

## CHAPTER 1: INTRODUCTION

### What a national integrity system is

The National Integrity System (NIS) on which this report is based was developed by Transparency International (TI) and has been applied by TI national chapters in many countries. It assesses the integrity of a country's institutional arrangements and asks whether they foster transparency, accountability, and ethical behaviour.

Such institutions will also be effective in reducing or preventing corruption, which in this approach is seen as a symptom of wider governance failures.

As originally formulated by Jeremy Pope, the objective of the NIS is a system of horizontal accountability, in which the role of agencies of restraint and watchdogs is to check on abuses of power, including corruption, by other agencies and branches of government.<sup>1</sup>

**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.”<sup>2</sup>**

**An NIS assessment, then, is an evaluation of the principal governance systems in a country that, if they function well and in balance with each other, constitute an effective protection against the abuse of power.**

Beyond restraining the abuse of power, integrity systems should also be designed to “ensure that 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.<sup>3</sup>

The NIS is commonly represented by a ‘temple diagram’ that illustrates the institutional pillars comprising the country's principal governance systems.

Figure 1 presents the NIS temple diagram as applied in the 2013 New Zealand NIS assessment. As illustrated in Figure 1, at the heart of this assessment are reports on 12 ‘pillars’ – branches of government, sectors, or agencies – that constitute New Zealand's NIS. Each of these pillars is the subject of detailed analysis in Chapter 5.

As discussed in this chapter, for the Integrity Plus 2013 New Zealand NIS assessment, two of the TI-S pillars (Law Enforcement, pillar 5, and Anti-corruption Agency, pillar 9) are combined into one pillar.

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<sup>1</sup> Jeremy Pope, *Confronting Corruption: The elements of a national integrity system*, TI Source Book (Berlin: Transparency International, 2000).

<sup>2</sup> National Integrity Systems Assessment, *Chaos or Coherence? Strengths, opportunities and challenges for Australia's integrity systems*, final report (Griffith University and Transparency International Australia, 2005), p. i.

<sup>3</sup> National Integrity Systems Assessment, 2005: i.

In addition, environmental governance and the Treaty of Waitangi have been added to the foundations, political, social, cultural and economic foundations.

Figure 1: New Zealand's National Integrity System



The 12 pillars rest on foundations: the key norms, ideals, and ethics of the various aspects of society. If the foundations of a society are sound, then they are capable of supporting a sound NIS.

Chapter 2 addresses the societal, cultural, political, and economic aspects that are usually taken to make up the foundations of an NIS.

Two foundations of particular significance for New Zealand have been added to the standard TI-S framework.

The first is the **Treaty of Waitangi**. The Treaty is unique to New Zealand and is generally accepted as a key foundation of the country's society and its constitutional arrangements. It establishes the basis of the relationship between Māori as the indigenous people and the Crown. No assessment of New Zealand's NIS would be complete without a consideration of the Treaty. Accordingly, Chapter 2 includes a brief section on the Treaty and each pillar report in Chapter 5 addresses adherence to Treaty obligations.

The second additional foundation is the **environment**. New Zealanders see the quality and management of the natural environment as another key foundational value. A well-governed society with high integrity needs to be underpinned by sound environmental values and governance practices. Chapter 2 includes a section on these matters, while the public sector pillar report assesses transparency and accountability of environmental governance.<sup>4</sup>

<sup>4</sup> [www.transparency.org.nz/docs/2013/Supplementary-Paper-2-Environmental-Governance.pdf](http://www.transparency.org.nz/docs/2013/Supplementary-Paper-2-Environmental-Governance.pdf)

Unlike the 2003 New Zealand NIS assessment, this assessment covers local government and the business sector.

With respect to the inclusion of local government, in 2010 and 2011 the city of Christchurch in the Canterbury region was devastated by earthquakes. The recovery process has been prolonged (at least in part because of a lengthy period of aftershocks). A disaster of this nature is a test of a country's NIS, and this assessment considers some of the issues that have surfaced and that relate to local government in particular. Accordingly, local government is discussed in the public sector pillar report.

The TI Secretariat (TI-S) core methodology, which focuses on corruption, has also been augmented by a wider and more in-depth analysis of selected issues, as follows.

- The public sector pillar report has been expanded to include detailed assessment of transparency and accountability for the effectiveness of policies, the quality of policy advice, and separate analysis of the Crown entity sector.<sup>5</sup>
- Public procurement was assessed against international examples of good practice and standards including OECD norms, policies of international financing institutions, and disclosure practices from the construction sector transparency initiative (CoST).<sup>6</sup>
- Fiscal transparency, including legislative oversight and direct public engagement, has been assessed against the international Open Budget Index and International Monetary Fund standards.<sup>7</sup>
- Environmental governance has been assessed against the standards set out in the Aarhus Convention.<sup>8</sup>
- The business pillar includes an assessment of the financial sector.<sup>9</sup>

Finally, a standard NIS assessment includes a separate pillar report on anti-corruption agencies, but New Zealand has no specific agency charged with anti-corruption activities. Therefore, such activities are covered in the law enforcement pillar report (renamed law enforcement and anti-corruption), which also discusses how this role is covered in New Zealand.

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<sup>5</sup> See the Supplementary NIS Paper on Crown entities at [www.transparency.org.nz/docs/2013/Supplementary-Paper-1-Crown-Entities.pdf](http://www.transparency.org.nz/docs/2013/Supplementary-Paper-1-Crown-Entities.pdf)

<sup>6</sup> See the Supplementary NIS Paper on procurement at [www.transparency.org.nz/docs/2013/Supplementary-Paper-4-Public-Procurement.pdf](http://www.transparency.org.nz/docs/2013/Supplementary-Paper-4-Public-Procurement.pdf)

<sup>7</sup> See the Supplementary NIS Paper on fiscal transparency at [www.transparency.org.nz/docs/2013/Supplementary-Paper-3-Fiscal-Transparency.pdf](http://www.transparency.org.nz/docs/2013/Supplementary-Paper-3-Fiscal-Transparency.pdf)

<sup>8</sup> See the Supplementary NIS Paper on environmental governance at [www.transparency.org.nz/docs/2013/Supplementary-Paper-2-Environmental-Governance.pdf](http://www.transparency.org.nz/docs/2013/Supplementary-Paper-2-Environmental-Governance.pdf)

<sup>9</sup> See the business pillar report (pillar 13 in Chapter 5).

## Basic propositions underpinning the assessment framework

The assessment framework is the same as that used in other national NIS analyses, but the analysis is extended, particularly in respect of governance indicators, to consider a wider variety of standards as mentioned above. The integrity-plus framework used in this assessment is based on five propositions about the importance and value of transparency, public participation, and accountability in the exercise of entrusted authority.

First, transparency means accessibility to the public of information the state and other institutions hold, particularly about their decisions and actions. Transparency is justified both on the basis of its intrinsic merit and because of its instrumental value, that is, its contribution to more effective, efficient, and equitable governance. Citizens have a right to information, as established, for instance, in the International Covenant on Civil and Political Rights and the Official Information Act 1982.

Second, transparency can increase institutional effectiveness and trust in institutions. There is some evidence that citizens' trust in government, in democratic settings, increases voluntary tax compliance, compliance with regulations and legal obligations, and political participation (for example, in terms of voting).<sup>10</sup> Trust in the integrity of large corporations, non-governmental organisations, media organisations, and in political parties is also a valuable asset.

Third, transparency is a promising generic form of "information-age governance". Fung and colleagues describe transparency policies as a third wave of modern regulatory innovation, at a time of optimism about advances in information and communications technology.<sup>11</sup> They note, however, that transparency policies need to be well designed, can be captured by special interests, and, if poorly designed, can result in social costs that exceed social benefits.

Fourth, direct public participation in policy development and implementation is a direct complement to transparency, and is widely regarded as contributing to better policies and better implementation by ensuring a wider range of perspectives is brought to bear, new initiatives are fully tested, and policies are seen as legitimate, so are more sustainable and less subject to reversal.

Fifth, accountability means that those in positions of authority have to account for their exercise of power, for the resources entrusted to them, and for their use of those resources. Typically, they are also responsible in the sense that they can face sanctions for the misuse of power or resources. Transparency is a key mechanism for assuring accountability.

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<sup>10</sup> See, for instance, "Why trust in government matters", in *Results, Performance Budgeting and Trust in Government*, chapter 2 (Washington D. C.: World Bank, 2010).

<sup>11</sup> Archon Fung, Mary Graham, David Weil, and Elena Fagotto, *Transparency Policies: Two possible futures*, Taubman Center Policy Brief 2007-1 (Harvard University, 2007), p. 6.

## Assessment methodology

In accordance with the TI-S methodology, each individual pillar has been assessed using a set of indicators developed by TI-S that measure each individual pillar's:

- capacity (resources and independence)
- governance (transparency, accountability, and integrity)
- role within the system.

Similarly, the foundations of the system have been assessed using indicators. In the case of the two additional foundations (the Treaty of Waitangi and environment), TINZ has developed the indicators.

The data collected and analysis developed in response to each indicator question is scored on a five-point scale to provide a quantitative summary assessment. The objective of scoring is **not** to enable a comparison of results across countries. The methodology is such that it is not possible to make valid comparisons between countries of how they scored on a particular pillar or indicator. The specification of the different levels of performance for each indicator is too brief and generic. No attempt is made in any of the NIS studies to cross-check, let alone to validate, scores across countries.

Rather, the objective of scoring is to provide an input to comparisons, for one country at a single point in time, of the relative strengths and weaknesses of the different pillars and the foundation elements of the NIS.

In light of that objective, what is scored are the legal frameworks and the pillars' performance against what New Zealanders expect of their institutions. The assessments are built up from research, public reports and data, interviews with key pillar participants and observers, international conventions and norms of good practice, and community and citizen views as revealed by surveys and public debate.

This methodology also provides a benchmark against which progress in a **single** country can be compared **over time**. The scoring in this report will assist such comparisons when future NIS analyses are done in New Zealand.

Another valid objective of scoring is to assess whether there are **patterns** in the scores across countries, for example, in terms of the relative strengths and weaknesses of different pillars and foundations. Perhaps the most relevant analysis of the pattern of cross-country results of NIS assessments is the study completed by Transparency International in 2012, *Money, Politics, Power: Corruption risks in Europe*.<sup>12</sup> Drawing on NIS reports financed by the EC in 25 European states in 2011, the report identified key cross-country gaps in anti-corruption systems.

The main strengths across these 25 countries are well-developed formal legal frameworks regulating corruption; strong supreme audit Institutions; and electoral processes that are generally robust. Key weaknesses are inadequate regulation of

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<sup>12</sup> See [www.transparency.org/enis](http://www.transparency.org/enis)

political party financing; lobbying is veiled in secrecy; legislatures are not living up to ethical standards; there is limited access to official information in practice; public procurement remains an area of high corruption risk; and protection for whistle blowers is severely lacking. These results are compared very briefly to the findings of this New Zealand NIS in the concluding chapter (Chapter 6).

The research team has been responsible for data collection and field interviews, the drafting of the qualitative work, reaching findings and framing recommendations, and the assigning of initial indicator scores. The final score and descriptive label for each pillar are the responsibility of TINZ.

In view of the large amount of existing data and research in New Zealand and to keep the exercise more manageable, it was decided early on not to commission original field tests of how institutions or organisations are performing in practice. The researchers extensively used interviews, desk research, and existing survey and other data, which are cited in Chapters 2–5, and the recommendations in Chapter 6 include some specific new initiatives in the field of research.

There were many policy announcements and other developments while this report was being written. There is limited coverage of events that occurred after 30 June 2013 and for most purposes, events that occurred after 30 September 2013 have not been taken into account, although a few important developments since that date are noted.

## A systems approach

The essence of a systems approach is that the functioning of the collection of parts, taken as a whole, cannot be adequately described or evaluated solely from an analysis of the functioning of each individual component in isolation. Individual components of a system interact with each other in a variety of ways.

In general terms, in this NIS assessment we were interested both in the individual pillars and their interactions (positive and negative), dependencies, and in the combined effectiveness of different pillars, subsystems, and the overall NIS. The “role” indicator questions focus on these elements of interaction between pillars. The underlying analysis answered the following questions.

- For each pillar, what are the key areas of interaction with other pillars?
- How dependent is each pillar on the performance of one or more other pillars or key institutions?
- Are there any positive or negative feedback loops in play? Can this dynamic be changed?
- Are there any external factors or ‘shocks’ – such as, in New Zealand’s case, the Canterbury earthquakes – that are challenging one or more pillars or the foundations of the NIS?
- Are there any core rules and procedures that emerge as areas of concern across two or more pillars?
- Are there any other interactions between pillars and foundations that influence their performance positively or negatively?

## What is not covered by this assessment

The scope of the NIS is limited in four key respects.

First, this assessment **is not an audit or an investigative exercise**. Neither TINZ nor TI is an investigative body. As per TI-S's policy, in this report individual cases or issues are referred to only where they have entered the public domain and can be referenced and substantiated by sufficient reputable sources.

Second, **policy settings are generally outside the scope** of this assessment – except for policies on governance. In relation to governance, the NIS is concerned with the transparency, integrity, and accountability for decisions taken by those with entrusted authority, not the content or quality of the decisions. In the public sphere, for instance, the NIS does not assess whether particular public policy decisions are sound – except for decisions on the regulation of the integrity pillars; that is, policies on the governance, independence, and resourcing of the integrity pillars are squarely within scope. However, decisions on the appropriate size of government or specific policies about regulation, tax, or public expenditure or individual projects or investment decisions in the public or private sectors are outside the scope.

Third, **detailed analysis of alternative approaches to reform is, in general, outside the scope** of the assessment. The assessment of a country's entire NIS is already a very large exercise. Therefore, in some areas it has been feasible only to recommend general directions or principles for reform, rather than to conduct a detailed analysis of the costs and benefits of alternatives or to specify precise recommended approaches or 'answers'. Based on Jeremy Pope's advice and the approach TI now recommends, however, this integrity-plus approach does envisage an implementation phase for its recommendations.

Fourth, **constitutional issues are considered only to the extent that they are relevant**. The assessment does not attempt a fundamental review of New Zealand's constitutional arrangements. Such an undertaking is well beyond the capacity of this exercise, and it would not be realistic to combine it with such a broad and detailed review of integrity systems. Issues such as the design of the electoral system, the appropriate division of powers between central and local government, the precise nature of the obligations created by the Treaty of Waitangi, or the length of the parliamentary term are outside the scope of the NIS. However, the analysis does raise questions that should be at the core of a more fundamental analysis of New Zealand's constitutional arrangements – such as the effectiveness of parliamentary oversight of the executive, and procedures and criteria for changing the role of a local authority. In this regard, the report raises significant concerns and makes recommendations in these key areas that TINZ hopes are taken up, including in the current exercise reviewing elements of the constitution.

## Target audiences for this report

There is more than one audience for an NIS report. The key audience is all New Zealanders, to whom belong the rights protected and advanced by the NIS and who are most directly affected by the performance of the system. A second key audience is the subset of New Zealanders in positions of authority or influence in the various branches and institutions of government, in the business community, and in the different elements of civil society such as the media and non-governmental and civil society organisations. A third important audience is the international community, both in terms of its wider interest in the specifics of how governance operates in New Zealand, and in terms of how this study contributes to knowledge generated by the growing number of individual country NIS reports.

In view of these multiple audiences, the writing style adopted, as the TI-S suggests, is that of 'scientific journalism', which presents valid analysis and arguments about technical matters in a language accessible to non-experts and experts alike.

## Project governance and management

The TINZ board retained overall oversight and responsibility for the NIS. The board approved a structure in which the chair and deputy-chair of the board were designated as co-directors of the NIS. The co-directors were responsible for all decisions on project design, management, resourcing, and implementation, including the content of reports, within the structure the board set.

Reporting directly to the co-directors was a research team manager (Liz Brown) who was recruited at the outset and attended a training course on the NIS methodology conducted by TI-S in Berlin in September 2012. The research team manager assumed overall responsibility for directing and supervising the large research team, and ensuring all research outputs and the final report were delivered on time and to an acceptable standard.

Between June 2012 and May 2013, TINZ recruited a highly qualified research team that eventually numbered more than 30 (researchers are listed by pillar in the acknowledgements section of this report). The objective of assembling such a large team was to ensure in-depth specialist expertise for each pillar and additional desk research and consultation time for each pillar and foundation topic.

The large number of researchers also provided a diverse background. The researchers included current academics from three different New Zealand universities across a range of disciplines (law, political science, public management, and environmental policy). Many researchers had worked at senior levels in government and watchdog institutions, and included a former Speaker of Parliament and former minister of the Crown, a former Police Commissioner, and two former chief executives of government departments. Others included an investigative journalist, a business commentator, a regular political commentator, a kaumātua (Māori elder), and several New Zealand-based international consultants in diverse fields. Short biographies of the research team members appear in Appendix 6.

A key additional quality control mechanism for the NIS was the Integrity Plus Research Advisory Group (IPRAG), which the co-directors established to provide further quality assurance and advice on technical matters. IPRAG comprised independent experts from diverse backgrounds who advised the co-directors on methodology, reviewed all drafts, advised on consistency of approach across pillars, assisted in identifying cross-cutting issues, and checked the NIS indicator scores for consistency with the text. IPRAG's role, however, was advisory. It is not responsible for the text nor the final scores.

In view of the substantial financial contributions from domestic public sector entities and to increase the likelihood that the recommendations in the final report would be implemented, TINZ also established the External Advisory Group (EAG), comprising representatives of the New Zealand entities that provided financing for the project, most of which have also committed to the implementation phase to follow the 2013 assessment. The EAG was chaired by TINZ patron Sir Anand Satyanand, and was supported by a secretariat provided by the Office of the Auditor-General. EAG members had significant relevant knowledge, access to factual material, and experience, which resulted in helpful comments on draft pillar reports and more accurate and complete final reports.

To preserve the actual and perceived independence of the NIS assessment, the EAG had no decision-making or formal review function. In all cases, the judgement and decision on the pillar reports remained with the individual researchers, NIS project team, and co-directors and, ultimately, the TINZ Board. Further details of project governance, management, and finances are in Appendix 2.

## Developments since the 2003 New Zealand NIS

The first New Zealand NIS report made recommendations to strengthen transparency, accountability, and the quality of governance in New Zealand. The individual pillar analyses in Chapter 5 of this report refer in a number of instances to specific recommendations from the 2003 study. To provide an overview of developments since 2003 and a context for the 2013 assessment, Figure 2 shows whether each recommendation has been implemented in full, implemented in part, or not implemented.

In approximately one-third of the areas where specific recommendations were made in the 2003 report, the authorities have subsequently taken action and the recommendations are no longer relevant. With respect to a further one-fifth of the 2003 recommendations, action by the authorities has only partially addressed the recommendation and more remains to be done. Somewhat less than one half of the recommendations have not been implemented at all.

Note that TINZ does not claim there is a causal link between the 2003 report and the subsequent actions. The 2003 assessment was completed with only limited engagement with official agencies, and generated limited attention. Some of the recommendations were in areas where action was already underway or where government had announced an intention to act. In other cases the 2003 report may

have anticipated pressures that subsequently led to reforms, without necessarily influencing events, although it is always difficult to judge the impact of these exercises.

In terms of the individual pillars:

- The judiciary has the best implementation record, with the introduction of a code of conduct for judges, the establishment of the Judicial Conduct Commissioner, and some opening up of public access to court information.
- Other notable recommendations that have been implemented are the formation of a single electoral authority; some tightening of rules about anonymous donations to political parties (concerns remain in this area); and a general allowance for members of Parliament determined by an independent authority (although the jurisdiction of the independent authority will be restricted if a bill currently before Parliament is passed).
- In the public sector, over half of the recommendations have been implemented, including strengthening governance of Crown entities, instituting surveys of public servants on issues of integrity, and introduction of a requirement for local government authorities to have a code of conduct.

Key recommendations from the 2003 NIS where action has not been taken include:

- extending the OIA to Parliament
- reviewing public funding of political parties and the allocation of election broadcasting time to political parties
- introducing a Regulatory Responsibility Act
- regulating post-ministerial and post-public service employment
- undertaking a concerted campaign to publicise the criminalisation of bribery of foreign public officials
- implementing civics and ethics education in appropriate courses at secondary and tertiary levels.

The 2003 New Zealand NIS was based on the TI-S methodology at the time, which did not entail scoring of the performance of pillars or foundations. It is not, therefore, possible to compare the scores in the 2013 New Zealand NIS against the 2003 study. However, the assignment of detailed ordinal scores for pillars and foundations in the current study provides an improved basis for future New Zealand assessments of the NIS to track changes over time.

**Figure 2: Implementation of 2003 National Integrity System recommendations**

	Fully implemented	Partially implemented	Not implemented
<b>Executive</b>		Auditor-General to audit ministers' declarations of assets	Code of conduct on post-ministerial employment
<b>Legislature</b>		Conflict of interest code for members of Parliament	Official Information Act 1982 extended to cover Parliamentary Service

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	<b>Fully implemented</b>	<b>Partially implemented</b>	<b>Not implemented</b>
		Allowances and taxation for members of Parliament determined by independent authority	Select committees make better use of expert advisers
<b>Political parties and elections</b>	Formation of single electoral authority	Significant anonymous donations to political parties prohibited	Operation of 'fronts' to fund political parties made more transparent  Revisit state funding of political parties  Review allocation of broadcasting time to parties
<b>Judiciary</b>	Judicial Complaints Commissioner established  Judicial Code of Conduct introduced	Increase public access to court information	
<b>Public service</b>	Governance of Crown entities strengthened  State Services Commission mandate for ethics management extended to cover Crown entities  State Services Commission more active in conducting ethics promotion across wider state sector	Survey of politicians' (not implemented) and public servants' (implemented) understanding of standards of integrity in public service  Centralised mechanisms to monitor departments' adherence to integrity in procurement,	Post-civil service period of restraint on employment for senior officials  Review of private sector sponsorship of government departments' projects. <sup>1</sup>  Centralised mechanisms to monitor departments' adherence to integrity in merit appointment to boards, and contracting out
<b>Public expenditure and audit</b>	Tax expenditures reported to Parliament  Publication of overall tax policy strategy		Executive to respond to findings and reports of the Auditor-General

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	<b>Fully implemented</b>	<b>Partially implemented</b>	<b>Not implemented</b>
<b>Regulations</b>			A new Regulatory Responsibility Act <sup>2</sup>  Independent Regulatory Task Force considered <sup>2</sup>
<b>Police</b>	Independence of Police Commissioner reinforced  Review of sponsorship of police vehicles		
<b>Regional and local government</b>	Local government code of conduct  Review mechanisms for distribution of gambling proceeds		
<b>Governance of Crown – Māori relations</b>	Review of adequacy of legal vehicles for Māori collective organisation  Accountability for social service delivery by Māori entities		Review minimum governance requirements for entities receiving Treaty of Waitangi settlements  Public education on the Treaty of Waitangi
<b>General</b>			Concerted campaign to publicise Crimes Act Amendment relating to payment of bribes offshore  Enhance understanding and implementation of the Official Information Act 1982  SIS archives opened earlier  Civics education in schools
<b>Future reform</b>			Set up a Task Force on the NIS  Ministers request departments to comment on NIS recommendations

	Fully implemented	Partially implemented	Not implemented
<b>Further studies</b>	TINZ to do a separate study of transparency and accountability of business sector – carried out in 2013NIS		

Notes

- 1 Note that this recommendation was under “Police” in the 2003 report, and referred specifically to police vehicles as well as having a general reference to other sponsorship projects.
- 2 Note, however, the new oversight role for Treasury in relation to regulatory regimes.

## Developments in 2013

Three major developments occurred when this report was nearing completion, and beyond the point at which their implications could be fully considered. Firstly, the “recent developments” section of Chapter 4 has some material on the government’s announcement of a legislative programme. Secondly, when complete, that should enable the Government to ratify UNCAC and progress the recommendations from the OECD Working Group on Bribery’s phase 3 report on implementing the OECD anti-bribery convention in New Zealand.

The third development was the Prime Minister’s announcement in September 2013 of New Zealand’s intention to join The *Open Government Partnership* (OGP). This is an opportunity both to demonstrate leadership on the international stage, and to commit New Zealand to new initiatives in transparency, public participation, and accountability. The OGP was launched in September 2011 by the USA and Brazil, and aims to ‘secure concrete commitments from government to promote transparency, empower citizens, fight corruption, and harness new technologies to strengthen government.’<sup>13</sup> The Open Government Declaration is reproduced in Appendix 5 to this report.<sup>14</sup>

The OGP is a multi-stakeholder initiative involving governments, NGOs and business. Each OGP member is required to prepare a national Action Plan containing new initiatives formulated with the active involvement of civil society. Member governments also commit to regular formal independent monitoring by domestic civil society of progress in implementing the Action Plan.<sup>15</sup> The five OGP ‘Grand Challenges’ – substantive areas of focus - cover public resource management, public services, public integrity, corporate accountability, and safer communities. Membership of the OGP allows states access to the OGP networking mechanism, which facilitates the sharing of transparency and open government best practices, approaches and technology.

<sup>13</sup> See <http://www.opengovpartnership.org/about>

<sup>14</sup> It is also available, in Addendum D, at [http://www.opengovpartnership.org/sites/default/files/page\\_files/OGP%20ArticlesGov%20Final%20June%2011%202012.pdf](http://www.opengovpartnership.org/sites/default/files/page_files/OGP%20ArticlesGov%20Final%20June%2011%202012.pdf)

<sup>15</sup> The first five country progress reports produced in terms of the independent monitoring mechanism were posted on the OGP web site in mid-October 2013, at <http://www.opengovpartnership.org/news/read-new-progress-reports-ogp-implementation>

## References

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## CHAPTER 2: COUNTRY PROFILE – FOUNDATIONS

### Introduction

Māori, a Polynesian people, are generally agreed by historians to have been the first inhabitants of New Zealand, probably arriving in several migrations from the 14th century.<sup>16</sup> The first European to reach the country was Abel Tasman in 1642, followed by Captain James Cook in 1769. By 1800, there was some European settlement by whalers and sealers. Soon afterwards, a wave of colonisation began, firstly by missionaries and subsequently by Europeans intent on settlement. The Treaty of Waitangi was signed between Māori chiefs (rangatira) and representatives of Queen Victoria in 1840. As European settlement expanded into Māori land through a variety of means, many illegitimate, conflicts arose culminating in the land wars of the 1860s.

Although throughout the 19th century and much of the 20th century immigrants came mostly from Europe, there has been a Chinese presence since the gold rush of the later 19th century and more recent immigration from other Asian nations. About 345,000 Pasifika live in New Zealand. The Māori population of New Zealand is about 15.4 per cent of the total population.

A sound national integrity system can flourish only in a society that provides a firm and supportive base for its institutions. The political, cultural, and economic aspects of our society are all important, while the Treaty of Waitangi is part of our constitutional framework and a foundation of our society and citizenship. The Treaty also helps to shape our rights and policies with regard to natural resources and the environment, and the value we place as New Zealanders on their maintenance and on equitable access to its benefits. For these reasons, Transparency International New Zealand includes the Treaty and the environment as part of the foundations that ground New Zealand's institutions.

### Political-institutional foundations

**To what extent are the political institutions in the country supportive of an effective national integrity system?**

Score: 4

In general, democracy is consolidated and stable, most political institutions function effectively, and the political and civil rights of citizens receive adequate protection.

New Zealand is a constitutional monarchy with a parliamentary system. The country's institutions are stable, and they ensure the rule of law and support the maintenance of democracy. The Failed States Index 2013 ranks New Zealand 173 out of 178 countries – that is, the sixth most “politically sustainable” country in the world. In the same index, New Zealand is ranked first equal in the world in terms of the “legitimacy of the state”,

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<sup>16</sup> Michael King, in *The Penguin History of New Zealand* (New Zealand, Penguin, 2003), p. 36, dates evidence from artefacts at 1350.

third in terms of lack of “violations of human rights and rule of law”, and second equal for lack of the “rise of factionalised elites”.<sup>17</sup>

Similarly, the most recent Democracy Index ranked New Zealand fifth out of the 167 countries surveyed. New Zealand scored 10 out of 10 in the categories of “electoral process and pluralism” and “civil liberties”.<sup>18</sup>

According to the latest Freedom House report, New Zealand has a total score of 17.<sup>19</sup> Freedom House classifies New Zealand as a “full democracy” and awards it top ratings for “civil liberties” and “political rights”.<sup>20</sup>

Elections are free and fair. The system of proportional representation has resulted in coalition governments. There is a high level of confidence in the election administration, although voter turnout has been falling. Overall, New Zealanders widely support democratic institutions.<sup>21</sup>

There is much less confidence in the way political parties and politicians operate. This is reflected in a decreasing participation in politics. For example, in the most recent general election of 2011, just over two-thirds (69 per cent) of the voting-age population voted. This is reflected in the Democracy Index, in which New Zealand’s lowest scores were for “political participation” (8.89 out of 10) and “political culture” (8.13 out of 10).

The reputation of politicians in New Zealand has been tarnished by a lack of confidence that there is full integrity in the exercise of political power. This leads to some dissatisfaction with government more generally. The public’s confidence has also been eroded by political scandals over recent years, including controversies over the misuse of taxpayer resources and allegations of links between party funding and some donors’ influence.

A 2013 survey of trusted professions in New Zealand ranked politicians 46th out of 50 professions – just below real estate agents and insurance salespeople, but above sex workers and car salespeople.<sup>22</sup> The 2013 Transparency International Global Corruption Barometer also signalled that New Zealanders have a low opinion of the integrity of the political parties – those surveyed were asked to rate how affected political parties are by corruption on a 1–5 scale (where 1 means not at all corrupt and 5 means extremely corrupt), producing an average score of 3.3.<sup>23</sup>

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<sup>17</sup> Fund for Peace, *The Failed States Index Rankings* (Washington D.C.: Fund for Peace, 2013).  
<http://ffp.statesindex.org/rankings>

<sup>18</sup> “Global democracy at a standstill”, *The Economist*, 27 March 2013.  
<http://country.eiu.com/article.aspx?articleid=1080324092>

<sup>19</sup> On a 0–100 scale where 0 means most free and 100 means least free.

<sup>20</sup> Freedom House, *Freedom in the World 2013*, 2013. [www.freedomhouse.org/report/freedom-world/freedom-world-2013](http://www.freedomhouse.org/report/freedom-world/freedom-world-2013)

<sup>21</sup> Stephen Levine, “Political values”, *Te Ara: The Encyclopedia of New Zealand*, updated 9 November 2012.  
[www.TeAra.govt.nz/en/political-values/print](http://www.TeAra.govt.nz/en/political-values/print)

<sup>22</sup> “New Zealand’s most trusted professions 2013”, *Reader’s Digest*, July 2013. [www.readersdigest.co.nz/most-trusted-professions-2013](http://www.readersdigest.co.nz/most-trusted-professions-2013)

<sup>23</sup> Transparency International, *Global Corruption Barometer 2013* (Berlin: Transparency International, 2013).  
[issuu.com/transparencyinternational/docs/2013\\_globalcorruptionbarometer\\_en](http://issuu.com/transparencyinternational/docs/2013_globalcorruptionbarometer_en)

Often it is felt that the political executive dominates the legislative branch of government<sup>24</sup> – a concern that has lessened since New Zealand moved to a mixed-member proportional representation electoral system in 1996, which has strengthened the role of Parliament somewhat. The government of the day is held to account through debates with opposition parties, which are usually reported adequately in the media.<sup>25</sup> Also, various select committees can scrutinise legislation and the activities of government departments.

The rights and welfare of the Māori population are major issues in New Zealand politics. Successive New Zealand governments have endorsed the concept of a Māori–Pākehā partnership that is founded on the Treaty of Waitangi at both Crown–rangatira level and tangata whenua–tauiwi levels (see the glossary of Maori words and phrases), although politicians occasionally express different views and popular endorsement varies.<sup>26</sup> The electoral system also has a unique aspect with specially reserved Māori seats for voters who choose to enrol on the Māori electoral roll (rather than the general electoral roll).

Overall, political and civil rights of citizens are assured. Risks to political and institutional support to the National Integrity System are posed by a declining faith in politicians and institutions such as political parties.

## Socio-political foundations

**To what extent do the relationships among social groups and between social groups and the political system in the country support an effective national integrity system?**

Score: 4

As in any country, social divisions exist in New Zealand, especially along economic and ethnic lines. In particular, there are large degrees of economic inequality with a strong ethnic bias. A recent book claims that the country has one of the fastest growing rates of inequality in the Western world.<sup>27</sup> Tensions also manifest themselves in issues of ethnicity and debates and concern about immigration levels, notably increased immigration in recent decades from non-traditional sources.<sup>28</sup>

However, the various social, ethnic, and religious differences rarely result in significant conflict in New Zealand. Diversity is accepted, and differences are usually resolved or ameliorated. New Zealand is, therefore, a peaceful country, which is reflected in its world ranking of number three in the 2013 Global Peace Index.<sup>29</sup> Certainly, by world standards, New Zealand is not characterised by deep social divisions and conflicts.

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<sup>24</sup> See the legislature pillar report (pillar 1 in Chapter 5).

<sup>25</sup> See the media pillar report (pillar 11 in Chapter 5).

<sup>26</sup> Levine, 2012.

<sup>27</sup> Max Rashbrooke, ed., *Inequality: A New Zealand crisis* (Wellington: Bridget Williams Books, 2013).

<sup>28</sup> Jock Phillips, "History of immigration", *Te Ara: The Encyclopedia of New Zealand*, updated 19 August 2013. [www.TeAra.govt.nz/en/history-of-immigration](http://www.TeAra.govt.nz/en/history-of-immigration)

<sup>29</sup> Vision of Humanity, "2013 GPI Findings". [www.visionofhumanity.org/#/page/our-gpi-findings](http://www.visionofhumanity.org/#/page/our-gpi-findings)

The link between New Zealand society and the political system is not strong at present. This is due in part to the weakness of political party organisations, civil society groups, and unions. For example, trade union density – the percentage of trade union members among all employees – is about 17 per cent,<sup>30</sup> which is little changed since 2003 and slightly low compared with other similar countries.

In some respects, New Zealand civil society can be seen as large, but much of its activity is focused on non-political functions such as sport and outdoor pursuits. As an organised force to mediate between society and the political system, it has less strength. Bruce Jesson has pointed out, however, that the main exception has been the strong Māori social institutions, especially iwi and marae (traditional gathering place).<sup>31</sup> Consequently, a strong history of Māori political activism has helped to secure greater rights for Māori. In recent years, the emergence of two Māori-based political parties in Parliament has given electoral politics a very different flavour.<sup>32</sup>

New Zealand also remains the site of one of the best organised and most deeply rooted environmental movements found anywhere in the world and has been the site of successive waves of organisation by women, of anti-nuclear and peace movement activity, of lesbian and gay rights activists, of a strong anti-apartheid movement, and more widely based movements for economic justice (most recently an emerging coalition for a living wage). Therefore, some important civil society movements impact heavily on politics.

Today, the number of well-resourced civil society organisations is small and, for some of them, their ability to influence policies and decisions through advocacy is limited by their lack of a broad social base.<sup>33</sup> Also, due to the scarcity of private funding, some organisations in the sector rely heavily on state resources.<sup>34</sup>

A stable, moderate, and partly socially rooted party system articulates and aggregates societal interests. The introduction of the mixed-member proportional representation system has resulted in a Parliament made up of a more representative base of politicians and political parties than was historically the case. However, the level of citizen participation in party activities is low and sporadic.<sup>35</sup> The party system also has only a limited ability to articulate and aggregate societal interests and to serve as a link between society and the state. This is especially because the internal democratic governance of parties is underdeveloped.<sup>36</sup>

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<sup>30</sup> Ministry of Business, Innovation and Employment, "Union membership return report 2012". [www.societies.govt.nz/cms/registered-unions/annual-return-membership-reports/union-membership-return-report-2012](http://www.societies.govt.nz/cms/registered-unions/annual-return-membership-reports/union-membership-return-report-2012)

<sup>31</sup> Bruce Jesson, *Only Their Purpose is Mad: The money men take over New Zealand* (Palmerston North: Dunmore Press, 1999), p. 205.

<sup>32</sup> The Māori Party and the Mana Party. There were also the Mana Motuhake and Mana Māori parties, both now dissolved.

<sup>33</sup> CIVICUS: World Alliance for Citizen Participation, *Aotearoa/New Zealand Civil Society: A framework for government–civil society dialogue*, 2001. [www.civicus.org/new/media/new%20zealand.pdf](http://www.civicus.org/new/media/new%20zealand.pdf)

<sup>34</sup> See the civil society pillar report (pillar 12 in Chapter 5).

<sup>35</sup> See the political parties pillar report (pillar 10 in Chapter 5).

<sup>36</sup> See the political parties pillar report (pillar 10 in Chapter 5).

## Socio-economic foundations

### To what extent is the socio-economic situation of the country supportive of an effective national integrity system?

Score: 4

New Zealand has an international reputation as a country that has a high standard of living,<sup>37</sup> low inflation, and low unemployment, is a good place to bring up children, has good access to housing and public services, and allows for easy market entry for new businesses.<sup>38</sup> These factors are supportive of an effective national integrity system, which merits a score of 4. There is evidence, however, that these socio-economic foundations are currently at a fragile stage.

To ensure this standard of living and integrity systems are maintained, a significant increase in ethical equity investment is required to support the conversion of research and innovation into quality products, and equity partnerships opening up distribution channels to increase the value and the volume of sales of high-value quality products traded into growing markets..

Currently, the number of New Zealand exporters and the proportion of exports to GDP are low for an open economy. In 2011, there were 14,000 exporters out of 350,000 business entities, with only 260 exporters earning NZ\$25 million or more (and one exporter, Fonterra, accounting for 25 per cent of all export receipts<sup>39</sup>). Product and supply distribution channels are narrow and short, mainly focused on the domestic economy, with only a few sectors (dairy, meat, forestry, education, wine, imports, and tourism) trading at some scale in overseas markets. Despite a consensus among the business, academia, and technology sectors about the need to be innovative,<sup>40</sup> New Zealand has had limited commercial success in this area, despite notable quality research and products, and its economic performance lags behind its OECD peers and that of other small nations with low levels of corruption such as Denmark, Finland, and Singapore.<sup>41</sup> While the collapse of New Zealand finance companies both before and during the global financial crisis has prompted the largely Australian-owned banking sector to take a stronger position in providing investment in selected sectors, private investment remains low and continues to favour property investments.<sup>42</sup>

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<sup>37</sup> New Zealand is a relatively low-wage economy compared with other developed economies, so this reputation is based on non-financial indicators such as “a good place to bring up children”.

<sup>38</sup> UMR Research with Transparency International, *Experiences of Corruption in Export Markets*, 2012.

<sup>39</sup> Fonterra, “25% of New Zealand’s export earnings from Fonterra”, press release, *Scoop*, 21 July 2008. [www.scoop.co.nz/stories/BU0807/S00346.htm](http://www.scoop.co.nz/stories/BU0807/S00346.htm)

<sup>40</sup> Discussion with Gary Hawke, Emeritus Professor Victoria University of Wellington, 9 August 2013.

<sup>41</sup> R. Christie and H. Anderson, “Raising our innovation game: Why business leadership matters”, Institute of Directors conference, April 2013.

<sup>42</sup> World Economic Forum, *Foreign Direct Investment as a Key Driver for Trade, Growth and Prosperity: The case for a multilateral agreement on investment* (Geneva: World Economic Forum, 2013). “The Council reached two main conclusions ... **1) different barriers and distortions are preventing the realization of the full potential from FDI** [foreign direct investment] and **2) the current fragmented governance of FDI contributes to the confusing landscape faced by investors and governments** ... Smaller, outward-looking economies tend to be genuinely more positive towards FDI, realizing the benefits associated with influxes of capital, technologies and skills” (p. 6, emphasis in original).

International Monetary Fund comparisons show that in 2012 New Zealand sat at 32<sup>nd</sup> with per capita income of US\$29,730.<sup>43</sup> An OECD report published 13 May 2013<sup>44</sup> reported that New Zealand experienced the 2<sup>nd</sup> highest decline in market income of any OECD country between 2007 and 2010 with the 2<sup>nd</sup> lowest average wage rates in the OECD, just above Iceland.<sup>45</sup> Recent research reviewed by Max Rashbrooke was the basis for his conclusion that New Zealand now has the widest income gap since detailed records began in the early 1980s.<sup>46</sup> The number of people who are poor has doubled, with 270,000 children living below the poverty line<sup>47</sup> and many families living in hardship.<sup>48</sup> “Economic analysis ... has failed to grasp the threat posed by widening disparities within society.”<sup>49</sup> Accompanying inequality has been growth in wider diversity with a greater range of living circumstances and standards. Fewer people can afford their own homes, and the houses they rent are more likely to be in poorer condition than owner-occupied housing.<sup>50</sup>

The increase in income inequality in New Zealand largely occurred between 1985 and the early 2000s.<sup>51</sup> Since then, inequality has not changed much, but remains much higher than before 1985. There is evidence that a higher level of inequality can lead to increases in corruption. The argument is that “the wealthy have both greater motivation and more opportunity to engage in corruption, whereas the poor are more vulnerable to extortion and less able to monitor and hold the rich and powerful accountable as inequality increases. Inequality also adversely affects social norms about corruption and people’s beliefs about the legitimacy of rules and institutions, thereby making it easier for them to tolerate corruption as acceptable behaviour”.<sup>52</sup>

Former Minister of Finance and now New Zealand Post Chairman and Treaty Settlements Negotiator Michael Cullen notes: “We used to argue that building a stronger and more equal society was enabled by a stronger economy. Increasingly, we realise that the causative relationship moves in the other direction as well – a stronger and more equal society is important for building a stronger economy.”<sup>53</sup>

On the positive side, New Zealand has abundant rainfall (though poor potable water quality in some areas), fast grass growth, clean air, and sunshine.

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<sup>43</sup> International Monetary Fund, *World Outlook Database*, April 2012.

<sup>44</sup> OECD, *Crisis Squeezes Income and Puts Pressure on Inequality and Poverty*, 13 May 2013.

<sup>45</sup> Ibid, Table 1.

<sup>46</sup> Rashbrooke, 2013. Rashbrooke’s conclusion was based on analysis using the Gini coefficient measure, not the 80 : 20 ratio applied information from Bryan Perry, *Household Incomes in New Zealand: Trends in indicators of inequality and hardship 1982 to 2011* (Wellington: Ministry of Social Development, 2012).

<sup>47</sup> Interview of Gary Hawke with author, August 2013.

<sup>48</sup> Perry, 2012. The number of people living on less than 60 per cent of equivalised median household income (contemporary median), after housing costs, rose from 9 per cent in 1984 to 19 per cent in 2011.

<sup>49</sup> Garnesh Nana, BERL, 2013.

<sup>50</sup> N. S. Buckett, M. S. Jones, and N. J. Marston, *BRANZ 2010 House Condition Survey: Condition comparison by tenure* (Wellington: Building Research Association of New Zealand, 2011).

<sup>51</sup> OECD, 2011, *Divided We Stand: Why Inequality Keeps Rising* (Country Note: New Zealand)

<sup>52</sup> You Jong-Sung and Sanjeev Khagram (2005) A Comparative Study of Inequality and Corruption, *American Sociological Review*, 70: 136-157.

<sup>53</sup> Interview of Michael Cullen with author, 24 October 2013.

Getting to see a doctor is easy, primary health care is free for all children from birth to five years old and (basic) dental care is free until age 18. The social safety net to compensate for the risks of old age remains generous by international standards and there is a focus on addressing the requirements of people with disabilities. Gary Hawke noted the low wage levels and high numbers in poverty in Asia suggesting that in relative terms, New Zealand's levels of poverty and inequality could be overstated.<sup>54</sup>

Treasury's policy advice increasingly enables individual circumstances to be addressed -as well as its traditional focus on macroeconomic and fiscal conditions, it's analysis is increasingly based on its living standards research.<sup>55</sup>

Through Callaghan Innovation<sup>56</sup> and other initiatives, the country is targeting innovation that leads to product development, and New Zealand Trade and Enterprise aims for an increase in firms exporting high value in sectors where New Zealand has a comparative and competitive advantage. supporting the development of quality jobs.

Infrastructure development has been progressed in Christchurch as part of the recovery from the 2010 and 2011 earthquakes and in Auckland through the new "super city" structure, although less progress is observable elsewhere in New Zealand. There are increasing examples of New Zealand businesses demonstrating how opportunities in new markets, including the fast-growing economies of Asia,<sup>57</sup> can be converted to sustainable business profitability and better jobs at home. This has refocused some businesses on the role of good governance and the importance of diversity in directorships, where integrity systems are at the core of institutional life. While there is a long way to go, businesses are waking up to the realisation that transparency, anti-corruption policy and ethical values lead to greater sustainability. This is what could make it possible for the New Zealand economy to move significantly back up the OECD table and to demonstrate the gains that can be realised from strong integrity systems.<sup>58</sup>

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<sup>54</sup> Interview with Gary Hawke, August 2013 where he wondered if relative poverty in New Zealand is linked to absolute poverty elsewhere only because it is a rhetorical device for gaining attention. Simple arithmetic means that the poverty line of 60% of the median income is above the average level of income when he was growing up in New Zealand after World War II.

<sup>55</sup> Discussion with Girol Karacaoglu, Chief Economist of Treasury, 9 August 2013 about the five key aspects when developing policy advice (economic growth, sustainability for the future, increasing equity, social infrastructure, and managing risks of New Zealand's ability to withstand unexpected shocks that impact on its macro-economic position).

<sup>56</sup> A new Crown entity established in 2013 to accelerate commercialisation of innovation by firms in New Zealand.

<sup>57</sup> Merchandise trade figures from Statistics New Zealand.

<sup>58</sup> Secretary-General, *Keeping the Promise: A forward-looking review to promote an agreed action agenda to achieve the Millennium Development Goals by 2015* (United Nations, 2010). "[8] A number of countries have achieved major successes in combating extreme poverty and hunger, improving school enrolment and child health ... demonstrating that the Millennium Development Goals are indeed achievable with the right policies, adequate levels of investment ... [14] Over 300 million new jobs will need to be created over the next five years to return to pre-crisis levels of unemployment."

## Socio-cultural foundations

### To what extent are the prevailing ethics, norms, and values in society supportive of an effective national integrity system?

Score: 4

New Zealand's cultural identity is predominately a bicultural one, although recent immigration particularly from the Pacific Islands and from Asia has been influential in developing multicultural characteristics.

Among the reasons for New Zealand's corruption-free reputation is the importance New Zealanders have placed on egalitarianism. Adherence to egalitarianism infers that individuals are not accorded any particular social status or rewards or allowed any influence if their behaviour demonstrates overtly materialistic values or they flaunt their wealth.

While egalitarianism in New Zealand is much less strong than it was three decades ago, values surveys continue to suggest it remains one of the core hallmarks of New Zealand's culture.

A comparison of 1998 and 2005 values surveys suggests that the ethics, norms, and values of New Zealanders continue to broadly support an effective NIS.<sup>59</sup>

- In 1998, 29 per cent of respondents had confidence in the public service. In 2005 that percentage had increased to 56 per cent.
- In 1998, 70 per cent of respondents agreed that the country was run by a few big interests. In 2005 that view was supported by 44 per cent.
- In 1998, 15 per cent of respondents had confidence in Parliament, but in 2005 69 per cent stated they were satisfied or rather satisfied with the way democracy developed in New Zealand. Notably in 2005, nearly 70 per cent of respondents also stated that they were very proud to be New Zealanders and 25 per cent stated they were quite proud.

However, in 2005 just over half the respondents (52 per cent) considered that most people could be trusted.<sup>60</sup> When asked whether most people would try to take advantage of you if they got a chance, or whether they would try to be fair, only 22 per cent of respondents considered that most people would try to take advantage.

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<sup>59</sup> For discussion of the 1998 New Zealand Survey of Values, see Transparency International, *National Integrity Systems: Transparency International Country Study Report: New Zealand 2003* (Berlin: Transparency International, 2003) and for the 2005 survey, see Massey University, "New Zealand Values Survey 2005". [www.whariki.ac.nz/massey/learning/departments/centres-research/shore/projects/new-zealand-values-survey-2005.cfm](http://www.whariki.ac.nz/massey/learning/departments/centres-research/shore/projects/new-zealand-values-survey-2005.cfm)

<sup>60</sup> There was no equivalent question in the 1998 survey.

As a further indicator of public mindedness, New Zealand and Australia were ranked as the most generous countries in the world for personal charitable giving out of 153 countries.<sup>61</sup>

Quarterly generosity data from October 2009 to December 2010<sup>62</sup> show that nearly 30 per cent of New Zealanders volunteer about 10 hours a month, about 40 per cent donate about NZ\$40 a month, and about 18 per cent of New Zealanders had donated goods. It is generally acknowledged that the level of giving in a society is a mark of social cohesiveness.<sup>63</sup>

## Socio-environmental foundations

**To what extent do the relationship and attitudes of New Zealanders to the environment and their governance and management of it contribute to an effective national integrity system?**

Score: 3

Exploitation of natural resources and pollution are potential sources of corruption and of private interests gaining priority over the public interest and the interests of future generations. Also, questions can, and have, been raised about the integrity of New Zealand's claim to be "clean and green".

New Zealanders' basic values and attitudes do not support corruption, and there appear to have been no publicly reported cases of corruption regarding the allocation of access to natural resources or the control of pollution. Compliance with, and enforcement of, the terms and conditions of access to natural resources and of the discharge of wastes to the environment is variable, particularly in some sectors,<sup>64</sup> but the New Zealand public expects compliance.<sup>65</sup>

To ensure integrity in New Zealand's claim to be "clean and green", environmental governance and practice (and governance and practice in areas that can, by

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<sup>61</sup> Charities Aid Foundation, *The World Giving Index 2010*, 2010, p. 8.  
[www.cafonline.org/pdf/WorldGivingIndex28092010Print.pdf](http://www.cafonline.org/pdf/WorldGivingIndex28092010Print.pdf)

<sup>62</sup> *How Do New Zealanders Give? Quarterly generosity indicators – December quarter 2009 to December quarter 2010* (Generosity Hub and Office of the Community and Voluntary Sector, 2011).  
[www.ocvs.govt.nz/documents/work-programme/building-knowledge/giving-research/qgi-2011.doc](http://www.ocvs.govt.nz/documents/work-programme/building-knowledge/giving-research/qgi-2011.doc)

<sup>63</sup> Charities Aid Foundation, 2010: 1.

<sup>64</sup> For example, regarding compliance with dairy effluent disposal consents (Ministry for Primary Industries, *The Dairying and Clean Streams Accord: Snapshot of progress 2010/2011*, 2011. [www.mpi.govt.nz/news-resources/publications.aspx?title=Dairying%20and%20Clean%20Streams%20Accord:%20Snapshot%20of%20Progress](http://www.mpi.govt.nz/news-resources/publications.aspx?title=Dairying%20and%20Clean%20Streams%20Accord:%20Snapshot%20of%20Progress)), forest products (Ministry for Primary Industries and New Zealand Forestry Industry, *The Legality of New Zealand's Forest Products*, 2013. [www.mpi.govt.nz/Portals/0/Documents/forestry/forestry-nz/illegal-log/the-legality-of-new-zealands-forestry-products.pdf](http://www.mpi.govt.nz/Portals/0/Documents/forestry/forestry-nz/illegal-log/the-legality-of-new-zealands-forestry-products.pdf)), and prosecutions under the Resource Management Act 1991 (Ministry for the Environment, *A Study into the Use of Prosecutions under the Resource Management Act 1991* (Wellington: Ministry for the Environment, 2009). [www.mfe.govt.nz/publications/rma/rma-prosecutions-2008/html/page1.html](http://www.mfe.govt.nz/publications/rma/rma-prosecutions-2008/html/page1.html)).

<sup>65</sup> E. Rose, J. Huakau, and S. Casswell, *Economic Values: A report from the New Zealand Values Study*, 2005 (Massey University, 2005).  
[www.massey.ac.nz/massey/fms/Colleges/College%20of%20Humanities%20and%20Social%20Sciences/Shore/reports/Economic\\_report.pdf](http://www.massey.ac.nz/massey/fms/Colleges/College%20of%20Humanities%20and%20Social%20Sciences/Shore/reports/Economic_report.pdf)

association, impact on environmental integrity) need to be effective so that all important issues are addressed with effective and durable policies and are widely accepted.

While some environmental issues generally are being addressed with effective and durable policies, some important issues are not.

While some aspects of environmental governance are widely accepted, though often subject to resource constraints, other aspects of environmental governance are subject to question and challenge.

In some cases, the eventual outcome may be improved effectiveness and acceptance, in other cases it may be the opposite.

Governance and practice in some areas that affect environmental integrity by association (for example, food safety and labour conditions on vessels fishing in New Zealand waters) are also under question.

Until environmental governance and practice, and governance and practice in other areas that impact on environmental integrity, are demonstrated to be effective and widely accepted, there is a risk that they will undermine an effective national integrity system.

New Zealanders recognise the need for, and the importance of, environmental governance. However, as noted above, there is ongoing debate about the objectives of that governance and about how best to balance the various interests, world views, and values involved. The place of Māori values in resource management and the tension between (shorter-term) economic gain and the maintenance, or enhancement, of environmental quality, natural capital, and ecosystem services are two key areas of tension.

Huge strides have been made in recent years in terms of the acknowledgement of the particular relationship between tangata whenua and the environment. Andrew Henderson notes policy makers have greater awareness that Māori values have a legitimate role in resource management,<sup>66</sup> but some commentators consider that, while Māori values have entered the system, the system may not yet have the tools or a sufficiently informed approach for dealing appropriately with these values.<sup>67</sup> The number of successful Māori submissions in opposition to development proposals that affect the environment is few.

Current environmental governance arrangements in relation to the tensions between environmental improvement and (shorter-term) increased economic activity are not widely accepted, one example being the impact of agriculture on water quality.<sup>68</sup> The

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<sup>66</sup> Andrew Henderson, "Nursing a colonial hangover – 15 years on 2011", paper for the New Zealand Planning Institute Winds of Change conference, Wellington, 29–31 March 2011.

[www.planning.org.nz/Folder?Action=View%20File&Folder\\_id=217&File=HENDERSON\\_2011.pdf](http://www.planning.org.nz/Folder?Action=View%20File&Folder_id=217&File=HENDERSON_2011.pdf)

<sup>67</sup> Robert Joseph quoted in Henderson, 2011: 12.

<sup>68</sup> Jon Morgan, "Water priorities come up trumps", *Stuff*, 1 November 2012.

[www.stuff.co.nz/business/farming/7892170/Water-priorities-come-up-trump](http://www.stuff.co.nz/business/farming/7892170/Water-priorities-come-up-trump)

Peter Watson, "New dairy waterways accord draws mixed reaction", *Stuff*, 16 July 2013.

[www.stuff.co.nz/business/farming/dairy/8924991/New-dairy-waterways-accord-draws-mixed-reaction](http://www.stuff.co.nz/business/farming/dairy/8924991/New-dairy-waterways-accord-draws-mixed-reaction); Marty

same tensions sometimes apply in respect of conserving natural capital for the future, reflecting the increasing numerical dominance of urban dwellers and, associated with that, the increasing mental distance of many people from the primary production sector. It also reflects generational differences, with younger people apparently giving the need to protect the environment a higher priority.<sup>69</sup>

Recently, the government indicated it intends to change the Resource Management Act 1991 in ways that appear to significantly undermine the original purpose of the Act and shift the balance in favour of economic development.<sup>70</sup> The government's rationale appears to be that the provisions of the Act are unduly restricting economic growth, employment growth, and the growth of Auckland. In terms of stocks of natural resources and environmental quality, this is likely to favour the current generation over future generations. The Parliamentary Commissioner for the Environment is a respected, independent commentator on such changes to the system of environmental governance.

New Zealand's system of environmental governance, environmental management, and environmental practice is generally appropriate for local issues, but is often inadequate for addressing national, systemic, and cumulative issues. The management of fresh water is an area in which environmental practice has been unsatisfactory and new governance arrangements are being explored. A potentially positive development has been the Land and Water Forum,<sup>71</sup> which has brought together various industry groups, environmental and recreational non-governmental organisations, iwi, scientists, and other organisations with a stake in fresh water and land management to develop a shared vision and a common way forward using a stakeholder-led collaborative process. The success or otherwise of this inclusive approach will depend on the extent to which the government is prepared to accept and implement the recommendations. But at the same time there have been recent instances of the government removing opportunities for public participation and local accountability.<sup>72</sup>

An active set of civil society organisations with environmental concerns, including iwi organisations, plays (and has played) a very important role in the development of contemporary environmental governance and practice, and continues to work to achieve sustainability, to protect and enhance the environment, and to ensure there is integrity in the "clean and green" claim.

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Sharpe, "Dairy industry yet to clean up its act", *Dominion Post*, 17 August 2013. [www.stuff.co.nz/dominion-post/news/9054351/Dairy-industry-yet-to-clean-up-its-act](http://www.stuff.co.nz/dominion-post/news/9054351/Dairy-industry-yet-to-clean-up-its-act). Other examples include, hydro dams (Forest & Bird, "Save the Mokihinui: Keep it in a park". [www.forestandbird.org.nz/campaigns/save-the-mokihinui-keep-it-in-park](http://www.forestandbird.org.nz/campaigns/save-the-mokihinui-keep-it-in-park) [accessed 19 August 2013]), irrigation schemes (Forest & Bird, "Save our Mackenzie country". [www.forestandbird.org.nz/savethemackenzie](http://www.forestandbird.org.nz/savethemackenzie) [accessed 19 August 2013]), and lignite mining (Parliamentary Commissioner for the Environment, *Lignite and Climate Change: The high cost of low grade coal*, 2010. [www.pce.parliament.nz/assets/Uploads/PCE-Lignite.pdf](http://www.pce.parliament.nz/assets/Uploads/PCE-Lignite.pdf)).

<sup>69</sup> Rose et al. 2005.

<sup>70</sup> Patrick Smellie, *Dominion Post*, 16 August 2013.

<sup>71</sup> [www.landandwater.org.nz](http://www.landandwater.org.nz)

<sup>72</sup> For example, the Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 and the issue of land for new housing in Auckland.

## Treaty of Waitangi

**The Treaty of Waitangi is a key foundation of New Zealand society. Does it support or contribute to an effective national Integrity system?**

The Treaty of Waitangi forms part of the fabric of New Zealand's society and Constitution. It is widely acknowledged as New Zealand's founding document by the public at large and by government. In this way, it provides a general framework for New Zealand's approach to relations between the government and Māori as well as laws and policies that impact on Māori.

The Treaty of Waitangi was drafted in English and poorly translated into te reo (the Māori language). It is unclear whether, at the time, sovereignty was ceded to the British Crown under the Treaty in the text in te reo, which was the text most signatories signed. Precedents now define New Zealand's constitutional arrangements with the Treaty articles, providing a basis for defining the relationship between the Crown and Māori. The Treaty also guarantees citizenship to both Māori and settlers.

The English and Māori texts align better, though not perfectly, in setting out guarantees for Māori rights, expressed in the English version as "exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties". As a result, the Treaty is considered the basis for the protection of Māori rights in New Zealand.

The Treaty of Waitangi is not enforceable as a matter of domestic law unless it is incorporated into legislation.<sup>73</sup> Despite that, it provides some constraint on law making. For example, the New Zealand *Cabinet Manual* requires ministers to draw attention to any aspects of a bill that may have implications for the Treaty.<sup>74</sup> Moreover, successive Parliaments have, on occasion, included the principles of the Treaty in important legislation, such as the Resource Management Act 1991. When New Zealand courts have been asked to interpret the principles of the Treaty in legislation they have done so in ways that have supported Māori rights.<sup>75</sup>

However, the Treaty's lack of formal legal status or enforceability, in a context where there is also no entrenched bill of rights and Māori are in the minority, leaves Māori rights vulnerable to majoritarian will. This was seen vividly when Parliament legislated to avoid the potential consequences of a Court of Appeal decision<sup>76</sup> that opened the door to recognition of Māori rights in areas of New Zealand's foreshore and seabed.<sup>77</sup>

New Zealand continues to grapple with its notorious history of breaches of the Treaty of Waitangi, reflected in Māori loss of authority and land and relative socio-economic poverty today.

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<sup>73</sup> *Hoani te Heu Heu v Aotea District Maori Land Board* [1941] AC 308

<sup>74</sup> Cabinet Office, *Cabinet Manual 2008* (Wellington: Department of the Prime Minister and Cabinet, 2008), para. 7.60. <http://cabinetmanual.cabinetoffice.govt.nz>

<sup>75</sup> *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641 (CA).

<sup>76</sup> *Attorney-General v Ngati Apa* [2003] 3 NZLR 643.

<sup>77</sup> Foreshore and Seabed Act 2004.

Since the 1970s, steps have been taken to address Māori grievances such as the establishment of the Waitangi Tribunal in 1975, which hears Māori claims in relation to Treaty breaches and makes associated recommendations. The Waitangi Tribunal is, in international terms, a progressive institution and constitutes a positive tool to achieve reconciliation between the state and the indigenous people. On the other hand, the Waitangi Tribunal's powers are limited and, in more recent years, several of its recommendations have been rejected by governments.

New Zealand governments since the early 1990s have engaged in a Treaty settlements process to address historical grievances associated with breaches of the Treaty against Māori directly. Sentiment about the settlements is mixed with some claiming it creates preferential treatment for Māori and others claiming it is unfair towards Māori in terms of financial award and design. Perhaps the most problematic element from an integrity perspective is that the government is both the arbiter and a party in the settlement negotiations, and the courts cannot review the process or the outcomes.

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## CHAPTER 3: CORRUPTION PROFILE

New Zealand is consistently ranked highly by Transparency International's Corruption Perceptions Index and is currently joint first with a score of 90.<sup>78</sup> This does not mean New Zealand has no corruption, and there are signs that should at least raise questions about whether New Zealand is as corruption-free as New Zealanders perceive it to be. New Zealand was included in the Global Corruption Barometer for the first time in 2010, and the result was that 3.5 per cent of New Zealanders surveyed reported that they or a member of their household had paid a bribe in the previous 12 months.<sup>79</sup> There was a similar result in 2013. It is significant that in this barometer, 65 per cent of people thought levels of corruption in New Zealand had increased in the last three years, although it is worth noting that the equivalent figure in 2011 was 73 per cent.

Recently, there have been investigations and prosecutions of bribery and corruption in New Zealand.

- In 2011, a former Accident Compensation Corporation manager was found guilty of accepting a bribe worth NZ\$160,000 and was sentenced to 11 months' home imprisonment (along with having to repay the bribe).<sup>80</sup>
- In 2010, a member of a district health board was sentenced under section 4 of the Secret Commissions Act 1910 to 20 months in prison for accepting bribes worth NZ\$775,000. The sentence was given concurrently with a nine-and-a-half-year sentence for fraud.<sup>81</sup>
- In 2009, a former minister of the Crown was convicted on 11 charges of bribery and corruption and 15 charges of attempting to pervert the course of justice, and sentenced to six years' imprisonment.<sup>82</sup>

The last three years have seen high-profile fraud prosecutions against company directors and public servants. One of the most prominent examples was two former New Zealand Cabinet ministers found guilty of making false statements.<sup>83</sup> While there is little evidence of serious corruption and fraud in New Zealand relative to some other countries, the risks remain important for New Zealanders, especially since cases such as these have served as a reminder that the country is not immune to such crime.

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<sup>78</sup> Transparency International, "Global Corruption Barometer, 2013". [www.transparency.org.nz/index.php/indices-reports/global-reports/161-global-corruption-barometer-2013](http://www.transparency.org.nz/index.php/indices-reports/global-reports/161-global-corruption-barometer-2013)

<sup>79</sup> Transparency International New Zealand, *Global Corruption Barometer 2010: New Zealand results*, 2011. [www.transparencynz.org.nz/index.php/resources/doc\\_download/90-study-of-global-corruption-barometer-2010-new-zealand-results](http://www.transparencynz.org.nz/index.php/resources/doc_download/90-study-of-global-corruption-barometer-2010-new-zealand-results). This was a potentially surprising and worrying result. However, the terms bribery and corruption were not defined, the survey was administered by email, and the response rate was low.

<sup>80</sup> "Home detention in ACC bribery case", *New Zealand Herald*, 15 June 2012. [www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=10813251](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10813251)

<sup>81</sup> These cases can be found in Peter&Peters, *Anti-Corruption Legislation in 54 Jurisdictions Worldwide* (London: Encompass Print, 2012).

<sup>82</sup> David Gadd, "Taito Phillip Field jailed for six years", *Stuff*, 6 October 2009. [www.stuff.co.nz/national/crime/2934748/Taito-Phillip-Field-jailed-for-six-years](http://www.stuff.co.nz/national/crime/2934748/Taito-Phillip-Field-jailed-for-six-years)

<sup>83</sup> PwC, *Public Sector Fraud Awareness Survey: Findings*, 2011. [www.pwc.co.nz/forensic-services/publications/public-sector-fraud-awareness-survey-findings](http://www.pwc.co.nz/forensic-services/publications/public-sector-fraud-awareness-survey-findings)

- New Zealand's culture positively contributes to a lack of tolerance for unfairness and misuse of official positions and public funds. Negatively, it contributes to a mentality of pragmatism, where (especially petty) corruption is seen as wrong, but not as causing sufficiently significant levels of harm to be worth addressing.

**Internationally**, some New Zealanders easily adopt an ethical relativist mentality, justifying a laissez-faire attitude where “everyone is doing it, and everyone has to do it”. This can be true even for those who know they are in breach of the Foreign Corrupt Practices Act 1977 (US).<sup>84</sup> As a consequence of the low domestic incidence of bribery and related corrupt activities, New Zealanders newly engaging in international trade may be relatively unprepared to respond to the corrupt practices they encounter. Many larger enterprises have been operating for long enough to be well aware of local conditions (though not immune to the temptation to adopt local practices), but smaller and possibly less scrupulous enterprises are now increasingly turning to overseas markets.

The significantly increased trade with countries that have lower rankings on the Corruptions Perceptions Index than traditional trading partners has meant more New Zealand businesses are further exposed to bribery. Recent examples include those featuring wool and meat exports from New Zealand. The “Grey Channel” is a well-known method of expediting goods into mainland China, via Hong Kong, with facilitation payments made to Hong Kong officials. In June 2012, Chinese authorities stopped an inbound Grey Channel ship carrying more than 1,800 metric tons of frozen meat from the United States, Brazil, Australia, and New Zealand and detained crew members.<sup>85</sup> Awareness of corruption has gradually increased since the implementation of the UK Bribery Act 2010, which extends extraterritorial jurisdiction to New Zealand businesses that have operations in the United Kingdom.<sup>86</sup>

Corruption risks for New Zealanders engaged in international trade occur in three main circumstances.

- New Zealanders face corruption risks when engaging in overseas trade (procurement, importing, exporting, tourism, financial transactions) where facilitation fees are demanded..
- New Zealanders face corruption risks when exporting to countries where the corruption risk is high.

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<sup>84</sup> UMR Research, *A Qualitative Research Study* (Transparency International New Zealand, 2012), p. 6.

<sup>85</sup> Rob O'Neill, “Threats to NZ's meat exports”, *Stuff*, 8 July 2012.  
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<sup>86</sup> The chair of Global Company Network United Kingdom noted the heightened awareness of anti-corruption issues and initiatives among member companies: *Anti Corruption and the UK Bribery Act: Fourth quarterly meeting report 2010* (Global Company Network United Kingdom, 2010). [www.unglobalcompact.org.uk/wp-content/uploads/2012/10/Anti-Corruption-and-the-UK-Bribery-Act\\_UNGC-UK-Report-2010.pdf](http://www.unglobalcompact.org.uk/wp-content/uploads/2012/10/Anti-Corruption-and-the-UK-Bribery-Act_UNGC-UK-Report-2010.pdf)

**Domestically** in New Zealand, political will is an issue because of the perception that corruption is not a national problem. However, one area of concern is inappropriate relationships between contractors and subcontractors, including forms of cronyism and nepotism. Subcontracting also introduces greater opacity, attenuated transparency, and loosens the control of the principal over the operational process of completing project work.

The 2012 Deloitte corruption survey collated responses from around 200 New Zealand entities.<sup>87</sup> The study found:

- one in five companies reported encountering corruption, most in the last 12 months
- of the one in five, joint ventures, local offices, and subsidiaries were the most common type of relationships featuring in the corruption experienced
- only 41 per cent of companies interviewed had actively considered the risk (formally or informally)
- 80 per cent with offshore operations either did not regard bribery and corruption as a top five risk to the business in the next five years or considered the issue to be inapplicable.

More generally, corruption is perceived to be a greater threat in the future because of three main issues.

- Recession-induced financial pressure, which is unlikely to ease in the short term and may increase motivation for corrupt activity.
- Globalisation and immigration. There is increasing influence from countries where corruption is the norm for business practice. Less-corrupt countries will find it harder to defend against corruption.
- Risks in post-earthquake Christchurch. There is growing concern with the commencement of the Christchurch post-earthquake rebuild.<sup>88</sup>
  - With NZ\$40 billion projected for rebuilding Christchurch and typical insurance fraud rates of 5–10 per cent of claim value,<sup>89</sup> the potential for loss to fraud and corruption is significant.
  - A large proportion of the expenditure will involve public sector employees making or influencing decisions. The Serious Fraud Office has been working closely with New Zealand Police, the Canterbury Earthquake Recovery Authority, and other agencies with key roles in Christchurch to address various risks of fraud during the rebuild. In March 2013, the Serious Fraud Office began investigating two high-level cases of alleged fraud and corruption in the

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<sup>87</sup> Deloitte, *Deloitte Bribery and Corruption Survey 2012 Australia and New Zealand: A storm on the horizon?* (Sydney: Deloitte, 2012).

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<sup>89</sup> New Zealand Insurance Council's most recent survey of the level of insurance fraud: [icnz.org.nz/for-consumers/insurance-fraud](http://icnz.org.nz/for-consumers/insurance-fraud)

Christchurch rebuild after claims in Parliament of up to NZ\$240 million worth of suspicious invoicing.<sup>90</sup>

- Local government officials may be put at risk because they are part of the supply chain of high-value projects. Overseas experience suggests corrupt public officials have the leverage to speed up or slow down processes, and bid rigging is a threat.<sup>91</sup>

Corruption is not only a risk in the business and public sectors. In civil society, non-government organisations and large trusts seem at higher risk of money laundering than are other enterprises, a fact counter to public perception.<sup>92</sup>

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<sup>91</sup> Commerce Commission, “Spotlight on the Christchurch rebuild”, press release, 2013. [www.comcom.govt.nz/spotlight-on-the-christchurch-rebuild](http://www.comcom.govt.nz/spotlight-on-the-christchurch-rebuild)

<sup>92</sup> Department of Internal Affairs – Charities, “Terrorism and money laundering”. [www.charities.govt.nz/strengthening-your-charity/governance-and-policies/terrorism-and-money-laundering](http://www.charities.govt.nz/strengthening-your-charity/governance-and-policies/terrorism-and-money-laundering)

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## CHAPTER 4: ANTI-CORRUPTION ACTIVITIES

New Zealand has no over-arching anti-corruption strategy, although the government has directed work be undertaken on developing a national anti-corruption policy covering prevention, detection, investigation, and remedy of corruption and bribery across the public sector (including local government and Crown entities) and the private sector.<sup>93</sup> This policy will provide a framework for existing government activity such as the collection and monitoring of corruption statistics, increasing business awareness of corruption risks and liabilities, and monitoring the work of the International Organization for Standardization with a view to using the international standard it is developing as a tool for New Zealand businesses and organisations.

The government has put in place an anti-money laundering policy built on compliance with the recommendations of the Financial Action Task Force, a non-government body that assesses member countries' implementation of anti-money laundering and related provisions. Non-compliance has commercial consequences; it becomes more difficult to trade with European and North American countries. New Zealand has been slow to enact anti-money laundering law, being at least three years behind Australia. However, the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 came into effect on 30 June 2013.

New Zealand was assessed by the Financial Action Task Force in 2009 with a follow-up assessment in October 2013.<sup>94</sup> Among the task force's recommendations were that New Zealand companies and trust law required reviewing, as New Zealand allowed anonymity of asset ownership and financial dealings.

Across the sectors in New Zealand, there appears to be a mentality that New Zealand should expend as little effort as is possible in fighting corruption, perhaps because it is not seen generally as a real risk. This lack of urgency is evidenced by New Zealand's delay in ratifying the UN Convention against Corruption, with one explanation being that the convention requirement for independence in the bodies charged with corruption prevention and the enforcement of anti-corruption legislation is not a priority in New Zealand. However, strong safeguards in New Zealand policy and practice are in evidence.

- The public sector, which strives for the highest standards of integrity, is backed by the Office of the Auditor-General, which is mandated to ensure the public sector is honest.
- In the commercial sector, professional services firms regularly conduct fraud susceptibility reviews. These reviews cover fraud, corruption, and theft, particularly in companies with offshore activities.<sup>95</sup> They report that most clients (even non-listed companies) are generally proactive about countering fraud and maintaining

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<sup>93</sup> Ministry of Justice, "A national anti-corruption strategy".

<sup>94</sup> Financial Action Task Force, "New Zealand". [www.fatf-gafi.org/countries/n-r/newzealand](http://www.fatf-gafi.org/countries/n-r/newzealand)

<sup>95</sup> PwC, *The 2011 Global Economic Crime Survey results for New Zealand: Fraud, fraudsters and cybercrime*, 2011. [www.pwc.co.nz/forensic-services/publications/global-economic-crime-survey-2011](http://www.pwc.co.nz/forensic-services/publications/global-economic-crime-survey-2011)

transparent governance with audit committees. However, a gap exists in the action taken to address corruption risk, as evidenced in the Deloitte corruption survey.<sup>96</sup>

- Whistle-blower telephone lines – in-house and outsourced – have become common in New Zealand to allow people to report fraud, corruption, and other inappropriate behaviour. International Organization for Standardization fraud risk standards cover prevention, detection, and remediation for New Zealand and Australia.
- Attempts to introduce fraud awareness training are under way. For example, the Serious Fraud Office has commissioned Transparency International New Zealand to adapt the UK chapter's online anti-bribery training model for use in New Zealand.

With respect to trade, New Zealand Trade and Enterprise is often seen as a primary source of information on operating in overseas markets, including the best ways to access markets and how to deal with corrupt practices in those markets.<sup>97</sup>

### **Legislation (prevention and enforcement)**

There is a set of laws that, taken together, represent an attempt to address corruption.

The two principal statutes against bribery and corruption in New Zealand are the Crimes Act 1961 (which, broadly speaking, deals with corruption in the public sector) and the Secret Commissions Act 1910 (which deals mainly with corruption in the private sector). Of particular relevance to corruption:

The Crimes Act makes it an offence to accept or obtain a bribe for acts committed or omitted in an official capacity.<sup>98</sup> Bribes may involve money, valuable consideration, employment, or any other personal benefit; and the offence covers politicians and public officials, including foreign public officials.

The Secret Commissions Act has some relevance in the public sector but also covers private sector actions such as giving or offering a gift, an inducement, or a reward to gain business advantage; not disclosing a financial interest in a contract while an agent; giving false receipts; or receiving secret rewards for giving advice to enter a contract.

Together these two pieces of legislation have an extensive range. There have been recent prosecutions under the Crimes Act,<sup>99</sup> but the definitions in the Secret Commissions Act are imprecise and the language is outdated because the Act is over 100 years old. For this reason, it is difficult to prosecute successfully. In addition, the maximum penalties under this Act are low.<sup>100</sup>

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<sup>96</sup> See above (Chapter 3)

<sup>97</sup> For advice on corruption risks when trading with China, see, for example, New Zealand Trade and Enterprise, *Navigating China: For New Zealand businesses*, 2012. [www.nzte.govt.nz/media/894196/navigating-china-2012.pdf](http://www.nzte.govt.nz/media/894196/navigating-china-2012.pdf)

<sup>98</sup> Crimes Act 1961, sections 99–106.

<sup>99</sup> See the examples in Chapter 3.

<sup>100</sup> Maximum penalties are NZ\$2,000 for a corporate entity and NZ\$1,000 or two years' imprisonment for an individual: section 13 of the Secret Commissions Act 1910.

Neither Act covers offences involving foreign officials, unless the relevant conduct is an offence in the country where it takes place.

Cabinet has approved (among other things) a review of the penalties under the Secret Commissions Act with any changes to be progressed through an omnibus Organised Crime and Anti-Corruption Bill to be introduced in 2013.<sup>101</sup>

Other relevant legislation is as follows.

- The Serious Fraud Office Act 1990 sets up the SFO but has no specific provisions as regards corruption
- The Criminal Proceeds (Recovery) Act 2009 provides for the civil forfeiture from individuals of property that was derived directly or indirectly from “significant criminal activity”. A special branch of New Zealand Police enforces this Act.
- The Search and Surveillance Act 2012 provides for wide-ranging powers to obtain evidence.
- The Ombudsmen Act 1975 provides for the Ombudsmen to investigate complaints of improper behaviour in the public sector.
- The Protected Disclosures Act 2000 affords some protection to whistle-blowers in the public and private sectors.
- The Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which Act came into force in 2013, aims “to detect and deter money laundering and the financing of terrorism; and ... to maintain and enhance New Zealand’s international reputation by adopting, where appropriate in the New Zealand context, recommendations issued by the Financial Action Task Force”.<sup>102</sup> The Act is designed to make the movement of illicit cash more difficult and requires reporting entities<sup>103</sup> to conduct a programme of customer due diligence against money laundering.
- The Commerce Act 1986 counters bid rigging.
- The Local Authorities (Members’ Interests) Act 1968 regulates for conflicts of interest in local authorities.
- The Mutual Assistance in Criminal Matters Act 1992 allows cross-border requests for investigation assistance
- The Extradition Act 1999 provides the process for extradition both from and to New Zealand.

### **International conventions**

The development of New Zealand bribery and corruption legislation was pushed along in the last decade as New Zealand become a signatory to international conventions.

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<sup>101</sup> Judith Collins, “Govt moves to stamp out organised crime”, 18 June 2013. [www.beehive.govt.nz/release/govt-moves-stamp-out-organised-crime](http://www.beehive.govt.nz/release/govt-moves-stamp-out-organised-crime). Bill not yet introduced as at 13 November 2013.

<sup>102</sup> Anti-Money Laundering and Countering Financing of Terrorism Act 2009, section 3(1)(a) and (b).

<sup>103</sup> Primarily financial institutions, including entities that carry out relevant financial business.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed in December 1997 and ratified in 2001. It establishes legally binding standards to criminalise bribery of foreign officials in international business transactions and provides for related measures to make this effective.

The government has recently released a list of planned legislative amendments to bring New Zealand into full compliance with the convention.<sup>104</sup>

An OECD Working Group on Bribery review team was in New Zealand in April 2013 to discuss the country's progress and commented that New Zealand seemed to be making little progress in complying with some Convention requirements.<sup>105</sup>

New Zealand signed the UN Convention against Corruption (UNCAC) in 2003 after adoption by the UN General Assembly but has yet to ratify the Convention. UNCAC covers five main areas: preventive measures, which include the involvement of civil society in fighting corruption; criminalisation and law enforcement; international cooperation; cross-border asset recovery; and technical assistance and information exchange. It covers a wide range of offences that taken together extend the concept of corruption well beyond the traditional narrower focus on bribery.

New Zealand is one of only three OECD countries that have not yet ratified UNCAC, but is working on the necessary legislation (see below under "recent developments").<sup>106</sup> Once the legislative changes are made, the country may be in a position to ratify UNCAC.

Moving rapidly to comply with both conventions is important for New Zealand. In the absence of compliance, concern is likely to grow (both internationally and in New Zealand) that insufficient emphasis is given to anti-corruption action, that the extent of corruption in New Zealand or by New Zealanders is not known, and that New Zealand is not pulling its weight in international anti-corruption efforts. Meanwhile, for the past 10 years, inaction has impeded New Zealand's ability to use UNCAC initiatives to prevent, investigate, and prosecute corruption.

Other multilateral influences are the Financial Action Task Force and the 1997 Asia-Pacific Group on Money Laundering.<sup>107</sup>

### **Recent developments**

On 18 June 2013, the government announced the adoption of recommendations in respect of detecting and preventing organised crime.<sup>108</sup> These include items to be included in the proposed Organised Crime and Anti-Corruption Bill such as:

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<sup>104</sup> [www.justice.govt.nz/publications/global-publications/o/organised-crime-all-of-government-response/a-national-anti-corruption-strategy?searchterm=OECD](http://www.justice.govt.nz/publications/global-publications/o/organised-crime-all-of-government-response/a-national-anti-corruption-strategy?searchterm=OECD)

<sup>105</sup> OECD, "Bribery in international business". [www.oecd.org/daf/nocorruption](http://www.oecd.org/daf/nocorruption)

<sup>106</sup> Judith Collins, "Govt moves to stamp out organised crime", 18 June 2013. [www.beehive.govt.nz/release/govt-moves-stamp-out-organised-crime](http://www.beehive.govt.nz/release/govt-moves-stamp-out-organised-crime)

<sup>107</sup> Ministry of Justice, "Global anti-money laundering and countering financing of terrorism initiatives". [www.justice.govt.nz/policy/criminal-justice/aml-cft/global-anti-money-laundering-and-countering-financing-of-terrorism-initiatives](http://www.justice.govt.nz/policy/criminal-justice/aml-cft/global-anti-money-laundering-and-countering-financing-of-terrorism-initiatives)

- creating new bribery offences relating to the provision of international aid, the solicitation and acceptance of bribes by foreign public officials, and the trading in influence over public officials
- increasing penalties for private sector corruption to bring them into line with those in the public sector
- preventing the tax deductibility of bribes
- ensuring the bribery of a foreign public official can be prosecuted in New Zealand regardless of whether it was an offence in the foreign country
- clarifying the provision allowing for small facilitation payments
- extending record-keeping requirements to require businesses to keep records of facilitation payments
- extending the company director disqualification provisions to corruption and bribery offences.

The announcement also refers to the national anti-corruption policy mentioned above.

On 10 October 2013, the OECD Working Group on Bribery adopted its phase 3 report on implementing the OECD anti-bribery convention in New Zealand.<sup>109</sup> This was too late for its findings to be incorporated into the main body of this report, but it is noted that they are largely consistent with it.

The working group highlighted positive aspects of New Zealand's efforts to fight foreign bribery such as whistle-blower legislation and the range of confiscation tools under its legislation. However, it expressed concern that since joining the convention over 12 years ago, New Zealand had not prosecuted any cases of foreign bribery and only four allegations had surfaced. The report states that outdated perceptions that New Zealand individuals and companies do not bribe may have also undermined detection efforts.

Recommendations of the working group included:

- broadening the possibilities for holding companies liable for foreign bribery and ensuring they face significant sanctions for this crime
- addressing gaps in the Crimes Act 1961 regarding the foreign bribery offence
- strengthening New Zealand's capacity to detect, investigate, and prosecute foreign bribery through law enforcement training
- raising awareness of the risks of foreign bribery and of channels for reporting allegations to law enforcement
- ensuring the non-tax deductibility of all bribe payments, including those paid through intermediaries.

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<sup>108</sup> Collins, 2013.

<sup>109</sup> OECD, "Bribery in international business". [www.oecd.org/daf/nocorruption](http://www.oecd.org/daf/nocorruption)

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