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## ***5.4 Fraud Prevention and Response Policy***

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## 4. Fraud Prevention and Response Policy

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### 4.1 Application

The Fraud Prevention and Response Policy applies to:

- Board members and employees of the Agency (Staff)
- Clients of the Agency (Legally Aided Persons, Clients of Community Law Centres)
- Providers contracted to the Agency (Lawyers listed to provide services under legal aid and related schemes, Community Law Centres)
- Contractors providing services to the Agency.

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### 4.2 Purpose

The Fraud Prevention and Response Policy sets out the Agency's approach to the discovery of fraud in areas covered by its functional responsibilities, and the steps that will be taken by the Agency in responding to that discovery.

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### 4.3 Policy Statement

The Agency expects all staff, and all other parties it contracts with, to deliver legal aid and community legal services, to act at all times honestly and with integrity, and to safeguard the public resources for which they are responsible.

The Agency is committed to ensuring that opportunities for fraud and corruption are minimised, by having appropriate prevention and detection processes in place, linked to a regular assessment of risk across the organisation's functions.

The Agency will thoroughly investigate any case of suspected fraudulent activity, and deal with it in an appropriate manner.

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### 4.4 Definition of Fraud

No precise legal definition of fraud exists. Fraud is generally used to describe depriving someone of something by deceit, which might either be straight theft, misuse of funds or other resources, or more complicated crimes like false accounting, and the supply of false information.

The term is also used to describe such acts as deception, bribery, forgery, extortion, corruption, theft, conspiracy, embezzlement, misappropriation, false representation, concealment of material facts, and collusion.

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### 4.5 Related Policies

The Agency has separate but related policies covering Gifts and Gratuities, Use of Agency Resources, Conflict of Interest, Protected Disclosures, Purchasing and the Staff Code of Conduct. The Fraud Response Plan (Staff) will be applied in response to any suspected or confirmed breaches of those related policies which form the basis of a fraudulent activity.

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### 4.6 Avenues for Reporting Fraud

The Agency has defined a number of avenues for reporting suspicions of fraud in the response plans included in this policy.

All matters will be dealt with in confidence, and in accordance with the Agency's Protected Disclosures Policy. The Protected Disclosures Policy protects the confidentiality of staff who report a suspected fraud, is located in the Agency's Human Resources Policy Manual – Section 5.

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Vigorous and prompt investigations will be carried out into all cases of actual or suspected fraud discovered or reported.

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## **4.7 Responsibilities**

The responsibility for understanding and applying the Fraud Prevention and Response Policy rests with all levels of the Agency's organisation.

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### **4.7.1 Board**

The Board has responsibility for establishing and maintaining a sound system of internal control that supports the achievement of Agency's functions through defined strategies and policies.

The system of internal control is an on-going process, in part designed to identify the principal risks faced by the Agency, to evaluate the nature and extent of those risks, and to manage them effectively.

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### **4.7.2 Chief Executive**

The Board has assigned the responsibility of risk management to the Chief Executive.

The Chief Executive has responsibility for:

- developing a fraud risk profile and undertaking a regular review of the fraud risks associated with each of the key organisation objectives in order to keep the profile current;
  - establishing an effective Fraud Prevention and Response Policy and response plans, covering staff, providers, and other third parties as appropriate, commensurate with the level of risk identified in the fraud risk profile;
  - designing an effective control environment to prevent fraud commensurate with the fraud risk profile;
  - establishing appropriate mechanisms for:
    - reporting fraud risk issues;
    - reporting significant incidents of fraud;
    - reporting to the sponsor department in accordance with the Memorandum of Understanding, ie briefing the department/minister on any important matters in the public interest, on a 'no surprises' basis;
    - reporting incidents of fraud to the Agency's external auditor;
    - coordinating assurances about the effectiveness of the Fraud Prevention and Response Policy to support the Board's Statement of Responsibility in the Annual report.
  - ensuring that the Agency promotes an anti-fraud culture, and that all staff are aware of Agency's Fraud Prevention and Response Policy and know what their responsibilities are in relation to combating fraud;
  - developing skill and experience competency frameworks to support the anti-fraud culture;
  - ensuring that appropriate anti-fraud training and development opportunities are available to appropriate staff in order to meet the defined competency levels;
  - ensuring that vigorous and prompt investigations are carried
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out if fraud occurs or is suspected;

- taking appropriate legal and/or disciplinary action against perpetrators of fraud;
- taking appropriate disciplinary action against managers where supervisory failures have contributed to the commission of fraud;
- taking appropriate disciplinary action against staff who fail to report fraud;
- taking appropriate action to recover assets; and
- ensuring appropriate action is taken to minimise the risk of similar frauds occurring in future.

The Chief Executive is assisted in the performance of these responsibilities by the Agency's Risk Management Committee, which has been established to provide advice on the Agency's risk management framework, among other tasks, internal audit, management, and staff.

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#### **4.7.3 Internal Audit**

Internal Audit is responsible for contributing to the prevention and detection of fraud by:

- examining and evaluating the effectiveness of the system of internal control commensurate with the extent of the potential exposure/risk in the various segments of the Agency's operations;
- ensuring that management has reviewed its risk exposures and identified the possibility of fraud as a business risk;
- reporting to the Agency's Risk Management Committee on the adequacy of arrangements for managing the risk of fraud; and
- assisting management in conducting fraud investigations.

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#### **4.7.4 Managers**

All managers are responsible for contributing to the prevention and detection of fraud by:

- ensuring that an adequate system of internal control exists within their areas of responsibility and that controls operate effectively;
- assessing the types of risk involved in the operations for which they are responsible;
- reviewing and testing the internal control systems for which they are responsible regularly;
- ensuring that controls are being complied with and their systems continue to operate effectively; and
- determining whether to implement new controls to reduce the risk of similar fraud occurring where frauds have taken place.

In the context of this policy a manager is considered a tier 2 or tier 3 manager. A Team Leader would need to immediately inform their Manager.

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#### **4.7.5 Staff**

All staff are responsible for:

- complying with the Agency’s “Code of Conduct” and related Corporate and Human Resource policies;
- acting with propriety in the use of Agency resources, and the application of public funds whether they are involved with granting of legal aid, contracting with suppliers of community legal services, or the administration of Agency functions, including dealing with suppliers, handling cash, and making payments;
- conducting themselves in accordance with the general principles of public service: integrity, objectivity, accountability, openness, honesty and leadership;
- being alert to the possibility that unusual events or transactions could be indicators of fraud;
- reporting details immediately through the appropriate channel if they suspect that a fraud has been committed or see any suspicious acts or events; and
- cooperating fully with whoever is conducting internal checks or reviews or fraud investigations.

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## 4.8 Specific Policies

### 4.8.1 Reporting of Fraud

The Chief Executive will report all instances of suspected fraud, as appropriate to the circumstances, to the appropriate law enforcement agency, and to the Agency’s external auditor.

The appropriate law enforcement agency will determine whether a person(s) should be prosecuted.

### 4.8.2 Recovery of Assets

The Agency will pursue the recovery of assets lost through fraud wherever possible and practicable.

## 4.9 Fraud Response Plans

Fraud Response Plans have been developed to provide guidance on how to identify and report suspicions of fraudulent activity, and how investigations will be conducted and concluded.

Separate plans, which form part of the Agency’s Fraud Prevention and Response Policy, cover:

- Board members and employees (Staff); and
- Clients, providers, contractors, and other third parties.

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## Fraud Response Plan – Staff

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### 4.10 Introduction

The Fraud Response Plan – Staff is part of the Agency's Fraud Prevention and Response Policy and sets out guidance on how to identify and report suspicions of fraud around activities which are primarily *internal* to the Agency, and how investigations will be conducted and concluded, in respect of Agency Board members and employees (Staff).

It should be noted that while this plan is focussed on addressing fraud concerning activities *internal* to the Agency, it may involve third parties. The Fraud Response Plan – Clients, Providers, Contractors, and Other Third Parties, sets out guidance on how to approach suspicions of fraudulent activity in respect of third parties and their employees.

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### 4.11 Identification of Fraud

Fraud is generally used to describe depriving someone of something by deceit, which might either be straight theft, misuse of funds or other resources, or more complicated crimes like false accounting, and the supply of false information.

Examples of activities *internal* to the Agency which may be identified as a suspected fraudulent activity include:

- theft of cash, conversion of cheques
- misappropriation of office property, including sensitive equipment eg computers, cell phones
- submission of false invoices for payment
- submission of false claims for reimbursement of business related expenses
- dishonest use of the Agency's business credit card
- improper use of commercially/politically sensitive documents, information, or intellectual property for pecuniary gain
- the offering, and/or acceptance, of bribes for pecuniary gain

For clarity, activities which are not likely to be considered fraudulent may include:

- failure to follow Agency policies and procedures where there is no intention to deceive, eg committing the Agency to non approved/non budgeted expenditure
- misuse of Agency resources, eg photocopying for private purposes

However, each such occurrence of this type of activity would be reviewed to ascertain whether it results from an error of judgement and/or constitutes misconduct or serious misconduct, which then needs to be further investigated.

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### 4.12 Risk of Fraud

Given the nature of the Agency's functions, and the public profile surrounding those functions, the risk of fraud will be regularly reviewed to assess the type and extent of that risk, through the application of:

- the Agency's designated systems of internal control, and

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staff management practices;

- the monitoring of contract arrangements with providers, contractors, and other third parties who are contracted to provide legal aid and community law services on behalf of the Agency, and
- the Agency's complaints processes.

It is important for all Agency Board members and staff to remain vigilant in addressing the risk of fraud. However, such vigilance should be kept in perspective, and not lead to the creation of an unproductive climate of suspicion in the workplace.

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#### 4.13 Detection of Fraud

Most frauds (over 50%) are identified through the operation of normal system controls which exist within an organisation, and information from third parties typically account for another 30% of proven cases of fraud. Other ways of discovering fraud within an organisation include accidental discovery, internal and external audit, confession, staff changes, and suspicion.

There are a range of warning signs which may lead to a suspicion of fraud within an organisation, eg a sudden change in behaviour or lifestyle by a staff member, reluctance to take leave, unexplained wealth, close relationships with suppliers/contractors/providers, new staff resigning quickly.

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#### 4.14 Action required at the point of discovery

In the event that staff discover, or have suspicions that fraud is occurring within the Agency, they should *immediately* inform their manager in the first instance, or failing that, the Chief Executive, the Internal Auditor, or the Chair of the Agency's Board.

Where it is believed to be serious wrongdoing, the disclosure should be made in accordance with the Agency's Protected Disclosures Policy, which is in the Human Resources Policy Manual – Section 5.

It is important that the staff member, who has identified the suspected fraud, does not take any action, which may forewarn the perpetrator of the suspected fraud. Instead, efforts should be directed, in conjunction with the appropriate line manager, towards ensuring that any readily available evidential matter is secured for the investigation process (see below). Under no circumstances should the staff member attempt to personally investigate the suspected fraud.

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#### 4.15 Investigation of the Fraud

The manager will immediately inform the Chief Executive of the suspected fraudulent activity. The Chief Executive will decide how the investigation of the suspected fraud will proceed.

All internal investigations conducted into allegations of fraud are employment investigations. Accordingly they will be conducted in terms of the Legal Services Agency process for Managing Misconduct and Poor Performance.

The investigation process, depending on the circumstances will likely include the following steps :

- Clarify, and document the nature and circumstances surrounding the suspected fraud, with the assistance of legal advice as considered necessary

- Advise the appropriate law enforcement agency, Internal Auditor, the Chair of the Board, the Agency's external auditor, and the sponsor department
- Ensure the threat of further or continued frauds and losses are removed
- Suspend or dismiss the alleged perpetrator of the fraud from the workplace (if the circumstances support this action), or arrange for surveillance if the staff member under suspicion remains in the work place
- Secure the evidence in a legally admissible form
- Decide whether a formal investigation is appropriate, after receiving advice from the appropriate law enforcement agency
- Appoint an 'investigation manager', if necessary, with suitable 'investigation' experience, who may be a member of management, or a third party investigator, to conduct the investigation
- Review the 'investigation managers' report and take the necessary actions based upon the report recommendations, eg disciplinary action in accordance with the Agency's Human Resource Policies
- Ensure a fully documented record is kept setting out the key steps and details of the investigative processes.

The key steps in the investigation process are covered below.

#### **4.15.1 Securing evidence**

Managers should, following advice from a staff member about a suspicion of fraud, take immediate steps to secure any available evidence, which is considered to substantiate the alleged fraud. The gathering of any additional evidence should only be undertaken with the advice and agreement of the Chief Executive or designated 'investigation manager'.

In order to secure the evidence in a 'legally admissible form' the relevant documents should be preserved in their original state, as they may need to be fingerprinted, or otherwise tested. A record should be maintained of anyone handling the evidence. It should be noted that the evidence in question may include electronic records which will require special treatment to preserve the evidence in a 'legally admissible form'.

#### **4.15.2 Dealing with employee(s) under suspicion**

It is important to ensure that any employee(s) who are under suspicion of committing fraud are treated fairly. Any action taken by senior management to suspend or dismiss an employee in this situation should be taken in conjunction with the Managing Misconduct and Poor Performance policy. If the decision is made to allow the employee(s) under suspicion to remain in the workplace, additional surveillance may be necessary, including a search of the work area, filing cabinets and computer files.

#### **4.15.3 Interviewing employee(s) under suspicion**

The decision to interview employee(s) who are under suspicion of committing fraud is made by the Chief Executive. This may be in accordance with advice from the appropriate law enforcement agency.

	<p>All interviews must be conducted under properly controlled conditions in order to ensure that any statement taken, which may be subsequently used as evidence in a court case, will not be rejected as inadmissible.</p>
<p><b>4.16 Recovery of Assets</b></p>	<p>The Agency will seek to recover all assets lost or misappropriated as a result of fraud or theft. The process of recovery will depend upon the nature and circumstances surrounding the loss, and whether the fraud results in criminal charges being laid.</p> <p>Once the size and extent of the 'loss' has been confirmed, action will be taken to trace and freeze the 'lost' assets where possible, so that the recovery process can be commenced.</p> <p>The recovery of 'lost assets' from employees, may take the form of direct repayments, or through payroll deductions (if still employed).</p> <p>The Human Resources Manager will assist the Chief Executive with recoveries from employees.</p>
<p><b>4.17 Communications</b></p>	<p>The Senior Communications Adviser will handle all internal and external communications about the fraud event.</p> <p>Given the sensitivity surrounding these types of events, and the need to ensure consistency in the release of any information about the event, the Senior Communications Adviser will advise the Chief Executive on the form and content of information (if any) to be released, and will deal directly with the media as necessary.</p>
<p><b>4.18 Applying the lessons learnt</b></p>	<p>The Agency is committed to ensuring that the threat of fraud is properly managed through the implementation and application of sound systems of internal control, and supporting staff management processes.</p> <p>In the event that a fraud is discovered and confirmed through the investigation process, the Agency will take steps to ensure the lessons learned from the event are applied to existing policies and practices. This may require:</p> <ul style="list-style-type: none"> <li>• Changes to the existing systems of internal control, such as separation of duties, additional checks</li> <li>• Changing attitudes to fraud</li> <li>• Making use of the 'fear factor' (of being caught/severity of the consequences)</li> <li>• Making it 'too much effort' to commit fraud.</li> </ul> <p>Appropriate communication to staff, of the lessons learned from a particular 'fraud' event, will provide a valuable 'learning' opportunity for the Agency as a whole.</p>
<p><b>4.19 Reporting Losses</b></p>	<p>All losses resulting from frauds/thefts are to be reported to:</p> <ul style="list-style-type: none"> <li>• the Board</li> <li>• the Ministry of Justice in the four monthly reports provided under the annual Memorandum of Understanding with the Minister.</li> </ul>
<p><b>4.20 Contacts for</b></p>	<p>The following organisations may be contacted for advice on</p>

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**advice and  
guidance**

dealing with suspected fraud, as appropriate:

- Ministry of Justice (sponsor department)
  - External legal advisor
  - External auditor
  - NZ Police
  - Serious Fraud Office
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## Fraud Response Plan – Clients, Providers, Contractors, and Other Third Parties

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### 4.21 Introduction

The Fraud Response Plan – Clients, Providers, Contractors, and Other Third Parties, is part of the Agency's Fraud Prevention and Response Policy and sets out guidance to staff on how to identify and report suspicions of fraud around activities which are primarily *external* to the Agency, and how investigations will be conducted and concluded, in respect of Clients (legal aided persons, clients of community law centres), Providers (lawyers listed to provide services under legal aid and related schemes, community law centres), Contractors, and Other Third Parties.

It should be noted that while this plan is focussed on addressing fraud concerning activities *external* to the Agency, it may involve employees of the Agency. The Fraud Response Plan – Staff sets out guidance on how to approach suspicions of fraudulent activity in respect of Agency staff.

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### 4.22 Identification of Fraud

Fraud is generally used to describe depriving someone of something by deceit, which might either be straight theft, misuse of funds or other resources, or more complicated crimes like false accounting, and the supply of false information.

Examples of activities *external* to the Agency which may be identified as a suspected fraudulent activity include:

- submission of false and/or unsubstantiated applications for legal aid
- falsification of time records supporting the payment of grants of legal aid, and/or services rendered to the Agency
- submission of false claims or invoices for payment
- submission of two or more invoices for the same work
- misappropriation of assets and funds provided by the Agency under contract for the provision of community legal services
- improper use of commercially/politically sensitive documents, information, or intellectual property for pecuniary gain
- the offering, and/or acceptance, of bribes for pecuniary gain
- theft of cash, conversion of cheques belonging to the Agency

For clarity, activities which are not likely to be considered fraudulent, may include:

- a failure to perform activities or meet performance measures specified in contracts between the Agency and other third parties, eg Providers, Community Law Centres, and Contractors.
- committing the Agency to non approved/non budgeted expenditure where there is no intention to deceive
- misuse of Agency provided resources, eg photocopying for

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private purposes

However, each such occurrence of this type of activity would be reviewed to ascertain whether it results from an error of judgement or constitutes a breach of contract, which will need to be further investigated as a contractual issue.

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#### **4.23 Risk of Fraud**

Given the nature of the Agency's functions, and the public profile surrounding those functions, the risk of fraud will be regularly reviewed to assess the type and extent of that risk, through the application of:

- the Agency's designated systems of internal control, and staff management practices
- the monitoring of contract arrangements with providers, contractors, and other third parties who are contracted to provide legal aid and community law services on behalf of the Agency
- the Agency's complaints processes.

It is important for all Agency Board members and staff to remain vigilant in addressing the risk of fraud. However, such vigilance should be kept in perspective, and not lead to the creation of an unproductive climate of suspicion in developing working relationships with contractors, providers and other third parties.

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#### **4.24 Detection of Fraud**

Most frauds (over 50%) are identified through the operation of normal system controls which exist within an organisation, and information from third parties typically account for another 30% of proven cases of fraud. Other ways of discovering fraud include accidental discovery, internal and external audit, confession, staff changes, and suspicion.

There are a range of warning signs which may lead to a suspicion of fraud among third parties. These include:

- the repeated non delivery of contracted services, including requirements for reporting and general communications
- inadequate and/or repeated delays in responses to the follow up of performance issues as part of the monitoring of contracted services
- complaints from clients (legally aided persons, clients of community law centres), about the level of service provided
- unexplained exceptions arising as a result of reviews of certified claims for legal aid against activity time and cost benchmarks
- repeated deferrals of regular third party compliance audits
- sudden changes in employee (of the third party) behaviour or lifestyle, reluctance to take leave, unexplained wealth, close relationships with Agency staff, new staff resigning quickly.

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#### **4.25 Action required at the point of**

In the event that staff discover or have suspicions that fraud is occurring, or are notified of a suspected fraud among Clients, Providers, Contractors, and Other Third Parties, they should

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**discovery**

*immediately* inform their manager in the first instance, or failing that, the Chief Executive, the Internal Auditor, the Chair of the Agency's Board.

Such disclosures may be made in accordance with the Agency's Protected Disclosures Policy,, which is aimed at protecting the confidentiality of staff who report a suspected fraud.

It is important that the staff member, who has identified, or been informed of the suspected fraud, does not take any action, which may forewarn the perpetrator of the suspected fraud. Instead, efforts should be directed, in conjunction with the appropriate line manager, towards ensuring that any readily available evidential matter is secured for the investigation process (see below). Under no circumstances should the staff member attempt to personally investigate the suspected fraud.

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**4.26 Investigation of the Fraud**

The line manager will immediately inform the Chief Executive of the suspected fraudulent activity. The Chief Executive will decide how the investigation of the suspected fraud will proceed.

The investigation process, depending on the circumstances will likely include the following steps :

- Clarify, and document the nature and circumstances surrounding the suspected fraud, with the assistance of legal advice as considered necessary
- Advise the appropriate law enforcement agency, Internal Auditor, the Chair of the Board, the Agency's external auditor, and the sponsor department
- Inform the external party, eg managing partner of law firm, trust board of community law centre, as appropriate, of any suspected fraudulent activities by employees
- Ensure the threat of further or continued frauds and losses are removed
- If a staff member is involved, refer to the Response Plan – Staff for guidance on how to investigate and deal with employees of the Agency in cases of suspected fraud.
- Secure any evidence in a legally admissible form
- Assist the appropriate law enforcement agency with their enquiries
- Ensure a fully documented record is kept setting out the key steps and details of the investigative processes.

The key steps in the investigation process are covered below.

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**4.26.1 Securing evidence**

Managers should, following advice from a staff member about a suspicion of fraud, take immediate steps to secure any available evidence, which is considered to substantiate the alleged fraud. The gathering of any additional evidence should only be undertaken with the advice and agreement of the Chief Executive or designated 'investigation manager'.

In order to secure the evidence in a 'legally admissible form' the relevant documents should be preserved in their original state, as

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they may need to be fingerprinted, or otherwise tested. A record should be maintained of anyone handling the evidence. It should be noted that the evidence in question may include electronic records which will require special treatment to preserve the evidence in a 'legally admissible form'.

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#### **4.27 Recovery of Assets**

The Agency will seek to recover all assets lost or misappropriated as a result of fraud or theft. The process of recovery will depend upon the nature and circumstances surrounding the loss, and whether the fraud results in criminal charges being laid.

Once the size and extent of the 'loss' has been confirmed, action will be taken to trace and freeze the 'lost' assets where possible, so that the recovery process can be commenced.

The recovery of 'lost assets' from Clients, Providers, Contractors, and Other Third Parties will normally be handled by the Agency's legal advisers.

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#### **4.28 Communications**

The Senior Communications Adviser will handle all internal and external communications about the fraud event.

Given the sensitivity surrounding these types of events, and the need to ensure consistency in the release of any information about the event, the Senior Communications Adviser will advise the Chief Executive on the form and content of information (if any) to be released, and will deal directly with the media as necessary.

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#### **4.29 Applying the lessons learnt**

The Agency is committed to ensuring that the threat of fraud is properly managed through the implementation and application of sound systems of internal control, and supporting staff management processes.

In the event that a fraud is discovered and confirmed through the investigation process, the Agency will take steps to ensure the lessons learned from the event are applied to existing policies and practices. This may require:

- changes to the existing systems of internal control, eg separation of duties, additional checks
- changing attitudes to fraud
- making use of the 'fear factor' (of being caught/severity of the consequences)
- making it 'too much effort' to commit fraud
- making changes to contracts for services to increase monitoring requirements, and/or increase obligations to maintain systems of internal control or other assurance processes to minimise the risk of fraud

Appropriate communication to staff, of the lessons learned from a particular 'fraud' event, will provide a valuable 'learning' opportunity for the Agency as a whole.

It may be necessary, and appropriate, to inform clients, providers, contractors, and/or their representatives, of the lessons learnt.

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**4.30 Reporting Losses**

All losses resulting from frauds/thefts are to be reported to:

- the Board
- the Ministry of Justice in the four monthly reports provided under the annual Memorandum of Understanding with the Minister.

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**4.31 Contacts for advice and guidance**

The following bodies may be contacted for advice on dealing with suspected fraud, as appropriate:

- Ministry of Justice (sponsor department)
  - External legal advisor
  - External auditor
  - NZ Police
  - Serious Fraud Office
  - NZ Law Society, District Law Societies
  - Community Law Centre Association (or equivalent)
-