Regulatory Impact Statement: Targeted amendments to the Serious Fraud Office Act 1990

Decision sought	*This Regulatory Impact Statement (RIS) accompanies the 'Targeted amendments to the Serious Fraud Office Act 1990' Cabinet paper, which seeks decisions on updating the Serious Fraud Office Act 1990 search warrant and evidence admissibility provisions.*
Agency responsible	*The Ministry of Justice (the Ministry)*
Proposing Ministers	Hon Paul Goldsmith, Minister for Justice
Date finalised	*23 October 2025*

The Minister of Justice is proposing targeted amendments to the search warrant and evidence admissibility provisions in the Serious Fraud Office Act 1990 (the SFO Act).

Summary: Problem definition and options

What is the policy problem?

The Serious Fraud Office (SFO) is the lead agency in New Zealand for the investigation and prosecution of serious or complex fraud and corruption.[1] The SFO Act provides the SFO with enforcement powers to investigate fraud, including search powers. However, the operating environment has changed, and continues to change rapidly. Fraud is committed almost exclusively in the digital environment, and the search warrant provisions have not kept pace.

The SFO advise that outdated provisions mean it is unable to most efficiently and effectively use search warrants to obtain evidence required to build cases, including evidence stored on devices s6(c) The SFO Act is becoming increasingly out of step with the more comprehensive Search and Surveillance Act 2012, under which most other enforcement agencies operate.

The SFO also advise that the SFO Act's evidence admissibility provisions no longer align with the now standard approach to evidence under the Evidence Act 2006. Outdated admissibility provisions mean that evidence obtained unlawfully under the SFO Act is more likely to be excluded at trial without a balancing of broader justice interests (e.g. balancing the seriousness of the transgression with the need for a credible and effective justice system).

[1] Henceforth referred to as 'fraud'.

Ultimately, the outdated provisions mean the SFO cannot most effectively fulfil its function to effectively prevent fraud victimisations and hold perpetrators to account. The issues are impacting current investigations and prosecutions, and it is therefore urgent these are addressed as soon as practicable.

The Ministry is aware that there are other aspects of the regime that are out of date and the SFO Act needs a more comprehensive review. However, this would take considerable time, and Ministers have directed us to address search warrant and evidence issues as a matter of priority.

What is the policy objective?

The policy objectives of the proposed changes are:

a. **to ensure the SFO can obtain the information it needs** to effectively undertake its investigations and determine whether cases meet the evidentiary threshold for prosecution on fraud or corruption charges;

b. **to ensure the process for obtaining a search warrant is efficient** so that the SFO can act quickly when required in urgent situations;

c. **to ensure the SFO can execute a warrant effectively and with minimal risk to safety** so it can obtain the information it needs for its investigations and prosecutions; and

d. **to ensure the test applied to unlawfully obtained evidence is appropriate and consistent with the test applied in criminal proceedings more generally,** specifically in terms of balancing different justice interests, including the public interest.

What policy options have been considered, including any alternatives to regulation?

The Ministry considers the search and evidence issues should be addressed as soon as practicable, and Ministers have directed us to progress the work as a matter of priority. We therefore considered possible policy options that can be progressed at pace and excluded approaches that cannot.

We have only considered options that draw on relevant legislative provisions in other Acts and bring the SFO Act into closer alignment with them – specifically the Search and Surveillance Act 2012 and the Evidence Act 2006.

We therefore considered, but discounted, developing bespoke provisions to address the issues identified with obtaining and executing search warrants, and evidence admissibility.

Retaining the status quo for both search warrants and evidence admissibility would not meet the policy objectives. s9(2)(h)

What consultation has been undertaken?

The Ministry undertook targeted agency consultation on draft ministerial advice. We engaged with the SFO, NZ Police, the Crown Law Office, the Financial Markets Authority, and the Office of the Privacy Commissioner.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

Yes

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

SFO: One-off and/or ongoing cost for the SFO associated with any requirements to increase capability and/or resource to operationalise changes to warrant powers. The SFO indicated it can meet costs within its baseline.

Public: There is a risk that search warrant powers impact individual rights. However, this risk is the same as for other enforcement agencies operating under the Search and Surveillance Act 2012. The proposals do not present a unique risk, and we consider the impacts on individual rights and freedoms are appropriately balanced with the enforcement need. The balance reflects that agreed to by Parliament in relation to the Search and Surveillance Act 2012.

Defendants: Amending the warrant powers may impact on the rights and interests of defendants under active investigation by the SFO, specifically in relation to search and seizure (s 21 NZBORA); criminal procedure (s 25 NZBORA); and natural justice (s 27 NZBORA). However, we consider the impact is proportionate with the enforcement need and the public interest in reducing fraud victimisations and holding offenders to account.

Justice Sector and Courts: An increase in device warrant applications may increase workload for the courts. However, enabling an 'issuing officer' to issue search warrants could create efficiencies. Police resource could be required to enforce non-compliance. However, it is unlikely that additional resource would be needed. In relation to evidence admissibility, there is a theoretical risk that the increased judicial discretion could result in an unbalanced assessment of justice interests (in determining evidence admissibility). However, standard judicial checks and balances would apply. Optimising the effectiveness of investigations and prosecutions could impact on the prison population, however we consider any impact would be marginal as the SFO do not prosecute a high volume of cases.

Benefits (Core information)

SFO: The changes to search provisions will swiftly provide the SFO with legal certainty, and modernised powers aligned with other enforcement agencies enabling the SFO to investigate fraud more safely and effectively. Updating the evidence admissibility provisions will allow the court to balance enforcement interests and the public good.

Public: The changes align with the public interest in ensuring law enforcement can appropriately respond to fraud in New Zealand, reducing victimisations and holding offenders to account. By aligning the current settings with those already in place for other enforcement agencies (via the Search and Surveillance Act 2012), the changes reflect what Parliament has already determined to be an appropriate and proportionate balance between enforcement needs and individual rights and interests.

Justice Sector and Courts: s9(2)(h)

Changes in the warrant application process could also distribute the warrant application workload more evenly the court. More efficient investigations and prosecutions could possibly benefit court timeliness.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs?

Yes, the benefits of targeted amendments are likely to outweigh possible monetary and non-monetary costs involved.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

The Minister of Justice intends to introduce a Bill to the House giving effect to the proposals by the end of February 2026, with a view to enactment as soon as practicable, but by the end of this parliamentary term.

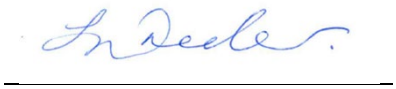
The SFO will be responsible for implementing any operational changes associated with the new powers and processes, and it has indicated this can be achieved within its baseline.

As regulatory stewards of the Serious Fraud Office Act, the Ministry will continue to work with the SFO to monitor the effects of the amendments, including any unintended consequences.

Limitations and Constraints on Analysis

The Ministry recognises that there are broader issues with the SFO Act, and we consider it is in need of a more fulsome review. However, the issues are impacting current investigations and prosecutions, and it is therefore urgent these are addressed. Ministers have directed us to address the issue as a matter of priority, which has meant our framing of the problem and solution is constrained to focus on the most pressing issues and efficient solutions.

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature: 

Sally Wheeler

Manager, Law Enforcement

23 October 2025

Quality Assurance Statement	
Reviewing Agency: Ministry of Justice	**QA rating:** Partially meets

Panel Comment:

The Ministry of Justice's Regulatory Impact Statement quality assurance panel has reviewed the regulatory impact statement (RIS) 'Targeted Amendments to the Serious Fraud Office 1990' on 22 October 2025. The assessors consider that the RIS ***partially meets*** *the quality assurance criteria.*

The RIS presents a clear analysis of the relevant policy choices. It appropriately notes limitations and constraints on the analysis. The most significant constraints are the lack of public consultation on the proposals and urgency that has limited the feasible options. The RIS does draw on relevant reports that provide a guide for some stakeholder views, where possible, although these are not specific to the SFO context. The RIS could have benefited from a wider range of options, but the analysis is sufficient, given the constraints. Despite these limitations, the panel considers the analysis is otherwise robust and can be relied on by Ministers to support decision-making.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The Serious Fraud Office is responsible for investigating and prosecuting cases of serious and complex fraud in New Zealand

1. The Serious Fraud Office (SFO) is the lead agency in New Zealand for the investigation and prosecution of serious and complex fraud.
2. The Serious Fraud Office Act 1990 (the SFO Act) established the SFO in response to the 1987 share market collapse and the recession, which exposed widespread fraud. It was developed in a largely pre-digital environment, and its provisions reflect the predominantly paper-based evidence gathering process required at that time, such as physical searches of filing cabinets for paper documents.
3. Fraud is one of the most common and fastest growing types of crime.[2] The evidence is also increasingly, almost exclusively, digital (e.g. online bank transactions and accounting software), with data increasingly stored on digital devices and in remote-access servers (the Cloud). The significant growth in data volume is expected to continue and drive increasing complexities in investigating financial crime more generally.
4. The SFO and Police have a Memorandum of Understanding that sets out how each agency will manage fraud cases to ensure best use of resources and avoid overlap.[3] Though the precise remit is not well-defined, the SFO handle cases of particularly "serious or complex" fraud including bribery and corruption, while Police manage the majority of remaining fraud cases.
5. The SFO Act is administered by the Ministry of Justice. Under the SFO Act, Ministerial responsibility for the SFO itself sits with the Attorney-General. Currently, Ministerial responsibility sits with the Minister of Police.

The SFO Act establishes investigatory powers and provides for some criminal procedural matters

6. The SFO Act provides the SFO with enforcement powers to detect, investigate, and ultimately prosecute cases of serious or complex fraud. The investigatory phase is most critical for the SFO in gathering the evidence required to appropriately build a case and then exercise its prosecutorial discretion in laying charges.
7. The investigatory phase encompasses two specific statutory tools for the SFO:
    - Section 9 notices (notices): issued by the Director of the SFO to an individual or group, requiring the production of "information" or "documents" relevant to the investigation and/or requiring someone's attendance for questioning; and
    - Section 10 warrants (search warrants).
8. The SFO Act's search warrant provisions require the Director of the SFO to make an application to the court in writing and on oath. The SFO does not have warrantless search powers.
9. To issue a warrant, the court must be satisfied that specific conditions are met, such as that the information supplied in response to a requisite notice was false or misleading; or

[2] According to the New Zealand Crime and Victims Survey, rates of fraud have grown consistently in recent years, with 10 percent of New Zealanders experiencing fraud in the 2023/24 year.
[3] Memorandum of Understanding between New Zealand Police and Serious Fraud Office.

that issuing a notice in the first instance might seriously prejudice the investigation (e.g. allowing for information to be altered or destroyed in the interim).

10. Typically, a notice would be the first investigatory tool deployed, and a warrant would be used subsequently if required. The sequencing and the layer of judicial oversight is on the basis that search warrant powers are particularly invasive and coercive investigatory tools. For the same reason, the warrant application must provide reasonable grounds as to why the search warrant is necessary or appropriate *in place* of, or in addition to, the less invasive notices.

11. The SFO Act also sets the process and requirements for evidence found to have been unlawfully obtained by the SFO. The evidence admissibility provisions require that unlawfully obtained evidence must be destroyed unless the judge is satisfied there was no unfairness in obtaining the evidence. More generally, evidence admissibility provisions serve a critical role in criminal procedure, drawing on judicial discretion to balance justice principles and the right to a fair trial alongside objectives of the criminal justice system and the public good.

A recent Court of Appeal decision found the SFO's use of powers unlawful, and the impacts are ongoing

12. The SFO is experiencing a series of legal challenges due to its exercise of powers and investigatory practices prior to the issuance of High Court (2022) and Court of Appeal (2024) judgments in *R v Pikia*. s6(c)

13. In 2020, the SFO laid various fraud and corruption charges against Roger Pikia in relation to his role as chairman of an iwi trust and its investment arm. The alleged offending took place between 2013 and 2016, and the SFO undertook an investigation between 2016 and 2020. The case was challenged at the Court of Appeal, which ultimately found the SFO acted unlawfully throughout its investigation into Mr Pikia.[4]

14. In the investigation, the SFO issued a high volume of notices and warrants to obtain a large quantity of information, including Cloud data and information from digital devices. The Court of Appeal found that many of the notices and warrants were unlawful as they were too broad in scope, lacked detail, or lacked relevance to the immediate investigation into Mr Pikia.

15. The use of notices to obtain electronic devices was found unlawful as notices cannot themselves be used to compel production of digital devices. This is because devices are not themselves *information* or *documents* as defined in the SFO Act.

16. s9(2)(h)

17. In finding that a significant volume of evidence was unlawfully obtained, the evidence was found inadmissible. The SFO found the case no longer met the evidentiary threshold required to prosecute, and the case was dismissed from the court.

18. The impact of the Pikia decision is ongoing, and the precedent continues to impact on cases. In July 2025, the SFO withdrew charges in relation another case of serious fraud

[4] R v Pikia [2024] NZCA 408.

because of the legal precedent set in the Pikia case.[5] The SFO has made operational changes in light of Court of Appeal findings, including but not limited to a shift to using more warrants rather than notices to ensure strong judicial oversight.

19. The Court of Appeal decision stated that the Pikia case is more generally symptomatic of the legislation being outdated and that the SFO Act no longer provides the SFO with the tools it needs to function in the modern environment.

What is the policy problem or opportunity?

Outdated provisions mean the SFO cannot most effectively and efficiently fulfil its function to investigate and prosecute fraud

20. s6(c)

21. s6(c)

The Act is becoming increasingly out of step with more comprehensive legislation (the Search and Surveillance Act 2012), under which most other enforcement agencies operate.

22. The approach to evidence admissibility in criminal proceedings has also evolved. The evidence admissibility provisions no longer align with the now standard approach to evidence law following the passage of the Evidence Act 2006. s6(c)

23. The Ministry last reviewed the SFO Act in the broader context of search and surveillance in New Zealand, which ultimately resulted in the Search and Surveillance Act 2012 (the SSA). At that time, the Ministry provided advice on whether the SFO powers should be wrapped into the SSA. However, this was not progressed.

24. Currently, the SFO Act exists alongside a broader search, seizure and surveillance regime, which is centralised through the SSA. The SSA provides powers for most other enforcement and regulatory agencies, including New Zealand Police and the Financial Markets Authority (FMA).

25. The FMA is comparable to the SFO. It regulates New Zealand's financial markets and holds functions including conducting investigations and taking enforcement action into matters relating to financial markets. The FMA was established through the Financial Markets Authority Act 2011 (the FMA Act), which confers a range of powers including powers for searching places and things. The legislation was drafted with the incumbent search and surveillance regime in mind, and is therefore well-aligned with the SSA. Part 4 of the SSA (with necessary modifications) applies to search warrants issued under the FMA Act.

26. There are other aspects of the regime that are out of date and the SFO Act is in need of a more comprehensive review. However, this would take considerable time, and Ministers

[5] Charges updated in immigration fraud case - Serious Fraud Office, New Zealand
s6(c)

have directed us to address the issue as a matter of priority because the issues are impacting current investigations and prosecutions.

The SFO cannot use its search warrant to obtain some of the types of evidence it needs to build cases in the modern context

27. s6(c) As the SFO Act was drafted with paper-based evidence in mind, the settings now do not readily empower the acquisition of some types of digital evidence using a warrant. s6(c)

28. Given evidence of fraud is increasingly digital, high volumes of information are being stored on devices s6(c) The Pikia case is an example of the degree to which digital evidence is often required to progress an investigation and successfully prosecute.

s6(c)

The current settings also make it hard for the SFO to efficiently obtain and execute its warrants

34. The statutory process for obtaining a search warrant takes significant SFO time and resource. In 2024, the SFO executed 14 warrants across 4 investigations. It also issued 425 notices. It estimates that the average time to obtain warrant urgently (from the start of application to granting) is:

s6(c)

s6(c)

The SFO Act test for evidence admissibility does not reflect the balancing approach used in other criminal proceedings

41. The SFO Act evidence admissibility test reflects the general law of evidence that was in place at that time. However, it has not been updated to reflect case law and the approach now codified in the Evidence Act 2006.

42. The Evidence Act 2006 uses a balancing test that allows the court to consider a wide range of justice interests in determining whether to exclude or admit evidence in criminal proceedings. The SFO Act test is much narrower, and inconsistent with the current approach.

What objectives are sought in relation to the policy problem?

43. The overall policy objectives are:

a. **to ensure the SFO can obtain the information it needs** to effectively undertake its investigations and determine whether cases meet the evidentiary threshold for prosecution;

b. **to ensure the process for obtaining a search warrant is efficient** so that the SFO can act quickly when required in urgent situations;

c. **to ensure the SFO can execute a warrant effectively and with minimal risk to safety** so it can obtain the information it needs for its investigations and prosecutions;

d. **to ensure the test applied to unlawfully obtained evidence is appropriate and consistent with the test applied in criminal proceedings more generally,** specifically in terms of balancing different justice interests, including the public interest.

44. There are possible points of friction between the objectives and the need to uphold core rights to privacy and human rights principles – specifically in relation to using search warrants to obtain a broader range of information s6(c)

45. However, we have sought to manage trade-offs through seeking to align the solution with approaches in more recent and comprehensive legislation, such as the Search and Surveillance Act 2012 and the Evidence Act 2006, where Parliament has agreed on the balance between the competing objectives. Nevertheless, we also acknowledge that there are known issues with that legislation, which are discussed in the options analyses.

What consultation has been undertaken?

46. s9(2)(h)

47. We undertook consultation with the SFO in developing the proposals. We also undertook targeted agency consultation with NZ Police, the Crown Law Office, and the Office of the Privacy Commissioner.

48. We supported our understanding of the issues through consideration of several New Zealand Law Commission reports, including on the Evidence Act 2006 and the Search and Surveillance Act 2012.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

49. We used the following criteria to assess the options in comparison with the status quo:

a. **Effectiveness:** this criterion asks the extent to which the option meets the enforcement needs of the SFO;

b. **Ease of implementation:** this criterion asks how quickly and efficiently the option addresses the problems;

c. **Legislative consistency:** this criterion asks whether the option aligns with current legislative approaches to investigation and criminal procedure; and

d. **Alignment with constitutional principles:** this criterion asks the extent to which the option upholds human rights, freedoms, and criminal justice principles.

What scope will options be considered within?

50. The Ministry recognises there are broader issues with the SFO Act, and we consider that it is in need of a more fulsome review. However, the issues are impacting current SFO investigations and prosecutions. Ministers have directed us to urgently address the issue as a matter of priority. This has constrained our framing of the problem and solution.

51. More specifically, we narrowed the problem definition to focus on the most pressing and urgent issues associated with the SFO Act being outdated. The narrowed problem definition necessarily constrained the scope of feasible solutions to those that would address the most urgent issues.

52. We have only considered options that draw on relevant legislative provisions in other Acts and bring the SFO Act into closer alignment with them – specifically the Search and Surveillance Act and Evidence Act.

53. We therefore considered, but discounted, developing bespoke provisions to address the issues identified with the scope of, and process for obtaining and executing search warrants. Creating a bespoke approach would have taken time and not achieved the urgency objective, and would have resulted in less legislative consistency.

54. The Ministry also considered, but discounted, creating a separate bespoke evidence admissibility test for the SFO Act. The option was discounted as it is unlikely to meet the policy objectives, specifically in relation to legislative consistency and alignment across the statute. The option is also not future-proof, as any changes to the general approach to evidence law (in the Evidence Act 2006) would not be automatically reflected in the SFO Act 1990.

55. The Ministry also notes the narrowed scope in considering the application of the evidence admissibility changes in relation to active cases, including: where an investigation is underway but charges have not been laid; where charges have been laid but a trial has not yet commenced; and where a trial has commenced.

56. There are a number possible approaches in setting the point where the changes would apply (in relation to active cases). In light of the constraints identified, we only considered an approach where changes would apply to cases that are not yet at trial. Changes would apply where an investigation is underway or has been completed but charges have not been laid; and where charges have been laid but the case is not yet at trial. In cases where a trial has commenced, the status quo test would apply. This approach is consistent with s 5 of the Evidence Act that determines the application of the Act to proceedings commenced before the Act came into force.

Search warrants: What options are being considered?

Option One – Status Quo

57. The existing process for obtaining and executing a search warrant is retained (paragraphs 6 to 11 refer).

58. The Director of the SFO must apply to the court in writing and on oath to obtain a search warrant.

59. Warrants are issued with respect to places; s6(c)

60. s6(c)

Option Two – Make targeted changes to address the most immediate issues in relation to search warrants

61. Option Two would address the most urgent concerns with existing search warrant powers, through targeted amendments aligning specific provisions in the SFO Act with existing provisions the Search and Surveillance Act 2012.

62. The changes would enable the SFO to obtain the types of evidence increasingly required to investigate cases through aligning the scope of what a warrant can be used to obtain with the Search and Surveillance Act 2012. Amendments would ensure that the SFO can obtain the evidence required in an increasingly digital world. The changes would enable the SFO to access named digital devices irrespective of their location, and to remotely access information stored in the Cloud, which brings the settings into alignment with other enforcement agencies, including the FMA.

63. Amendments would enable the Director of the SFO to apply for search warrants orally and to an issuing officer in cases where the delay in obtaining a search warrant would frustrate a search process (such as risking the destruction of evidence). This is in alignment with s 100 of the Search and Surveillance Act 2012.

64. Enabling applications to an issuing officer means applications could be issued by a broader range of appropriate people as defined at s 108 of the Search and Surveillance Act 2012. An issuing officer is a Judge or a Justice of the Peace, Community Magistrate or Registrar who has also been granted authorisation by the Attorney-General.

65. Amendments would enable the SFO to take steps to ensure the warrant site is preserved and the scene is not interfered with, in alignment with s 116 of the Search and Surveillance Act 2012. For example, an investigator may temporarily exclude someone from a warrant site to secure the scene and evidence.[9] Case law has established that using this power to direct someone away from a computer and into another area in the space is reasonable.[10]

66. Lastly, amendments would enable reasonable use of utilities in alignment with s 110 of the Search and Surveillance Act 2012. It would empower the SFO to access utilities at a warrant site if required to use equipment in the course of the investigation (such as electricity and internet).

Option Three – Comprehensively bring the SFO warrants framework under the Search and Surveillance Act

67. Option Three would involve a more comprehensive alignment of the SFO Act warrants framework with Part 4 of the SSA. Part 4 contains provisions relating to the application for and issuing of search warrants, and the powers and requirements for carrying out searches.

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[9] This would not include direction to *remain* in a place (as this amounts to detention).
[10] *Powerbeat International Ltd v Attorney-General* (1999) 16 CRNZ 562.

68. Under this option, the SFO Act would be listed into schedule 2 of the SSA, which sets out all the Acts to which part 4 of the SSA applies. It would mean that all the SSA part 4 provisions automatically apply, unless specifically excluded in schedule 2.

69. This would provide the most fulsome alignment of the SFO Act with the SSA regime and bring the SFO in line with other enforcement agencies with similar powers. It would also help to future-proof the SFO Act, as any changes to the SSA framework would be immediately incorporated into the SFO Act.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Targeted alignment with SSA (preferred option)	Option Three – Comprehensive alignment with the SSA
Ease of implementation	0	++ This option quickly addresses urgent issues. Any costs are able to be met within SFO baseline.	-- Additional time would be required for a detailed analysis of part 4 of the SSA, to determine whether any of the SSA provisions might create unintended consequences for the SFO and would need to be specifically excluded. The time required means that the SFO would be less able to effectively respond to fraud, and risks identified would remain unresolved, for longer.
Alignment with constitutional principles	0	- The broadening of SFO search powers engages human rights and freedoms, specifically in relation to search and seizure (s 21 NZBORA); criminal procedure (s 25 NZBORA); and natural justice (s 27 NZBORA). However, we consider the impact is proportionate to the public good of effective investigations and prosecutions. The option reflects the same settings in the SSA, which Parliament has agreed strikes a proportionate balance between constitutional rights and enforcement need.	- / 0 Broadens SFO search powers as in option two. However, a full alignment would allow for additional checks and balances from the SSA to be applied.
Legislative consistency	0	+ This option retains the bespoke approach but brings powers into closer alignment with other enforcement agencies.	++ Uses the same approach as other comparable enforcement agencies

Effectiveness	0	++ This option enables effective and efficient investigations.	++ Enables effective and efficient investigations
Overall assessment	0	++ In light of constraints, this is the preferred option.	+

Search warrants - What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

70. Option Two is most likely to address the most pressing issues arising from outdated legislation, which are impacting SFO investigations and prosecutions. As the changes are targeted, the SFO Act warrant framework more generally would retain its bespoke features.

71. Amendments to the search warrant provisions support efficiency and effectiveness objectives. Access to reasonable utilities would also support workplace health and safety.

72. The changes align with the comparable provisions in the Search and Surveillance Act 2012, which was established in accordance with constitutional and privacy principles. Adopting similar provisions to those that are already in the Search and Surveillance Act would give effect to both:

    a. the established policy approach for search warrant powers already used by other comparable enforcement agencies; and

    b. uphold an approach to searches that Parliament agreed to strike a reasonable balance between impacts of searches on personal freedoms and rights, and upholding the criminal law.

73. Option Three would provide better legislative consistency and would allow for any future changes to the Search and Surveillance Act 2012 to be immediately carried over into the SFO warrant framework. However, given the time required to implement this approach, it would not meet the ease of implementation criterion and is therefore not the preferred option.

74. The Law Commission report *Review Search and Surveillance Act 2012* highlights known issues with that framework.[11] The report identifies provisions that should be updated to reflect further developments in technology, including increasingly sophisticated electronic devices and the role of encryption and anonymisation tools to hide electronic data. However, the Search and Surveillance Act 2012 regime is much more up to date and fit for purpose than the SFO Act, and therefore there would still be benefit associated with closer alignment.

Search Warrants - Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred package of option in the RIS?

75. Yes

What are the marginal costs and benefits of the preferred options package in the Cabinet paper?

Affected groups *(identify)*	**Comment**	**Impact**	**Evidence Certainty**
Additional costs of the preferred option compared to taking no action			
Serious Fraud Office	Ongoing and one-off digital capability	Low	High

[11] NZLC R141, 2017.

	resourcing; enforcement skills		
Public	Impact of powers on individual rights e.g. privacy	Low	Medium
Defendants	Changes may impact on the rights interests of defendants under active investigation	Medium	Medium
Others (e.g. Police, Ministry of Justice, Judiciary)	Possible increase in warrants applications may impact court workload; possible minor increase in Police resource for enforcement; possible marginal impact on the prison population	Medium	Medium
Total monetised costs	N/A	N/A	N/A
Non-monetised costs	*Low-Medium*	*Medium*	*Medium*
Additional benefits of the preferred option compared to taking no action			
Serious Fraud Office	Ongoing legal certainty; powers aligned with other enforcement agencies; access to appropriate evidence	High	Medium
Public	Effective law enforcement may reduce victimisations from fraud	High	Medium
Others (e.g. Police, Ministry of Justice, Judiciary)	Consistent and efficient approach across law enforcement; warrant application changes could aid court efficiency	Medium	Low
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	*High*	*Medium-High*	*Low-Medium*

Costs, Risks and Mitigations

76. The changes bring the SFO more into alignment with what is now the standard approach to search warrants for law enforcement. Therefore, we do not envisage any *novel* risks associated with the changes to search warrants.

77. **Upfront or ongoing cost to SFO:** The changes may involve an upfront cost for the SFO if any additional training or technical resource is required in the use of additional powers. However, we understand that the SFO can meet any associated costs from within its baseline.

78. **Risks in enforcement:** s6(c)

79. **Impact on rights:** The changes involve enabling the SFO to exercise more powers in undertaking an investigation. Therefore, this may increase the impacts associated with the use of coercive powers e.g. on personal freedoms and privacy. Privacy rights may be impacted by the increase in types of information the SFO can obtain (e.g. through device warrants). However, this risk is the same as that posed by other enforcement agencies who operate with the same powers, including the FMA. Bringing the SFO's powers into alignment with the SSA should mitigate major risks to the public good insofar as the SSA is an established framework that strikes an appropriate balance between facilitating the investigation and prosecution of offences while protecting individual rights.

80. **Impact on defendants:** Amending the warrant powers may impact on the rights and interests of those under investigation, specifically in relation to search and seizure (s 21 NZBORA); criminal procedure (s 25 NZBORA); and natural justice (s 27 NZBORA). However, we consider the impact is proportionate with the enforcement need and reasonable insofar as it brings the powers into alignment with enforcement agency practices more generally.

81. **Impact on court workload:** Enabling applications for device warrants may increase the volume of warrant applications that the SFO make to the court, which may impact on court workload. However, the impact may be offset by the changes that enhance efficiency in the application process, namely the ability to apply for an oral warrant and a broadening of the application recipient from judge to issuing officer (e.g. a magistrate) so the impacts are more distributed.

82. **Police resource**: s6(c)

83. **Prison population**: Optimising the effectiveness of investigations and prosecutions could impact the prison population. However, we do not expect the impact to be significant as the SFO do not prosecute high volumes of cases.

Evidence Admissibility: What options are being considered?

Option One – Status Quo

84. Option One would retain the existing evidence admissibility provisions that establish the consequences for evidence that has been unlawfully obtained under the SFO Act. It states that unlawfully obtained evidence is admissible in court only when the court determines that there was "no unfairness" in obtaining the evidence. This test reflects the general law of evidence that was in place at the time.

Option Two – Align with the Evidence Act 2006

85. Option Two would amend the existing evidence admissibility provisions so that the evidence admissibility test at s 30 of the Evidence Act 2006 applies – through cross-refence to the Evidence Act 2006.

86. Section 30 of the Evidence Act 2006 (which governs evidence rules for other criminal proceedings) allows the court to take into account a broader range of considerations when determining whether unlawfully obtained evidence can be admissible. It allows the court to balance the "impropriety" involved in obtaining the evidence against the public interest in allowing that evidence to be admissible.

87. For example, under s 30, the court can consider factors such as:

    a. level of intent in the impropriety;

    b. seriousness of the rights breached;

    c. quality of the evidence in question;

    d. alternatives to redress aside from evidence exclusion; and

    e. the seriousness of the offence that the evidence is in relation to.

How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Align with Evidence Act 2006
Ease of implementation	0	+ This option is a targeted legislative change.
Alignment with constitutional principles	0	+ This option enables the court to take into account broader range of interests e.g. the public good in prosecution. However, there is a risk that the option negatively impacts the rights of natural justice for defendants (e.g. where evidence would otherwise likely be inadmissible under the status quo).
Legislative consistency	0	++ This option is consistent across approaches in criminal proceedings.
Effectiveness	0	++ This option enables the court to take into account factors such as whether there was urgency required in obtaining the evidence
Overall assessment	0	++

Evidence admissibility - What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

88. Option 2 is most likely to address the issue by aligning the SFO Act evidence admissibility test with what is now the established policy approach to evidence in criminal proceedings. This intent could be achieved by amending s 22 to provide that the balancing test at s 30 of the Evidence Act 2006 applies (with cross-reference to the Evidence Act 2006 test).

89. Updating SFO Act settings in this way gives effect to the established policy approach for evidence admissibility, as codified in the Evidence Act 2006. This approach is used in other, similar legislation, for criminal proceedings, such as the FMA Act and in relation to information obtained by Police using SSA powers.

90. This option would enable greater flexibility for the court to determine whether to admit evidence found to have been unlawfully obtained. Essentially, if the court deems that the egregiousness of the offending in question outweighs the seriousness of how the evidence was improperly obtained, the court may allow the evidence to be used at trial. However, the status quo test simply asks if there was unfairness, and if so, the evidence is inadmissible. This is a much narrower test, and evidence is arguably much more likely to be found inadmissible regardless of justice interests.

91. In amending the evidence admissibility provisions, the Bill will clarify the point at which the Evidence Act 2006 test applies for cases that are active at the time that the amendment comes into effect.

92. The intent is that, for investigations and prosecutions active at the time that amendments come into force, the change in admissibility test would apply to cases where investigations have already occurred (i.e. notices and warrants have already been used to gather evidence) but charges have not yet been laid. It would also apply in proceedings where charges have been laid but a trial has not yet commenced. If a trial has commenced, or for any appeals relating to previous cases, the older SFO test would continue to apply.

93. This approach is consistent with that in the Evidence Act (s 5) that determines the application of the Act to proceedings commenced before the Act came into force.

94. The option may impact a small number of active investigations and cases. There may be instances where the court determines that unlawfully obtained evidence would be admissible under the s 30 Evidence Act test, but would have been inadmissible if it were considered under the old SFO Act test – even if the evidence was obtained before the SFO Act was amended. We consider the potential impact is mitigated by the role of judicial discretion in balancing the interests of evidence exclusion with those of evidence inclusion.

95. The Law Commission report *The Third Review of the Evidence Act 2006* highlights that there are known issues with the existing admissibility test at s 30 of the legislation.[12] Specifically, the report notes that submitters raised concerns over inconsistencies in how the test is applied between different judges. This creates uncertainty for legal counsel in advising clients whether to challenge the admissibility of evidence, and may mean that similar cases are not treated alike. The report indicates that it may be desirable to update the Evidence Act 2006 admissibility test to provide for a clearer structure that encourages consistency in its application between judges.

[12] NZLC R148, 2024.

96. Despite the known issues, the Ministry considers the admissibility test in the Evidence Act 2006 is still more suitable than the existing test in the SFO Act. It is more up to date and reflects the general approach to evidence admissibility in criminal proceedings across other similar enforcement agencies. Through amending the SFO Act test to specify, through cross reference, that the s 30 test applies, the preferred solution also future proofs the SFO Act from any changes to the Evidence Act (as these would be automatically incorporated).

Evidence Admissibility - Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred package of option in the RIS?

97. Yes

What are the marginal costs and benefits of the preferred options package in the Cabinet paper?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Serious Fraud Office	Nil	Nil	Nil
Public	Risk of more evidence being unlawfully obtained under the SFO Act on basis it may still be admitted	Medium	Low
Defendants	Impact on evidence status in active cases	Medium	Medium
Others (e.g. Police, Ministry of Justice, Judiciary)	Risk of less certainty due to increase judicial discretion; possible marginal impact on prison population	Low	Low
Total monetised costs	N/A	N/A	N/A
Non-monetised costs	*Low*	*Low-medium*	*Low*
Additional benefits of the preferred option compared to taking no action			
Serious Fraud Office	Flexibility over admitting evidence if found to be unlawfully obtained – may account for minor improprieties	Medium	Medium

Public	Fewer victimisations and offenders held to account	Medium	Low
Others (e.g. Police, Ministry of Justice, Judiciary)	Flexibility for courts to exercise judicial discretion; possible improvements to court timeliness arising from more efficient prosecutions	Medium	Low
Total monetised benefits	N/A	N/A	N/A
Non-monetised benefits	*Medium*	*Medium*	*Low-Medium*

Costs, Risks and Mitigations

98. Due to the need to act at pace, the evidence in relation to marginal costs and benefits is limited. Nevertheless, this change would bring the SFO Act into alignment with what is now the standard approach to evidence admissibility in criminal proceedings. As such, we do not envisage any *novel* costs or risks over and above those that are already present in how the SFO Act operates, and risks in any existing approach to evidence admissibility.

99. **Inappropriate inclusion of evidence:** Providing for a broader legal test could risk an increase in the inclusion of evidence that is less appropriate to be included in a trial on the basis of it being unlawfully obtained. However, we consider this risk is appropriately mitigated by both judicial discretion being exercised in line with matters the court must have regard to set in legislation; and checks and balances within the court process more generally, including the right to review.

100. **Risk to defendants in active cases:** As previously discussed, the point at which the proposed test applies in proceedings may impact the rights of defendants, insofar as a change could mean evidence may become admissible that would otherwise be excluded due to being unlawfully obtained. This engages a defendants' rights to natural justice. However, we consider that the exercise of judicial discretion in how the balancing test is applied mitigates the risk to defendants.

101. **Prison population**: Allowing for a balancing of justice interests in the evidence admissibility test could impact the prison population through a possible increase in more successful prosecutions. However, we do not expect the impact to be significant as the SFO do not prosecute high volumes of cases.

Section 3: Delivering an option

How will the proposal be implemented?

102. The proposal will require legislative amendments to the SFO Act. The Minister of Justice intend to introduce a Bill to the House giving effect to the proposals by the end of February 2026, with a view to enactment by the end of this parliamentary term.

103. The SFO will be responsible for implementing any operational changes associated with the new search warrant powers and processes. We have consulted with the SFO heavily in developing these proposals. The SFO has indicated that the proposals can be operationalised efficiently and effectively, as a matter of urgency.

104. The SFO has indicated it can meet any associated cost of the proposals from within its baseline.

How will the proposal be monitored, evaluated, and reviewed?

105. As regulatory stewards of the SFO Act, the Ministry would continue to work with the SFO to monitor the effects of the amendments, and to ensure that the SFO Act meets the needs of the SFO and remains in line with constitutional principles.

106. We will rely on the SFO, as well as the courts, to advise of any unintended consequences.

107. We recognise that there are broader issues with the SFO Act, and consider that it needs a more fulsome review. However, as previously indicated, such a review would take time, and the current settings present a significant risk to the SFO's core operations. Therefore, the key issues should be urgently addressed through implementing the targeted changes in this proposal, as a matter of priority.