communication is a privileged communication only if—
 - (a) it is a confidential communication, whether oral or written, passing between—
 - (i) a legal practitioner in his or her professional capacity and another legal practitioner in such capacity; or
 - (ii) a legal practitioner in his or her professional capacity and his or her client,—whether made directly or indirectly through an agent of either; and
 - (b) it is made or brought into existence for the purpose of obtaining or giving legal advice or assistance; and

- (c) it is not made or brought into existence for the purpose of committing or furthering the commission of some illegal or wrongful act.
- (4) Where the information or document consists wholly of payments, income, expenditure, or financial transactions of a specified person (whether a legal practitioner, his or her client, or any other person), it shall not be a privileged communication if it is contained in, or comprises the whole or part of, any book, account, statement or other record prepared or kept by the legal practitioner in connection with a trust account of the legal practitioner within the meaning of section 6 of the Lawyers and Conveyancers Act 2006.
- (5) Where any person refuses to disclose any information or document on the ground that it is a privileged communication under this section, the Director or that person may apply to a District Court Judge for an order determining whether or not the claim of privilege is valid; and, for the purposes of determining any such application, the District Court Judge may require the information or document to be produced to him or her.
- (6) For the purposes of this section, the term **legal practitioner** means a barrister or solicitor of the High Court, and references to a legal practitioner include a firm or incorporated law firm (within the meaning of the Lawyers and Conveyancers Act 2006) in which he or she is, or is held out to be, a partner, director, or shareholder.

Compare: 1966 No 19 s 218A; 1985 No 145 s 15

Section 24(4): amended, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Section 24(6): substituted, on 1 August 2008, by section 348 of the Lawyers and Conveyancers Act 2006 (2006 No 1).

Miscellaneous provisions

25 Certain provisions not to apply to Police, Inland Revenue, and Statistics Department officers

Nothing in section 5 or section 6 or section 9 or section 10 shall require—

- (a) any person in his or her capacity as an officer of the Inland Revenue Department; or
- (b) any person in his or her capacity as a constable or the Police Department; or
- (c) any person in his or her capacity as a member of Statistics New Zealand,—

to comply with any requirement imposed pursuant to any of those sections.

Section 25(b): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 25(c): amended, on 15 December 1994, pursuant to section 2(7) of the Statistics Amendment Act 1994 (1994 No 159).

26 Admissibility of evidence

Subject to section 28, no evidence that is lawfully obtained under section 5 or section 6 or section 9 or section 10 shall be inadmissible by reason only of the fact that it was so obtained.

27 Privilege against self-incrimination no excuse

No person shall be excused from answering any question, supplying any information, producing any document, or providing any explanation pursuant to section 5 or section 9 on the ground that to do so would or might incriminate or tend to incriminate that person.

28 Admissibility of self-incriminating statements

- (1) A self-incriminating statement made orally by a person (whether or not the statement is recorded in writing) in the course of answering any question, or supplying any information, or producing any document, or providing any explanation, as required pursuant to section 5 or section 9, may be used in evidence against that person only in a prosecution for an offence where the person gives evidence inconsistent with the statement.
- (2) Notwithstanding subsection (1), any statement made in relation to—
 - (a) a refusal or failure to answer any question, supply any information, produce any document, provide any explanation, or comply with any other requirement may be used in evidence against that person in any prosecution for any offence under section 45(d) arising from that refusal or failure:
 - (b) the answering of any question in a way that is false or misleading in a material particular, or the supply of any information, or the production of any document, or the providing of any explanation that is false or misleading in a material particular, may be used in evidence against that person in any prosecution for any offence under section 45(e) arising from that act.

Part 4**Miscellaneous provisions***Provisions relating to Public Service Act 2020 and other matters*

Heading: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

29 Responsible Minister

For the purposes of the Public Service Act 2020, the Attorney-General shall be responsible for the Serious Fraud Office.

Section 29: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

30 Independence in matters relating to investigations

- (1) Notwithstanding section 29, in any matter relating to any decision to investigate any suspected case of serious or complex fraud, or to take proceedings relating to any such case or any offence against this Act, the Director shall not be responsible to the Attorney-General, but shall act independently.
- (2) Nothing in this section shall limit or affect any power exercisable by the Attorney-General in relation to any proceedings.

31 Chief executive of Serious Fraud Office

The chief executive of the Serious Fraud Office shall be known as the Director.

32 Judicial notice of signature of Director

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

33 Delegation of functions or powers

- (1) The provisions of the Public Service Act 2020 relating to the delegation of functions or powers shall apply in all respects to the Serious Fraud Office: provided that no delegation of—
 - (a) any power conferred by Part 1 or Part 2; or
 - (b) any power to authorise, under section 36(2) or section 37(3)(b) or section 39(2)(b), the disclosure of protected information,—shall be valid unless it is to a designated member and is in writing.
- (2) For the purposes of the provisions of the Public Service Act 2020 relating to the delegation of functions or powers, any person who is seconded to the Serious Fraud Office shall be treated as if that person were an employee of the Serious Fraud Office.

Section 33(1): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 33(2): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

34 Exercise of powers by outside investigators

- (1) Any person (other than a constable) who is appointed by the Director to investigate the affairs, or any aspect of the affairs, of any other person may be authorised by the Director—
 - (a) to exercise, in the company of a designated member of the Serious Fraud Office, all or any of the powers conferred by section 5 or section 9;
 - (b) to obtain, subject to section 15, a search warrant under this Act;
 - (c) to assist any constable or designated member of the Serious Fraud Office to execute any search warrant issued under this Act.

- (2) Any person so appointed shall be deemed to be a member of the Serious Fraud Office for the purposes of the investigation in respect of which he or she is appointed.

Section 34(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

35 Indemnity

- (1) The Serious Fraud Office and every member of the Serious Fraud Office shall be indemnified by the Crown in respect of any liability relating to the exercise of, or purported exercise of, or the omission to exercise, any power conferred by this Act unless it is shown that the exercise or purported exercise of, or the omission to exercise, the power was in bad faith.
- (2) Any money required for the purposes of this section—
- (a) shall be paid out of a Crown Bank Account without further appropriation than this section; and
 - (b) shall be shown as a separate item in the annual financial statements of the Serious Fraud Office.
- (3) The indemnity conferred by subsection (1) extends to legal costs incurred in defending a proceeding.
- (4) No reference in this section to a liability relating to any omission to exercise any power shall limit the provisions of section 49.
- (5) Nothing in this section shall limit or affect any provision of the Crown Proceedings Act 1950 or the Crimes Act 1961 relating to the liability of the Crown or to matters of justification or excuse.

Compare: 1989 No 11 s 63

Section 35(2)(a): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Secrecy

36 Secrecy of certain information relating to Serious Fraud Office business

- (1) Every member of the Serious Fraud Office shall observe the strictest secrecy in relation to—
- (a) information supplied to or obtained by the Director under or in connection with the exercise of any power conferred by section 5 or section 9 or in the course of executing any search warrant issued under this Act;
 - (b) information derived from or based upon any such information;
 - (c) information relating to the exercise or possible exercise of any power conferred by Part 2,—

and, except as provided in subsection (2), shall not disclose any such information in any way whatever to any person who is not a member of the Serious Fraud Office.

- (2) Notwithstanding subsection (1), the Director may disclose such information, or authorise any other member of the Serious Fraud Office to disclose such information,—
 - (a) if the person who disclosed the information to the Serious Fraud Office consents to that disclosure; or
 - (b) to the extent that the information is available to the public under any Act; or
 - (c) for the purposes of this Act or in connection with the exercise of powers under this Act; or
 - (d) for the purposes of any prosecution anywhere; or
 - (e) to any person who the Director is satisfied has a proper interest in receiving such information.
- (3) This section is subject to section 37 and section 39.
- (4) Every member of the Serious Fraud Office commits an offence, and is liable on conviction to a fine not exceeding \$5,000, who knowingly contravenes this section.

Compare: SR 1985/259 r 33; 1988 No 2 s 32; 1989 No 11 s 23

Section 36(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

37 Secrecy of information protected under Inland Revenue Department Act 1974

- (1) Every member of the Serious Fraud Office shall observe the strictest secrecy in relation to revenue information.
- (2) For the purposes of this section, **revenue information** means any information—
 - (a) that is subject to an obligation of secrecy under the Tax Administration Act 1994; and
 - (b) that has been disclosed by the Commissioner of Inland Revenue to a member of the Serious Fraud Office.
- (3) Notwithstanding subsection (1) or anything in the Tax Administration Act 1994,—
 - (a) any member of the Serious Fraud Office may disclose any revenue information to any other member of the Serious Fraud Office for the purpose of investigating or prosecuting any inland revenue offence; and
 - (b) the Director may disclose any revenue information, or authorise any other member of the Serious Fraud Office to disclose any revenue information,—
 - (i) with the consent of the Commissioner of Inland Revenue, to any person; or

- (ii) to any Judge for the purpose of obtaining a search warrant under this Act for the purpose of investigating or prosecuting any inland revenue offence; or
 - (iii) to any person commencing or conducting any proceedings relating to any suspected inland revenue offence; or
 - (iv) to any court hearing any proceedings relating to any suspected inland revenue offence.
- (4) Every member of the Serious Fraud Office commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$15,000, who knowingly contravenes this section.

Section 37(2)(a): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 37(3): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 37(4): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

38 Disclosure to Serious Fraud Office of information protected under other Acts

- (1) Any information which is protected under any Act other than the Tax Administration Act 1994 or the Statistics Act 1975 may, notwithstanding any provision of that Act, be disclosed to any member of the Serious Fraud Office for the purpose of investigating or prosecuting any offence involving serious or complex fraud.
- (2) No person shall be liable to prosecution for an offence by reason of disclosing information pursuant to this section.
- (3) Every person who discloses any such information to a member of the Serious Fraud Office shall, at the time of making the disclosure, inform the member that the information is so protected.

Section 38(1): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

39 Secrecy of information protected under other Acts

- (1) Every member of the Serious Fraud Office shall observe the strictest secrecy in relation to any information which is protected under any Act other than the Tax Administration Act 1994.
- (2) Notwithstanding subsection (1) or anything in the Act that protects the information,—
 - (a) any member of the Serious Fraud Office may disclose any such information to any other member of the Serious Fraud Office for the purpose of investigating or prosecuting any offence involving serious or complex fraud; and

- (b) the Director may disclose any such information, or authorise any other member of the Serious Fraud Office to disclose any such information,—
 - (i) with the consent of the person who disclosed the information to the Serious Fraud Office, to any other person:
 - (ii) to any Judge for the purpose of obtaining a search warrant under this Act:
 - (iii) to any person commencing or conducting any proceedings relating to any suspected offence involving serious or complex fraud:
 - (iv) to any court hearing any proceedings relating to any suspected offence involving serious or complex fraud.
- (3) Every member of the Serious Fraud Office commits an offence, and is liable on conviction to a fine not exceeding \$5,000, who knowingly contravenes this section.

Section 39(1): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 39(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

40 Obligation to inform that protected information is secret

- (1) Every person who discloses any protected information pursuant to this Act shall inform the recipient—
 - (a) that the recipient is, in accordance with section 41, under an obligation to observe the strictest secrecy in relation to the information; and
 - (b) that, if the recipient discloses the information pursuant to section 41, the recipient will be bound by the obligation that is imposed by paragraph (a).
- (2) Every person commits an offence, and is liable on conviction to a fine not exceeding \$1,000, who knowingly contravenes this section.

Section 40(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

41 Secrecy to be observed by other persons to whom protected information is disclosed under this Act

- (1) No person to whom any protected information is disclosed pursuant to this Act (whether by a member of the Serious Fraud Office or by any other person) shall disclose that information in any way whatever to any other person unless the disclosure is,—
 - (a) in the case of information protected under section 36,—
 - (i) authorised by the Director; or
 - (ii) necessary or desirable for the purposes of commencing or conducting any proceedings relating to any suspected offence involving serious or complex fraud:

- (b) in the case of any revenue information protected under the Tax Administration Act 1994,—
 - (i) authorised by the Commissioner of Inland Revenue; or
 - (ii) necessary for the purposes of commencing or conducting any proceedings relating to any suspected inland revenue offence:
 - (c) in the case of any information protected under any Act other than the Tax Administration Act 1994,—
 - (i) authorised by the person who disclosed the information to the Serious Fraud Office; or
 - (ii) necessary for the purposes of commencing or conducting any proceedings relating to any suspected offence involving serious or complex fraud.
- (2) Every person commits an offence, and is liable on conviction to a fine not exceeding \$5,000, who knowingly contravenes subsection (1)(a) or subsection (1)(c).
- (3) Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$15,000, who knowingly contravenes subsection (1)(b).

Section 41(1)(b): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 41(1)(c): amended, on 1 April 1995 (applying with respect to the tax on income derived in 1995–96 and subsequent income years), by section YB 1 of the Income Tax Act 1994 (1994 No 164).

Section 41(2): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Section 41(3): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

42 Authorisations to disclose protected information

Every authorisation given pursuant to section 36(2) or section 37(3)(b) or section 39(2)(b)—

- (a) shall be in writing; and
- (b) may be given subject to such conditions as the Director thinks fit; and
- (c) may authorise the disclosure of information to any person or class of persons, or, subject to paragraph (d), may authorise the general disclosure of information; and
- (d) in the case of an authorisation given pursuant to section 37(3)(b) or section 39(2)(b), shall only authorise the disclosure of specified information; and
- (e) shall expire at the time when the person to whom it is given ceases to be a member of the Serious Fraud Office.

43 Protected information may cease to be secret

- (1) For the purposes of this Act, protected information shall cease to be protected information if—
- (a) it is lawfully released in any court proceedings; or
 - (b) it is lawfully released under section 36 or section 37(3)(b)(i) or section 39(2)(b)(i) in circumstances where the Director informs the person to whom the information is disclosed, by notice in writing, that the information is no longer protected information.
- (2) The Director shall not serve any such notice in respect of information that is released under section 37(3)(b)(i) or section 39(2)(b)(i) unless the person who disclosed the information to the Serious Fraud Office consents.

44 Persons ceasing to be members of Serious Fraud Office under continuing obligation of secrecy

Every person who ceases to be a member of the Serious Fraud Office—

- (a) shall continue to observe the strictest secrecy in relation to any protected information that was disclosed to him or her in his or her capacity as a member of the Serious Fraud Office; and
- (b) may be charged and convicted of any offence against section 36(4) or section 37(4) or section 39(3) or section 40(2) in all respects as if he or she had not ceased to be a member of the Serious Fraud Office.

Miscellaneous offences and penalties

45 Offence to obstruct investigation, etc

Every person commits an offence, and is liable on conviction,—

- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$15,000:
 - (b) in the case of a corporation, to a fine not exceeding \$40,000,—
- who,—
- (c) without lawful justification or excuse, resists, obstructs, or delays any member of the Serious Fraud Office in the exercise of any power conferred by section 9; or
 - (d) without lawful justification or excuse, refuses or fails to—
 - (i) attend before the Director; or
 - (ii) answer any question; or
 - (iii) supply any information; or
 - (iv) produce any document; or
 - (v) provide any explanation; or
 - (vi) comply with any other requirement,—

as required pursuant to the exercise of any power conferred by section 9;
or

- (e) in the course of complying with any requirement imposed pursuant to section 5 or section 9, gives an answer to any question, or supplies any information, or produces any document, or provides any explanation, knowing that it is false or misleading in a material particular or being reckless as to whether it is so false or misleading.

Compare: 1989 No 11 ss 20, 70

Section 45: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

46 Offence to destroy, alter, or conceal records, etc

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

- (a) destroys, alters, or conceals any book, document, or record; or
(b) sends any book, document, or record out of New Zealand.

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

- (a) destroyed, altered, or concealed any book, document, or record; or
(b) sent any book, document, or record out of New Zealand,—

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

Compare: 1989 No 11 s 68

Section 46(1): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

47 Offence to resist search

Every person commits an offence, and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000, who intentionally resists, obstructs, or delays any person executing, or assisting in the execution of, any warrant issued under this Act.

Section 47: amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

Miscellaneous provisions

48 Serious Fraud Prosecutors Panel

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

- (2) That panel shall be appointed by the Solicitor-General after consultation with the Director, and shall consist of such barristers or solicitors of the High Court as the Solicitor-General considers appropriate.
- (3) No proceedings relating to serious or complex fraud shall be conducted on behalf of the Director except by a member of that panel.

49 No obligation to investigate, etc

Nothing in this Act shall be regarded as imposing on the Director or any other person any duty or obligation—

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

50 Exercise of powers not precluded by certain matters

The Director may exercise any power conferred by this Act notwithstanding—

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

51 Agreements with overseas agencies

- (1) The Director may enter into any agreement or agreements with any person in any other country whose functions are or include the detection and investigation of cases of fraud or the prosecution of any proceedings which relate to fraud, if—
 - (a) the agreement relates to a particular case or cases of fraud; and
 - (b) in the case of an agreement providing for the supply of information by the Serious Fraud Office,—
 - (i) the Director is satisfied that compliance with the agreement will not substantially prejudice the performance of the Serious Fraud Office's functions in relation to any other investigations; and
 - (ii) the Director has recommended to the Attorney-General that the agreement be entered into and the Attorney-General has accepted the recommendation.
- (2) Any such agreement—
 - (a) may be made orally or in writing;

- (b) may provide for the supply or the receipt of information by the Serious Fraud Office:
 - (c) shall contain a condition that no person who receives information pursuant to the agreement shall disclose the information except for any purpose specified in the agreement or with the consent of all of the parties to the agreement.
- (3) Nothing in this section shall limit the general powers of the Director to enter into agreements.
- (4) This section is subject to the provisions of sections 37 and 39.

52 Giving of notices

- (1) Where a notice or other document is to be given to a person for the purposes of this Act, it may be given—
- (a) by delivering it personally to the person; or
 - (b) by delivering it at the usual or last known place of residence or business of the person, including by facsimile; or
 - (c) by sending it by prepaid post addressed to the person at the usual or last known place of residence or business of the person.
- (2) Where a notice or other document is to be given to a corporation for the purposes of this Act, service on an officer of the corporation, or on the registered office of the corporation, in accordance with subsection (1) shall be deemed to be service on the corporation.
- (3) Where a notice or other document is to be given to a partnership for the purposes of this Act, service on any one of the partners in accordance with subsections (1) and (2) shall be deemed to be service on the partnership.
- (4) Where a notice or other document is sent by post to a person in accordance with subsection (1)(c), it shall be deemed, in the absence of proof to the contrary, to have been given on the third day after the day on which it was posted.

53 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations for any of the following purposes:
- (a) prescribing the form of notices required under this Act:
 - (b) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication PCO must publish it on the legislation website and notify it in the *Gazette* LA19 s 69(1)(c)

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 53(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Amendments to other Acts

54 Amendment to Summary Proceedings Act 1957

Amendment(s) incorporated in the Act(s).

55 Amendment to Inland Revenue Department Act 1974

Amendment(s) incorporated in the Act(s).

56 Amendments to Wanganui Computer Centre Act 1976

[Repealed]

Section 56: repealed, on 1 July 1993, by section 129(2) of the Privacy Act 1993 (1993 No 28).

Schedule
Amendments to Wanganui Computer Centre Act 1976
[Repealed]

s 56(2)

Schedule: repealed, on 1 July 1993, by section 129(2) of the Privacy Act 1993 (1993 No 28).

Notes

1 *General*

This is a consolidation of the Serious Fraud Office Act 1990 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135

Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020 (2020 No 5): section 277

Judicial Review Procedure Act 2016 (2016 No 50): section 24

Criminal Procedure Act 2011 (2011 No 81): section 413

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Lawyers and Conveyancers Act 2006 (2006 No 1): section 348

Income Tax Act 1994 (1994 No 164): section YB 1

Statistics Amendment Act 1994 (1994 No 159): section 2(7)

Privacy Act 1993 (1993 No 28): section 129(2)

Public Finance Act 1989 (1989 No 44): section 65R(3)