

# *Integrity Plus 2013*



## *New Zealand National Integrity System Assessment*

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# Integrity Plus 2013

## New Zealand National Integrity System Assessment

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## DEDICATION



*Jeremy Pope*

This report on the effectiveness of New Zealand's National Integrity System is dedicated to Jeremy Pope, the first managing director of Transparency International. Jeremy's *TI Source Book 2000* pioneered the concept of the National Integrity System, and his untimely death in 2012 robbed New Zealand and the world of one of its leading anti-corruption and human rights champions. We hope that this report and, more particularly, the actions taken to strengthen integrity following its completion, will serve as further testament to Jeremy's life's work.

## PREFACE

### TAKING INTEGRITY MORE SERIOUSLY IN NEW ZEALAND

This report documents the second assessment by Transparency International New Zealand (TINZ) of the effectiveness of New Zealand's National Integrity System, 10 years on from the initial study (2003). It also coincides with the centenary of the coming into effect of the Public Service Act 1912, which introduced a professional, merit-based public service in New Zealand.

The methodology for the assessment follows a research design developed by the Transparency International Secretariat (TI-S) in Berlin and implemented by TI national chapters in many countries. The core methodology, which focuses on corruption, has been augmented by a wider focus in selected areas on the role of transparency, integrity, and accountability in strengthening governance in New Zealand – what we have named an “integrity-plus approach”. The report was resourced domestically. Many researchers, reviewers, interviewees, the TINZ Board, TI, and seminar organisers volunteered their time and knowledge – of the order of 500 person-days. TINZ records its profound gratitude for the amazing dedication and efforts of so many people (of its virtual team). Project team members are listed in the acknowledgements section of this report. Those many who gave up their time in interviews and consultation are mentioned in footnotes throughout the report. In addition, financial contributions were received from numerous public sector agencies and the Gama foundation. In-kind contributions of meeting rooms and advice were also received from a large number of businesses and non-governmental organisations. The arrangements to manage the project and ensure the independence of the assessment are described in this report. TI-S also provided its intellectual property as well as in-kind support in the form of training for two New Zealand researchers and comments on report drafts. We thank the Secretariat for its support.

Since the 2003 NIS report, there has been a welcome strengthening of transparency and accountability in some areas in New Zealand. It is clear New Zealand remains highly rated against a broad range of international indicators of transparency and the quality of governance. Areas of concern, weakness, and risk highlighted in 2003, however, remain in the face of on-going and new challenges to integrity in this country. In some key areas, passivity and a lack of urgency continue. In others, progress has been very recent and sometimes insufficient.

***The core message of this report is that it is beyond time for serious and urgent action to protect and extend integrity in New Zealand.***

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## EXECUTIVE SUMMARY

*This assessment of New Zealand's National Integrity System is dedicated to New Zealander Jeremy Pope who pioneered the approach. It also marks the centenary of the coming into effect of the Public Service Act 1912*

### Transparency matters ...

“Transparency” is a term so frequently used and used in such diverse contexts that it is worth re-stating why it matters so much. Citizens have a right to information – a principle well established in such codes as the International Covenant on Civil and Political Rights and New Zealand's Official Information Act 1982. Transparency is also a precondition for effective public debate, strengthens accountability, and promotes fairer and more effective and efficient governance. As Professor Jeremy Waldron, an internationally regarded New Zealand legal academic, has observed, “there is such a degree of substantive disagreement among us about the merits of particular proposals ... that any claim that law makes on our respect and our compliance is going to have to be rooted in the fairness and openness of the democratic process by which it was made”.

### The National Integrity System

**This National Integrity System (NIS) assessment report takes stock of the integrity with which entrusted authority is exercised in New Zealand.** The framework on which the report is based was developed by the Transparency International Secretariat and applied by TI national chapters in many countries. A good working definition of an NIS is “the institutions, laws, procedures, practices and attitudes that encourage and support integrity in the exercise of power”. Beyond restraining the abuse of power, integrity systems should also be designed to ensure power is exercised in a manner that is true to the values, purposes, and duties for which that power is entrusted to or held by institutions and individual office-holders, whether in the public sector, the private sector, or civil society organisations.

**At the heart of this assessment are reports on 12 ‘pillars’ – branches of government, sectors, or agencies that constitute New Zealand's national integrity system.** An NIS assessment is an evaluation of the principal governance systems in a country to assess whether they function well and in balance with each other and thus help to guard against the abuse of power. It extends also to the societal foundations that support the pillars. The New Zealand NIS is illustrated in the standard “temple diagram”. This assessment framework incorporates the Treaty of Waitangi (New Zealand's founding document), environmental governance, and local government. Each of the individual pillars of the NIS has been assessed and scored against a set of indicators that measure each pillar's capacity, governance, and role within the system.

**The assessment identifies systemic interactions, interdependencies, and common themes and concerns.** The wide scope of an NIS assessment facilitates such identification, which is difficult, if not impossible, to achieve in standard sector- or institution-specific analyses of transparency and accountability. It considers the individual pillars and their interactions (positive and negative) as well as the effectiveness of the overall NIS.

## ***New Zealand's National Integrity System***



### **Overall conclusions of the report**

New Zealand's national integrity system remains fundamentally strong, and New Zealand is rated highly against a broad range of cross-country transparency and good governance indicators. Since the first NIS assessment of New Zealand in 2003, a welcome strengthening of transparency and accountability has occurred in some areas. The assessment found that the strongest pillars in the NIS are the Office of the Auditor General, the judiciary, the Electoral Commission, and the Ombudsman. The Canterbury earthquakes represented a severe test of governance systems in terms of compliance with building standards and integrity in reconstruction, and (with two tragic exceptions, the collapses of the CTV and Pyne Gould Corporation buildings), systems have generally held up well.

However, New Zealand's national integrity system faces increasing challenges. In key areas, passivity and complacency continue. New Zealand has not ratified the UN Convention against Corruption more than 10 years after signing it, and is not fully compliant with the legal requirements of the OECD Anti-Bribery Convention more than 14 years after signing it. Areas of concern, weakness, and risk do exist; for example, the relative dominance of the political executive, shortfalls in transparency in many pillars, and inadequate efforts to build proactive strategies to enhance and protect integrity in New Zealand. The pillar that raises issues of most concern is the political parties pillar. The core message of this report, therefore, is that it is beyond time to take the protection and promotion of integrity in New Zealand more seriously.

### **Strengths from the interactions between pillars**

The four key strengths from the interactions between pillars are:

- **the effectiveness of the judiciary as a check on executive action**
- **the effectiveness of the Office of the Auditor-General in supporting parliamentary oversight of the public finances**
- **the effectiveness of the Ombudsman as a restraint on the exercise of administrative power** and in enforcing citizens' rights of access to information under the Official Information Act 1982

- when cases of corruption or unethical behaviour by those in power are exposed, **the media, political parties, the Auditor-General, law enforcement agencies, and the judiciary usually pursue these cases vigorously.**

## **Weaknesses from the interactions between pillars**

Four main weaknesses are apparent in the interactions between pillars.

- **Interface between political party finances and public funding:** A combination of continuing concerns includes the transparency of political party financing and of donations to individual politicians, a long-term decline in party membership and increased party reliance on public funding, and a lack of full transparency of public funding of the parliamentary wings of the parties. These concerns interact also with the refusal to extend the coverage of the Official Information Act 1982 to the administration of Parliament.
- **Parliamentary oversight of the executive:** Concerns include the use of urgency to pass controversial legislation and the lack of specialist expertise and committees to hold the executive to account.
- **Interface between the political executive and public officials:** Concerns include evidence of an erosion of the convention that public servants provide the government of the day with free and frank advice, an apparent weakening over the last decade of the quality of policy advice that public servants provide, and perceived non–merit-based appointments to public boards.
- **Interface between central government and local government:** Concerns include intervention by central government in the decision-making authority of local government and weaknesses in the design and implementation of regulations.

## **Foundation assessment discloses both strengths and weaknesses**

Sources of strength and weakness are also found in the foundations of the NIS.

**Key strengths** include:

- support for a high-trust society, economy, and polity, and a general culture that does not tolerate overt corruption
- overall, wide support for democratic institutions, and elections that are free and fair
- overall, assurance of the political and civil rights of citizens
- the Treaty of Waitangi as a source of legitimacy, citizenship for all, and respect for Maori authority and full participation. In this context, social, ethnic, religious and other conflicts are rare.

**Key weaknesses** include:

- a degree of economic inequality that strains social cohesion and, international experience suggests, may create some risk of increased corruption
- only 37 per cent of respondents to a recent Serious Fraud Office survey thought the country was “largely free” of serious fraud and corruption
- 44 per cent of respondents in the New Zealand Survey of Values 2005 thought the country was run by a few big interests looking after themselves rather than for the benefit of all people

- only 55 per cent of those surveyed by the Human Rights Commission considered the Treaty of Waitangi to be New Zealand's founding document, and only 25 per cent rated the Crown–Māori relationship as healthy.

Together the last three factors suggest recognition by the public of the need for a more pro-active approach to promoting and protecting integrity in New Zealand.

## **Six broad themes across the NIS**

**Analysis of the 12 pillars and societal foundations of the New Zealand NIS identified six broad cross-cutting themes (that is, themes that cut generally across the whole of the NIS).** These themes helped to frame the recommendations.

- A strong culture of integrity with most decisions conforming to a high ethical standard, but this culture is coming under increasing pressure.
- The relative structural dominance of the political executive branch of government.
- A lack of transparency in a number of areas.
- The degree of formality in the frameworks that regulate the pillars in New Zealand's national integrity system varies considerably. Informal conventions provide flexibility, but also create a risk of expediency and a need to ensure they are not being quietly eroded.
- Conflicts of interest are not always well managed.
- New Zealand would benefit from greater emphasis on the prevention of fraud, bribery and corruption.

## **Recommendations**

**The recommendations are set out in full in Chapter 6 and cover seven areas.** They are based on the analysis and findings in the pillar reports and the identification of pillar interactions and system-level cross-cutting themes. Each recommendation addresses an area of concern identified in this assessment and is directed to a particular institution or sector to implement.

- 1 Ministry of Justice to lead the development of a comprehensive national anti-corruption strategy in partnership with civil society and the business community, combined with rapid ratification of the UN Convention against Corruption (UNCAC), as a matter of urgency.
- 2 Ministry of Justice to initiate a cross-government programme of wide public consultation to develop an ambitious New Zealand Action Plan for the international Open Government Partnership.
- 3 Strengthen the transparency, integrity and accountability systems, of Parliament, the political executive (cabinet) and local government.
- 4 Strengthen the role of the permanent public sector with respect to public procurement, integrity and accountability systems, and public policy processes.
- 5 Support, reinforce and improve the roles of the Electoral Commission, the judiciary, and the Ombudsman in maintaining integrity systems.
- 6 The business community, the media, and non-government organisations to take on a much more proactive role in strengthening integrity systems, addressing the risks of corruption as "must-have" features of good governance.
- 7 Public sector agencies to conduct further assessments and research in priority areas to better understand how to further strengthen integrity systems.

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## ACRONYMS AND ABBREVIATIONS

AGAS	Auditor-General's Auditing Standards
APN	APN News and Media
CSO	civil society organisation
DPMC	Department of the Prime Minister and Cabinet
EAG	External Advisory Group
FMA	Financial Markets Authority
GCSB	Government Communications Security Bureau
GIFT	Global Initiative on Financial Transparency
IATI	International Aid Transparency Initiative
INTOSAI	International Organisation of Supreme Audit Institutions
IPCA	Independent Police Conduct Authority
IPRAG	Integrity Plus Research Advisory Group
ISSAI	International Standards of Supreme Audit Institutions
MMP	mixed member proportional representation
MP	member of Parliament
NIS	National Integrity System
NZX	New Zealand Stock Exchange
OAG	Office of the Controller and Auditor-General
OECD	Organisation for Economic Co-operation and Development
OGP	Open Government Partnership
OIA	Official Information Act 1982
SFO	Serious Fraud Office
SSC	State Services Commission
TI	Transparency International
TI-S	Transparency International Secretariat (located in Berlin, Germany)
TINZ	Transparency International New Zealand (the New Zealand chapter of Transparency International)
TVNZ	Television New Zealand
UNCAC	United Nations Convention against Corruption



## GLOSSARY OF MĀORI WORDS AND PHRASES

Aotearoa	New Zealand
hapū	traditional political entity based on family relationships, land, and beliefs
hui	gathering, meeting, decision-making forum
iwi	political entity based on hapū relationships
kaiwhakarite	person who makes things right; leadership
kaumātua	elder
kaupapa	issue; matter to be deliberated or resolved; framework
mana	dignity; respect; honour; important value
Matangireia	The name of the former Maori Affairs Committee Room in Parliament House, meaning the 13th and uppermost heaven.
Māori	The indigenous people of New Zealand.
marae	traditional gathering place for whānau, hapū, and iwi; socio-cultural centre
mihi	greeting; speech of welcome
Ngāti Toa	An iwi originally of the coastal west Waikato region of New Zealand, then later Taranaki and Wellington regions.
Ngāti Poneke	A pan-tribal iwi of Māori who have migrated to the city of Wellington in New Zealand
Pākehā	non-Māori residents of New Zealand
pōwhiri	formal process for engaging as hosts and visitors
rangatahi	young people
rangatira	hapū leaders
rangatiratanga	self-determination; sovereignty
rohe	area of land
taonga	treasures, things of value
tangata whenua	people of the land; original people
tauiwi	landed or landing people; diverse origins
Te Māngai Pāho	the Māori Broadcast Funding Agency
Te Puni Kōkiri	the Ministry of Māori Development
te reo	the Māori language
Te Ture Whenua Maori Act 1993	the Maori Land Act 1993
tikanga	Māori law, rules, and practice

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Glossary of Māori words and phrases

tino rangatiratanga	Autonomous self-government and self-determination over lands, people, and belief systems, or tribal authority in terms of self government.
Ngāi Tūhoe	An iwi of Te Urewera in the eastern North Island of New Zealand.
tūrangawaewae	authority to belong; place to stand
waiata	song
whānau	extended family
Whānau Ora	An inclusive interagency approach to providing health and social services that empowers whānau as a whole rather than focusing separately on individual family members and their problems.

## GENERAL GLOSSARY

The **Aarhus convention** is the UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. This convention was signed on 25 June 1998 in the Danish city of Aarhus. It entered into force on 30 October 2001, and, as of 31 May 2013, 45 states and the European Union had ratified it. All of the ratifying states are in Europe and Central Asia. The convention grants the public rights regarding access to information, public participation, and access to justice in governmental decision-making process on matters concerning the local, national, and trans-boundary environment.

**Bribery** is the offering, soliciting, or receiving of a financial or other advantage to or by any person to encourage them to perform their functions or activities improperly, or to reward that person for having already done so. In the business context, this is usually in order to obtain or retain business or to secure an improper advantage

The **Cabinet Manual** defines the procedures of Cabinet and provides a code of conduct that is an authoritative guide to central government decision making for ministers, their offices, and those working within government. It has no legal status but has become a primary source of information on New Zealand's constitutional arrangements and is explicitly endorsed by each Prime Minister at the first Cabinet meeting of a new government.

**Corruption** is the abuse of entrusted power for private gain.

The **Crown** is a general term that describes the state of New Zealand, including the Queen and her representative, the Governor-General. Particularly in the context of the Treaty of Waitangi, it is not synonymous with the government of the day.

The **Department of the Prime Minister and Cabinet** provides advice and support services to the executive.

**Fraud** is intentional deception made for personal gain or to damage another individual.

**Impunity** is exemption from punishment or loss or escape from fines.

**Pasifika** denotes people, organisations, or issues connected to the Pacific Island communities in New Zealand.

The **Remuneration Authority** is an independent statutory body that sets the remuneration of key office holders such as judges, members of Parliament, local government representatives, and some individual office holders and board members of independent statutory bodies.

Parliamentary **Standing Orders** are the rules of procedure for the House of Representatives and its committees.

The **State Services Commissioner** provides leadership and oversight of the state services. As the holder of a statutory office, the commissioner acts independently in a range of matters to do with the operation of the public service, state services, and the wider state sector.

The **Treaty of Waitangi** (New Zealand's founding document) was signed by over 500 Māori chiefs and by representatives of the British Crown in 1840. It agreed the terms on which New Zealand would become a British colony.

The **Treaty Settlement Process** is the means by which Māori and the Crown agree to settle a Māori claimant group's historic claims against the Crown, mainly related to the illegal appropriation of Māori land and other resources. Iwi and hapū present claims to the Waitangi Tribunal, which makes recommendations to the government for suitable recompense. Iwi and hapū are also able to negotiate settlements directly with the Crown without going through the full Waitangi Tribunal hearing process. The Crown has established the rules for negotiation that include a mandating process for the negotiations and a vote by the hapū or iwi to accept the settlement. Settlements are generally made up of four parts: an agreed on historical account, an apology by the Crown, a package of cash and property compensation, and commercial redress, providing additional resources for iwi 25-year strategies to meet the future needs of their people. As at 25 July 2013, 38 claims have been settled and more are being negotiated.

**Vote** (in the context of resources for publicly funded agencies) is the part of the annual Budget allocated to a particular agency or for a particular purpose.