

Content

- Pg. 1 • "As good as we are perceived?" seminars
- Pg. 2 • TI(NZ) Members' Page: Mai Chen
- Pg. 3 • Pacific Update: Victoria's Anti-Corruption Commission
- Pg. 4 • Global News: TRACE global enforcement report
- Pg. 5 • Links & Papers of Interest

Transparency International is a not-for-profit, non-government organisation, which aims to counter corruption in international and national business transactions and government decision making.

Transparency International is politically non-partisan and does not undertake direct investigation of alleged corruption or expose individual cases.

There are over 90 National Chapters of TI worldwide. Each chapter is an autonomous body supported by a global Secretariat based in Berlin

"As good as we are perceived?" seminars: NZX50 companies noticeably absent

This month TI(NZ) held two seminars to discuss the findings in TI(NZ)'s published review of the Australian group CAER's research into New Zealand companies' approach to restricting bribery and corruption: "As good as we are perceived?"

The first seminar was held in Wellington on the 1st of June in conjunction with the Victoria University Institute of Policy Studies and the second was held in Auckland on the 3rd of June and kindly hosted by PricewaterhouseCoopers. Duncan Patterson CEO of CAER flew in from Australia to co-host the event with TI(NZ) director and co-author of "As Good as we are Perceived?" Alex Tan. The seminars highlight the fact that New Zealand companies could do a lot more to safeguard themselves from the risk of bribery and corruption. New Zealand companies are by no means completely immune to the possibility of exposure to bribery and are in fact falling behind their Australian counterparts in terms of actively implementing policies to safeguard both themselves and their employees (see pg. 5 for a graphical comparison between Australia and New Zealand).

The NZSX code of ethics (found in Appendix 16 of the NZSX listing rules) discusses adherence to applicable laws, regulation and rules but disappointingly neglects to mention bribery, corruption or facilitation payments. Further analysis of NZX50 companies' codes of conducts produces some interesting results. Seventy per cent of NZX50 companies mention conflict of interests in their codes of conduct and close to 80 per cent stipulate obedience to laws and regulations. However, as

Alex Tan pointed out during the seminar if we turn these figures around we are left with the rather surprising conclusion that 20 per cent of NZX50 codes of conduct make no mention of obeying laws and regulations and 30 per cent neglect to address conflicts of interest. So exactly what kind of behaviour are these codes of conduct trying to prevent?

Notably absent from the seminars were the majority of the NZX50 companies, most of whom were invited to attend. AMP, Macquarie and ANZ Bank were the only three listed companies to make an appearance at the seminars and should be commended for doing so. However, the fact that only three out of the fifty companies listed on the NZX50 sent a representative to participate in these seminars was disappointing.

The most important issue to come from these seminars is the indication that NZ companies are not as stringent when it comes to the prevention of bribery and corruption as they could or should be.

Transparency International (NZ) would like to thank everyone who helped in the organisation of the seminars and a special thanks to IPS, Pricewaterhouse Coopers and Duncan Patterson.

You can download "As good as we are perceived" via the TI(NZ) website:

<http://www.transparency.org.nz/index.php/indices-reports/new-zealand>

Continued on pg. 5

Resignation of TINZ Chairman

TINZ Chairman Gerald McGhie has resigned as from July after three and a half years in the Chair. The Board records its thanks for the distinguished service provided by Gerald McGhie to TINZ in his capacity of chairman. Gerald served as Chairman at a difficult time in the history of TINZ with skill and distinction. He presided over the administrative reorganisation of TINZ, contributed significantly to relationships with TI and other Chapters, led growth initiatives, and has overseen a significant improvement in the public profile of

TINZ. He has managed a difficult but significant relationship with NZAID to the benefit of TINZ and the Pacific Chapters of TI.

The Board takes this opportunity to recognise the distinguished service given by Gerald to the TI movement and wishes him well for the future.

Board Deputy Chair Murray Petrie has assumed the role of Acting Chair in the interim until a new Chair is appointed.



The TI(NZ) Members' Update page invites one of our members to share their thoughts on corruption and on the role of TI(NZ).

Mai Chen



Mai is a founding partner of Chen Palmer NZPLS, Barristers and Solicitors, Australasia's first public law specialist firm, which she co-founded in 1994. Mai has particular expertise in constitutional and administrative law, judicial review, regulatory issues; public policy and legislative solutions. Formerly a Senior Lecturer at Victoria University Law School. She is President of the Harvard Law School Alumni Association (New Zealand), and a member of the Asia New Zealand Foundation. Mai is an Associate Member on the New Zealand Advisory Board of Trade and Enterprise's Beachheads programme.

1. How do you think corruption affects New Zealand?

More than we think. New Zealanders tend to think that corruption is something that happens overseas, but giving a favour or a gift with the intention of influencing behaviour or the opinion of the recipient does happen in New Zealand. It may go under the radar given the small size of the country. That has an upside for transparency in the sense that everyone knows what everyone else is up to. But on the other hand, we may be less clear in drawing the boundary between proper advocacy, and improperly using close relationships and undue influence. I advise on many conflict of interest situations, and I am surprised at the extent to which people do not see the conflict of interest issue, and the problem with decisions being made other than an independent mind. There are often senior positions with very senior people.

I am also concerned about policies or laws that give people leverage to receive a payment or a benefit from those seeking consent or approval. Policy and law makers need to be mindful of that when they are making or reforming policy or law. The Resource Management Act is an example.

2. How do you think we minimise corruption in New Zealand?

I think codes of conduct and rules are

important to delineate what is a pecuniary or non-pecuniary interest, and when a relationship is or is not a conflict of interest. For example, the Cabinet Manual 2008 describes the Register of Pecuniary Interests for MPs, how to identify and manage pecuniary and non-pecuniary interests, including in Parliament and in constituency matters, and sets out rules concerning gifts, political party donations and fees, endorsements and outside activities.

I also think we need a lobbyists register in New Zealand so that the public knows who is lobbying ministers and MPs, who lobbyists are working for, and on what issues. I think this enhances transparency around the executive and parliamentary branches of Government.

3. Why do you feel that Transparency International is an important organisation?

I am a public lawyer because I think transparency and accountability are important, especially in the use of public power. My favourite area of the law remains administrative law because I believe in good process. I support the objectives of Transparency International and I can see the impact that public law tools such as the Ombudsman and the Official Information Act have had in heightening the public's expectations of transparency. This heightened expectation is probably appropriate for those exercising public power and

spending public money.

TI(NZ) is important because it thinks about these issues and educates us of their importance.

4. What do you think the focus of TI(NZ) should be in New Zealand?

I think it should focus on enhancing awareness of the definition of corruption and how it can manifest itself. It can increase understanding that you need to sweat the small stuff when it comes to corruption issues. For example, strict compliance with the rules on credit card use (whether ministerial or a private company) is still important to help ensure that small breaches are not allowed to progress to more significant issues.



Australia: Victoria sets up Corruption Commission

Sources:

- <http://www.theage.com.au/victoria/brumby-to-create-independent-corruption-commission-20100602-wy2m.html>
- http://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10649607;and
- <http://www.premier.vic.gov.au/component/content/article/10643.html>

Victoria Premier John Brumby caved into public pressure and has made the move to set up an independent anti-corruption commission. Brumby made the decision after receiving recommendations stemming from a review of Victoria's current corruption bodies. The review found that "there is a level of concern within the Victorian community regarding the effectiveness of current efforts to address corruption". The review's main findings were as follows:

- Establishing a Victorian Integrity and Anti-Corruption Commission (VIACC) to investigate allegations of serious misconduct and corruption in the public sector and local government, including whistleblower complaints. The VIACC will comprise of three independent officers of the Victorian Parliament: a new Public Sector Integrity Commissioner; Director, Police Integrity; and Chief Municipal Inspector;
- Establishing a Parliamentary Integrity Commissioner to receive and investigate complaints about the conduct of Members of Parliament and their publicly-funded employees;
- Establishing the new Public Sector Integrity Commissioner, who would also be the inaugural VIACC chair, and would be responsible for gathering intelligence and investigating serious misconduct and corruption in the Victorian public sector, including through the Whistleblowers Protection Act 2001;
- Extending the jurisdiction of the Director, Police Integrity, to include unsworn, as well as sworn, employees of Victoria Police;
- Ensuring the Chief Municipal Inspector has responsibility for gathering intelligence and investigating misconduct and corruption involving local govern-

- ment councilors and employees; and
- Modernising the Ombudsman Act 1973 to provide further clarity around the Ombudsman's procedures and jurisdiction.

The report also acknowledged that there was no standard 'best practise' model in regards to structuring and operating an integrity and anticorruption system. However, it did note that on an international level there exists a general consensus that "anticorruption legislation and measures need to be implemented and monitored through specialised bodies and personnel with adequate powers, resources and training. Integrity bodies should be collectively responsible for combating misconduct and corruption through intelligence gathering, investigations and law enforcement. This objective is achieved through a range of multi-disciplinary functions, including research monitoring and coordination; and investigation and prosecution" (pg. 47 of the review)

Victoria's Premier had previously been openly against the establishment of an independent commission, however within 48 hours of receiving the review he altered his position and publicly announced the decision to set up the Victorian Integrity and Anti-Corruption Commission (VIACC) and in his own words "take public accountability and integrity to the next level." The commission will investigate all allegations of serious misconduct and corruption both in the public sector and local government. Formerly, public sector corruption investigations in Victoria had been handled by the Office of Police Integrity (OPI) and the Ombudsman. However, after the high profile collapse of an OPI investigation into the former assistant police commissioner and former Victorian police union chief public pressure had been mounting to set up a commission.

When established the VIACC will incorporate into its structure both the OPI and the Ombudsman. Additionally, it will benefit from much wider powers related to surveillance capabilities as well as have the added capacity of being able to compel witnesses to attend hearings and answer questions. The commission will be far-reaching and will be able investigate police, MPs, public servants, the judiciary and local councillors. It is also likely that there will be further

changes in regards to privacy levels and it is probable that the commission's hearings will be held in private to protect witnesses from any negative repercussions, a move which would be in line with recommendations that came from the review.

The review's relevance is not confined to Australia, as it offers some important insights into the problems with anticorruption institutions. The reviews inquiries are especially interesting as it highlights the need for governments to actively demonstrate to the general public its capacity to effectively deal with corruption and maintain high levels of integrity not just in the public sector, but also to hold all those in public power to the same level of scrutiny including the Judiciary, Police and Ministers. As the review points out "An effective integrity system requires coverage of all types of public officials across a full spectrum of behaviour, extending from behaviour that demonstrates the highest standards of integrity to behaviour that constitutes maladministration, misconduct and corruption."

Simply because anti-corruption agencies appear to be functioning at an acceptable level does not necessarily mean they should not or could not be improved upon. The detection and prevention of corruption is a complex task and governments all around the world could most likely benefit from reviews such as this. It will also be interesting for New Zealand to keep an eye out on the progress and effectiveness of Victoria's soon to be established Integrity and Anti-Corruption Commission.

You can read the full review at the following link:

[http://www.ssa.vic.gov.au/CA2571410025903D/WebObj/PSSC_Integrity_Review/\\$File/PSSC_Integrity_Review.pdf](http://www.ssa.vic.gov.au/CA2571410025903D/WebObj/PSSC_Integrity_Review/$File/PSSC_Integrity_Review.pdf)





Trace Global Enforcement Report 2010

Source: <https://secure.traceinternational.org/documents/TRACEGlobalEnforcementReport2010.pdf>

The TRACE Global Enforcement Report 2010 is the first in a planned series of annual reports designed to identify and track international anti-bribery enforcement trends.

Most countries have criminalised the payment of bribes to their government officials and signed international conventions requiring the criminalisation of bribery of various types. The goal of such laws and conventions is to create a fair and transparent international business market rather than one skewed by under-the-table deals that enrich government officials at the expense of their fellow citizens.

Among the first international anti-bribery laws was the United States Foreign Corrupt Practices Act of 1977 (FCPA). Most countries have enacted their laws prohibit-

ing foreign bribery since 2000. Passing such laws is an important first step toward promoting international business transparency, but enforcement is a necessary second step in the effort to reduce corruption. Unfortunately, little data is consistently available on the pace of, and trends in, international anti-bribery enforcement, although such information is essential to understanding to what extent countries are putting muscle behind their anti-bribery statutes and encouraging greater transparency in global business. TRACE has launched the Global Enforcement Report—GER—to meet this need.

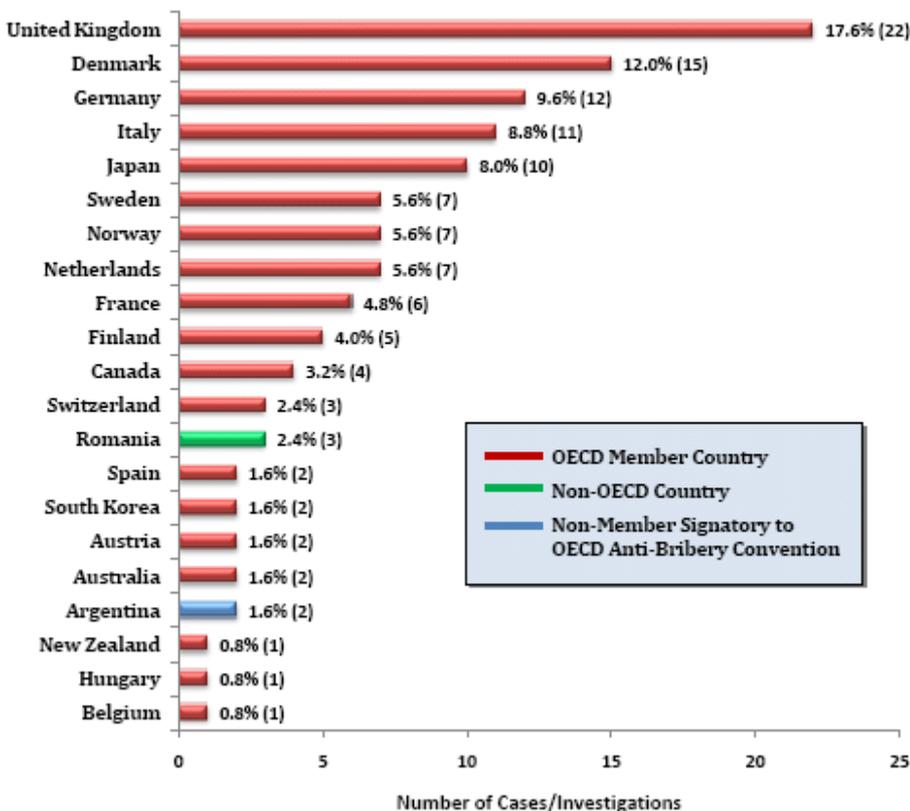
As the first publication in the series, TRACE GER 2010 principally provides a summary of all known international anti-bribery enforcement actions since the FCPA's passage some 33 years ago. TRACE has collected information about all publicly known enforcement actions—including investigations, prosecutions,

settlements and cases settled with no finding of bribery

The TRACE GER 2010 summarizes known international enforcement actions by countries to date. Its key findings include:

- Just 22 countries have pursued enforcement of their foreign bribery laws and just 35 have pursued enforcement of their domestic bribery laws against foreign citizens or companies in the last 33 years. There is considerable overlap in the countries that have pursued both.
- The United States has pursued three foreign bribery enforcement actions for every one enforcement action pursued by all other countries over the last 33 years.
- For the 2000 to 2009 time period, countries other than the United States increased their foreign bribery enforcement activities, but the United States nevertheless maintained its three-to-one tempo as compared to all other countries combined.
- The United Kingdom is in a strong second place for the enforcement of foreign or “outbound” bribery.
- South Korea and Italy lead enforcement activity worldwide for domestic or “inbound bribery,” defined as the bribery of their own government officials by foreign companies.
- The largest number of enforcement actions involves alleged bribe payments to officials in Iraq, Nigeria and China.
- Government officials of OECD countries received alleged bribes at a rate significant in comparison to the rate in non-OECD countries.
- The extractive industries sector was most frequently the subject of international anti-bribery enforcement actions.

Figure III: Foreign / Outbound Bribery Enforcement By Countries Other Than The United States, 1977 - June 2010 *
(N = 125)



Download the full report at: <https://secure.traceinternational.org/documents/TRACEGlobalEnforcementReport2010.pdf>

Links & Papers of Interest



http://portal.unesco.org/ci/en/files/26159/12054862803freedom_information_en.pdf/freedom_information_en.pdf

This book, first published in 2003 by UNESCO looks at how governments around the world have tried to give effect to the public's right to know. This book seeks to provide an accessible account of the law and practice regarding freedom of information, and an analysis of what is working and why.

"The free flow of information and ideas lies at the heart of the very notion of democracy and is crucial to effective respect for human rights... Central to the guarantee in practice of a free flow of information and ideas is the principle that public bodies hold information not for themselves but on behalf of the public." From the Foreword by Abdul Waheed Khan, Assistant Director-General for Communication and Information, UNESCO



<http://www.transparency.org/publications/publications/resist>

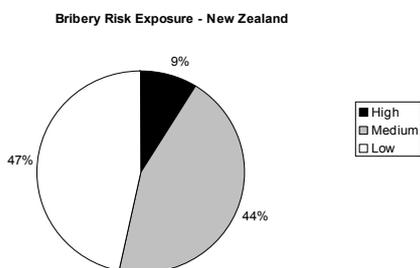
RESIST: Resisting Extortion and Solicitation in International Transactions. A company tool for employee training

Companies facing extortion now have a new anti-corruption tool based on real-life scenarios of solicitation and extortion demands. RESIST (Resisting Extortions and Solicitations in International Transactions) published by International Chamber of Commerce, United Nations Global Compact, Transparency International and the World Economic Forum is primarily a training tool to help employees counter solicitation and extortion demands in the most efficient and ethical manner, acknowledging they might be accompanied by a threat. The tool also aims to help companies reduce the probability of such demands being made. Over 20 companies and organisations contributed to designing RESIST, based on their experience of solicitation and extortion demands.

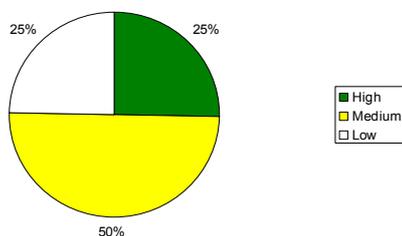
"As good as we are perceived?" seminars: NZX50 companies noticeably absent: *Continued From pg. 1*

These two graphs (taken from Duncan Patterson's presentation) highlight the fact that 53% of NZX 50 companies are operating in areas with a medium to high risk of being exposed to bribery and yet only 14% have implemented advanced anti-bribery policies.

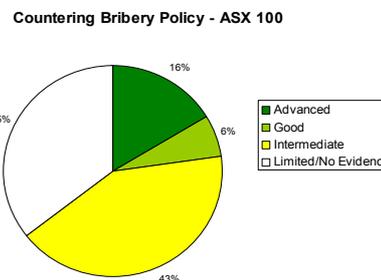
Aus vs NZ – Bribery Risk Exposure



Bribery Risk Exposure - Australia



Aus vs NZ – Bribery policy



Countering Bribery Policy - NZX 50

