

Political parties (pillar 10)

Summary

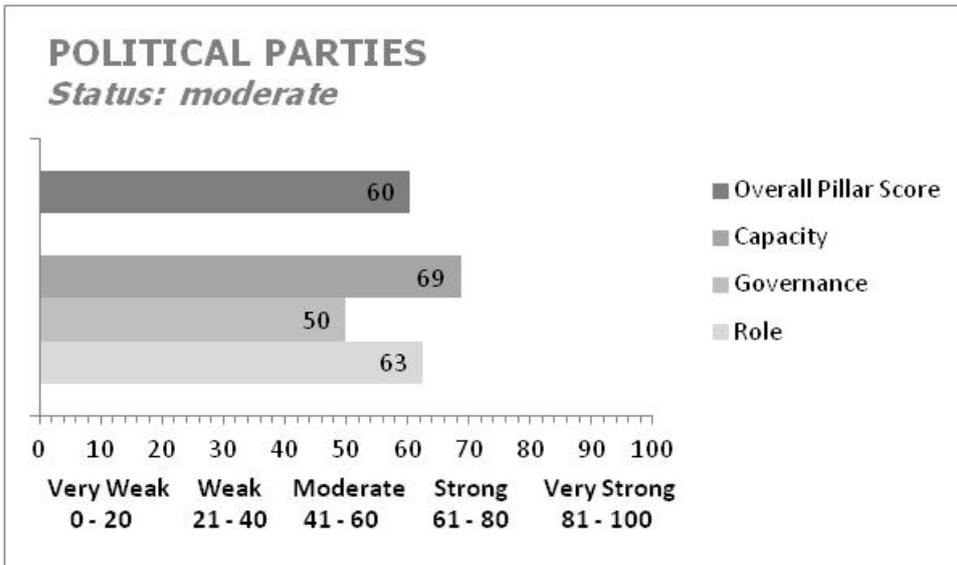
The institution of political parties is perceived to be one of the weakest in holding up the integrity of public life in New Zealand. The most problematic features of political party integrity in New Zealand involve political finance – how politicians raise and spend their funds, and how the state attempts to regulate these activities. Some of the problems relate not only to the usual concerns about the improper influence of donations and unequal private wealth, but also to the indirect state funding provided opaquely to the parties in Parliament and used for political campaigning. Significant political finance scandals in recent years have related to all types of political finance.

There is also a major problem of legitimacy for political parties. The parties are remote and isolated from the general community and are distrusted by many citizens. Their representational and engagement abilities are limited. Parties have few members, and their relationship with voters is weak.

Nonetheless, political parties do play a strong role in highlighting and combating impropriety and potentially corrupt practices in public life. Politicians are extremely on guard against the wrong doing of their opponents. Opposition parties are highly focused on exposing untoward activities of the government, and this has become a central theme of electoral competition.

The concerns about political parties raise further dimensions of transparency and monitoring. While the parties are not public institutions, they play a significant role in the operation of several other pillars, and they receive significant state funding. For these reasons, Chapter 6 recommends that there be greater transparency of the finances (income and spending) of political parties and that the powers of enforcement by the Electoral Commission be clarified and strengthened. It is also recommended that the allocation of election broadcasting time be reviewed with a view to reducing barriers inhibiting small and new political parties.

Figure 11: Political parties scores



Source: Transparency International New Zealand, 25 October 2013.

Structure and organisation

Political parties form an important pillar in New Zealand’s National Integrity System. This is because the institution of political parties is central to several other integrity pillars, especially the legislature and the executive. In particular, they have the central role in elections, so are essential to democracy. They simplify voting choices, organise competition, unify the electorate, bridge the separation of powers and foster cooperation among branches of government, translating public preferences into policy and providing loyal opposition.

However, it is precisely because of their central role in upholding the integrity of public life that political parties need to be extremely robust and healthy. Unfortunately, in some respects New Zealand parties are not playing a strong role in maintaining this integrity.

Several “democratic deficits” are found in relation to the way political parties operate. Most obvious is the weak relationship that parties now have with civil society: very few citizens are members of parties – let alone actively involved in the parties – and the capacity of parties to mobilise citizens to vote in elections is severely eroded. The public’s trust and respect for political parties has been declining. This is seen in various statistics. One particularly salient opinion poll figure comes from the Transparency International Global Corruption Barometer for 2013, in which a survey of 1,000 people found that 75 per cent of New Zealanders believe political parties are affected by corruption. On a scale of 1–5, where 1 means “corruption is not a problem at all” and 5 means “corruption is a very serious problem”, the average score for New Zealand political parties was 3.3 – the highest for any institution in the country.⁸⁹¹

⁸⁹¹ Transparency International, *Global Corruption Barometer 2013*, 2013.
http://transparency.org/gcb2013/country/?country=new_zealand

The New Zealand party system has evolved considerably in the last two decades. Thirteen political parties are registered with the Electoral Commission, and eight parties are represented in Parliament. By comparison, in the last election before the shift to mixed member proportional representation (MMP), only four parties were elected to Parliament, two of which held 95 out of the 99 seats.

The shift to MMP has helped make elections more competitive and has broken down New Zealand's previously long-standing two-party system. Not only are there many more political parties in Parliament, but the demographic profile of Parliament has broadened in significant ways, especially in ethnicity and gender.⁸⁹²

Elections and Parliament, therefore, have become more representative as a result. But there is still good reason to doubt that the parties are sufficiently fulfilling their necessary role of making elections meaningful and promoting public participation in politics.

Capacity

10.1.1 Resources (law)

To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

Score: 4

The New Zealand legal framework provides an environment that is relatively conducive to the formation and operation of political parties, but the rules around state funding are heavily biased towards larger parties and inhibit the establishment and growth of new parties.

The Electoral Act 1993 establishes the regulatory structure governing the registration and finances of political parties. The Electoral Commission is responsible for registering political parties and their logos. Parties that are unregistered cannot submit a party list and compete for the party vote, but are allowed to put forward candidates in electorate contests.

A central element in the registration process is the requirement for political parties to have at least 500 members.⁸⁹³ According to a former chief executive of the Electoral Commission, Paul Harris, the registration process and the requirement that parties have a certain number of members provide some assurance to voters that the parties they vote for are "reasonably substantial organisations". The Electoral Commission may place restrictions on the names and logos that parties register. All Electoral Commission decisions on registration can be subject to judicial review (which could encompass issues under the New Zealand Bill of Rights Act 1990).

⁸⁹² See the legislature pillar report (pillar 1).

⁸⁹³ See Electoral Commission, "Registered political parties". www.elections.org.nz/parties-candidates/registered-political-parties-0

Registered political parties must comply with statutory controls, including the submission of returns on their finances, especially controls on donations and expenditure – issues explored later in this pillar report.

The requirement to register is intended to provide a guarantee that the finances of all political parties are properly regulated. Parties are left to determine their own legal structure and the Electoral Act 1993 does not provide a legal definition of political parties. However, it does place legal obligations on parties and recognises them in law.

The state also provides considerable resources to help political parties operate. It is not commonly realised that such money is now the most important source of resources for political parties. The only direct form of state funding is the money and broadcasting time that the Electoral Commission provides to political parties for their election broadcast advertising. This funding administered under the Broadcasting Act 1989. As detailed in the electoral management body pillar report, the Act provides the commission with a great deal of independence in deciding how to allocate the resources. The commission may weigh up the various criteria for deciding the allocations – one of which is “fairness” – but invariably chooses to provide highly differentiated allocations to the various parties.

For the last five elections, the total amount of money available to the Electoral Commission has remained the same – NZ\$3.3 million. The commission also distributes broadcasting time on Television New Zealand (TVNZ) and Radio New Zealand – in 2011, it was 112 minutes.

It is also important to note that the state prohibits parties from purchasing their own broadcast election advertising – a rule that is particularly contentious for some small parties. For various reasons some minor parties receive inconsequential amounts or are denied any allocation. Former chief executive of the Electoral Commission Paul Harris has said that this is “undesirable and undemocratic”. Harris has called for a revamp of the rules on broadcasting funding, adding that, “A party should then be free to buy time for election broadcasting, subject only to a modest increase in the current limit on its election expenses, and perhaps also to a secondary limit on its election broadcasting expenditure”.⁸⁹⁴ Another critic of the broadcasting allocation process is Graeme Edgeler, an expert on electoral law and a lawyer for the former Electoral Commission: “Absolutely nothing can be said to defend the way the allocations are made ... You cannot come up with any arguments that the current broadcasting allocation model is a good idea”.⁸⁹⁵

Most of the taxpayer-funded resources provided to parties in New Zealand come under the category of “indirect” state funding because these resources are not given directly to the party organisations but instead are given to the parliamentary wing of the parties for the purpose of helping the members of Parliament (MPs) to carry out their parliamentary or ministerial activities. MPs receive resources intended to permit them

⁸⁹⁴ Paul Harris, “Broadcasting allocations and voter education at the 2002 general election”, paper for presentation to the 2002 Post-Election Conference, Parliament Buildings, Wellington, 23 August 2002. www.scoop.co.nz/stories/PO0208/S00086.htm

⁸⁹⁵ Interview of Graeme Edgeler with author, Wellington, 12 January 2013.

to carry out their legislative duties and serve their constituents – activities such as research, paying for office expenses, and consultation with the public – but some of this is used for partisan political purposes, electioneering, and organising their parties. Officially, such financial support is not known as state funding for parties, but as “parliamentary funding”.⁸⁹⁶

The Parliamentary Service and Ministerial Services distribute resources to the politicians. The Parliamentary Service is the more significant of these two bodies, administering Parliament and its MPs and their offices. In 2012, the Parliamentary Service had a budget of NZ\$72 million.⁸⁹⁷

The Parliamentary Service is controlled by the Parliamentary Service Commission, which is in turn controlled by the parties. The commission is made up of the Speaker of the House, the Leader and shadow Leader of the House, and a representative from each party in Parliament (or two representatives in the case of parties with over 30 MPs). It is, therefore, a case of the recipients of the resources devising the rules on how they can use them, something that would usually be viewed as a conflict of interest. As former MP Jim Anderton pointed out in a parliamentary debate, “It is not a good look for political parties to design schemes for party funding to get around the laws that they themselves are responsible for making”.⁸⁹⁸ This “poacher as gamekeeper” situation appears to have led to a lax regime where parties are easily able to convert parliamentary resources into political tools.

Non-state financial resources are relatively insignificant. The income that New Zealand parties derive from civil society is small – the two major party organisations have annual incomes of about NZ\$3 million, and the smaller parliamentary parties have incomes of less than a third of this figure. In election years, income from civil society increases somewhat to fund the election campaigns but, even then, remains relatively low.

This is a major shift from the past when the bulk of party resources came from their membership base or from organisations aligned with the party, such as trade unions and businesses. Less party funding now comes from these sources, as the parties have only minuscule memberships and their traditionally aligned organisations contribute relatively little.

Political scientist Raymond Miller says that “Over a number of years, but especially since the move to proportional representation, almost all of the parliamentary parties have been able to lay claim to the spoils of office”.⁸⁹⁹ The shift to proportional representation has played some role in this transformation, because the new electoral system has brought parliamentary party politics back to the centre of the governing process, whereas under the former system Parliament suffered from the dominance of

⁸⁹⁶ David McGee, *Parliamentary Practice in New Zealand*, 3rd ed. (Wellington: Dunmore Publishing, 2005), p. 85.

⁸⁹⁷ Parliamentary Service, *Parliamentary Service Annual Report for the Year Ended 30 June 2012*, (Wellington: House of Representatives, 2012). www.parliament.nz/en-nz/parl-support/agencies/ps/corp-docs/00NZPPSAnnualReport20121/annual-report-for-the-year-ended-30-june-2012-parliamentary

⁸⁹⁸ *Sunday Star-Times*, 6 May 2001, p. 2.

⁸⁹⁹ Raymond Miller, “New Zealand: A party system transformed”, in Kay Lawson, ed., *Political Parties and Democracy*, vol IV (Santa Barbara: Praeger, 2010), p. 164.

the political executive – what Lord Hailsham in the United Kingdom called “elective dictatorship”. A downside of this recentring of parliament has perhaps been intra-parliamentary horse-trading among parties in non-transparent ways.

There are some suggested international standards for disclosure requirements for political parties’ financial information, in addition to the more common requirements for disclosure of electoral campaign finances. The standards were developed because of the role parties play in the executive and legislative branches of government and because they often receive significant public funding. For example, the Council of Europe calls on states to oblige political parties to keep proper accounts and make them available to the public as well as presenting them to an independent oversight agency.⁹⁰⁰ The OECD shares this approach.⁹⁰¹

In the United Kingdom, which has fairly comprehensive rules, parties are obliged, among other requirements, to provide an overview of income and expenditure and a balance sheet. Income should include information on membership fees, money received from affiliated organisations, and donations as well as public funding. Equivalent details are required on expenditure. In countries where political parties are obliged to report to only an oversight body, that body should be required to make the information available to the public in a timely manner. Sanctions for non-compliance are also seen as necessary.

New Zealand should consider adopting requirements on these lines. In the meantime, parties in New Zealand could consider voluntary compliance with these international standards.

10.1.2 Resources (practice)

To what extent do the financial resources available to political parties allow for effective political competition?

Score: 3

The financing of political parties in New Zealand is highly problematic, with the extra-parliamentary party organisations run on shoe-string budgets of significantly varying sizes while the parliamentary wings of the parties enjoy generous state funding that is opaquely controlled and inequitably distributed.

The change in electoral systems – from first-past-the-post to MMP – has provided an electoral environment more conducive to minor parties, so voters clearly have more choice in elections. Since the introduction of MMP in 1996, eight small parties have gained parliamentary representation in addition to the two major parties – Alliance, Act, United Future, New Zealand First, Greens, Progressive, Māori Party, and Mana.⁹⁰²

⁹⁰⁰ Council of Europe, *Guidelines on the Transparency of Party Funding*, 2001, and Council of Europe, *Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns*, 2003.

⁹⁰¹ OECD, *Transparency and Integrity in Political Finance* (Paris: OECD, 2012).

⁹⁰² This pillar report refers to the political parties by the name they are commonly known: Act (ACT New Zealand), Alliance, Greens (Green Party of Aotearoa New Zealand), Labour (New Zealand Labour), Mana,

Many other parties have failed to gain representation; 41 parties have been registered, set up, and disbanded since the introduction of MMP.⁹⁰³

Yet there are good reasons to doubt whether New Zealand's party system contains effective competition, and there is reason to see the funding regime as being strongly biased against small and emerging political parties. As discussed later (under question 10.3.1), there are serious issues of declining voter turnout and engagement with political parties. Also, survey evidence shows that a significant proportion of the public does not feel sufficiently happy with the degree of choice in elections and views the differences between the main parties as minor. For example, in the 2008 general election, half of voters (51 per cent) thought there were only "minor differences" between the parties during the campaign, while only 38 per cent thought there were major differences between the parties. Furthermore, when survey respondents were asked to place the parties on the left–right spectrum, "A third could not place Labour or National".⁹⁰⁴

Small parties have a precarious existence and often fail to compete with the large parties, at least in part because of the legal framework, electoral system, and provision of resources. There is little diversity in the political funding of parties. In theory, parties receive money from members, their fundraising activities, and from supporters, but in reality, the levels of money are relatively low. As pointed out previously, the balance between private and public funding is highly skewed towards public funding.

The ability of New Zealand political parties to recruit and retain members has drastically declined. Between the 1950s and 1990s New Zealand party membership as a proportion of the electorate fell from 23.8 per cent to 2.1 per cent – a decline of 21.7 percentage points. Of 16 OECD countries studied, New Zealand had the third lowest membership ratio.⁹⁰⁵

That New Zealand constitutes a particularly advanced case of party membership decline can be seen in the fact that, whereas the National and Labour parties were once able to claim branch memberships of 250,000 and 80,000 respectively, today National has only about 20,000 and Labour about 10,000 members. Likewise, the relatively new parties of New Zealand First, the Greens, Act, and United Future probably only have about 15,000 members among them. It seems that fewer New Zealanders belong to political parties today than at any time since the establishment of the two-party system in the 1930s.⁹⁰⁶

Māori Party (Māori Party of Aotearoa New Zealand), National (National Party of New Zealand), New Zealand First, Progressive, and United Future (United Future New Zealand).

⁹⁰³ Electoral Commission, "Register of political parties". www.elections.org.nz/parties-candidates/registered-political-parties-0/register-political-parties

⁹⁰⁴ Jack Vowles, "The 2008 election: Why National won", in Raymond Miller, ed., *New Zealand Government and Politics* 5th ed. (Sydney: Oxford University Press, 2009).

⁹⁰⁵ Susan Scarrow, "Parties without members? Party organization in a changing electoral environment", in Russell Dalton and Martin Wattenberg, eds., *Parties Without Partisans: Political change in advanced industrial democracies* (Oxford: Oxford University Press, 2000), p. 90.

⁹⁰⁶ Bryce Edwards, "Elections and campaigns: Voter participation and turnout", *Te Ara: The Encyclopedia of New Zealand*, updated 13 July 2012. www.TeAra.govt.nz/en/elections-and-campaigns/page-4

State funding has an important effect on the nature of political competition, especially in terms of consolidating the existing party system and artificially inhibiting change. Much like the state's ban on television advertising by parties and the Electoral Commission's inequitable allocation of state funding for election broadcasting, the provision of generous parliamentary funding operates as an impediment to the competitiveness of new parties in New Zealand politics. For the last election, the commission divided this election broadcasting funding among 11 parties, with the Labour and National parties receiving most of the money allocation – 72 per cent between them (or NZ\$1.15 million each) – the Greens, Act, and New Zealand First receiving much smaller amounts, and six other small parties getting minuscule allocations.⁹⁰⁷

It is significant that the only new political party to be elected to Parliament since the introduction of MMP is the Act party, which was bankrolled by millions of dollars of private wealth in 1996. Since then no other new party not already represented in Parliament has been able to compete with the millions of dollars of state-funded resources that the other parties have at their disposal. The other new parties currently in Parliament – the Greens, United Future, Māori Party, and Mana – were all launched by MPs already in Parliament.

The larger political parties – Labour and National – have access to the greatest amount of resources through Parliament, which puts them at a significant electoral advantage over other parties in political campaigning and organising their parties. In addition, the major parties receive a greater share of donations from civil society. Ever since 1996, when parties were first obliged to disclose elements of their donations and expenditure, the amounts of money for Labour and National have been broadly similar. Other parties like the Greens and Act have also been well resourced at various elections, but the wealth inequalities of Labour and National have caused the greatest concern about the political process. Hence, arguments are often made about the unfairness of electoral participants having unequal amounts of money to spend on their campaigns, and the possibility of corruption resulting from donations made to campaigns.

The most infamous scandal about political finance came during the 2005 general election when members of the Exclusive Brethren church spent a considerable amount of money publishing leaflets that were thought to assist the National party's campaign, thus circumventing the limits on expenditure for political parties.⁹⁰⁸

10.1.3 Independence (law)

To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?

Score: 4

⁹⁰⁷ For further details, see Electoral Commission, "Broadcasting allocation decision 2011 general election". www.elections.org.nz/events/past-events-0/2011-general-election/parties-candidates-and-promoters-2011-ge/broadcasting

⁹⁰⁸ Nicky Hager, *The Hollow Men: A study in the politics of deception* (Nelson: Craig Potton, 2006).

Comprehensive legal safeguards exist to prevent unwarranted external interference in the activities of political parties.

The state is not easily able to monitor, investigate, or dissolve a political party. The surveillance of parties is not legally possible except under very tight conditions relating to criminal law.

10.1.4 Independence (practice)

To what extent are political parties free from unwarranted external interference in their activities in practice?

Score: 4

Political parties operate freely and are subject only to minimal oversight linked to clear and legitimate public interests.

State interference in the affairs of political parties mostly takes the form of state regulation of political finance (as discussed above). More intrusive state interference is extremely uncommon. For example, there are no examples of the state dissolving or prohibiting political parties. The last time this was even raised as an issue was in the early 1980s when National Prime Minister Robert Muldoon considered passing legislation to outlaw the Socialist Unity Party.⁹⁰⁹

There are few other examples of state interference in the activities of political parties and no examples of harassment or attacks on opposition parties by state authorities or actors linked to the state or a governing party. There are no examples of the detention or arrest of political party members because of their work. When attacks on political party members from members of the public occur, which is uncommon, the state engages in the sort of proper and impartial investigation that occurs in other civil society matters.

In general, it appears that authorities treat all political parties equally. There are some exceptions to this, when it comes to issues of political finance and regulating that finance (as outlined above), but in practice New Zealand political parties can operate independently from authorities.

There is more concern about political parties' linkages to civil society and business. Recent political finance scandals suggest that political parties are still not seen as being protected from external influence.⁹¹⁰ As one leading political journalist wrote in 2012, "the world believes Kiwis [New Zealanders] operate the world's cleanest government. Its politicians are rated incorruptible: fraud, bribes and sleaze-free. And yet, of late, domestic politics has been dominated by a series of grubby scandals".⁹¹¹

⁹⁰⁹ Nick Barnett, "The spies are coming in from the cold", *Dominion*, 7 April 2000, p. 11.

⁹¹⁰ For examples, of political finance scandals in recent years, see Bryce Edwards, "Review of New Zealand politics in 2008", *Liberation*, 27 April 2009. <http://liberation.typepad.com/liberation/2009/04/review-of-new-zealand-politics-in-2008.html>; Bryce Edwards, "Review of New Zealand politics in 2009", *Liberation*, 1 December 2010. <http://liberation.typepad.com/liberation/2010/12/review-of-new-zealand-politics-in-2009.html>

⁹¹¹ Andrea Vance, "Grubby scandals threaten New Zealand's reputation", *Dominion Post*, 29 July 2012. www.stuff.co.nz/national/politics/7370248/Grubby-scandals-threaten-NZs-reputation

Governance

10.2.1 Transparency (law)

To what extent are there regulations in place that require parties to make their financial information publicly available?

Score: 3

Comprehensive regulations require political parties to make some of their financial information publicly available. However, this does not cover all aspects of party finances, and some provisions contain loopholes.

New Zealand now has a large framework of electoral law that is supposed to prevent the illegitimate influence of wealth on parties. Donations to registered political parties and candidates are regulated. Political parties have been required, since 1996, to disclose the names and addresses of all donors who have given above a certain threshold. The records of donations for each calendar year must be audited and submitted by 30 April to the Electoral Commission, which makes them available for public inspection. The rules relating to the public disclosure of donations and limits on the size of anonymous donations and overseas donations changed on 1 January 2011.⁹¹²

A return is required even if the party has received no donations during the calendar year. An auditor's report must accompany the return, including where nil donations are declared. Parties are also required to make an immediate disclosure to the Electoral Commission when a donor gives a party more than NZ\$30,000 in a 12-month period.

The opaqueness of party finance is seen most strongly in the weak rules regulating the disclosure of the main source of (indirect) funding for political parties – that from Parliament – which is exempt from the Official Information Act 1982.

The use of parliamentary resources for party activities is also perpetuated by the fact the parties in Parliament have ensured the Parliamentary Service is exempt from the Official Information Act 1982. This means information about the parties' use of state funds is generally not available to the public. According to political journalist Vernon Small, "None of its meetings are open to the public, its agenda is not released and the Official Information Act ... does not apply to it – and that is the way most MPs like it. Ironically, the only people with routine access to the darkest secrets about individual members – which insiders say is rare in any case – are representatives of rival parties. It is this 'mutually assured destruction' that keeps much of what it does secret".⁹¹³ Gathering material for this report has proved difficult, as there are few sources of information on the parliamentary resources. The public is, therefore, uninformed about the situation.

⁹¹² The rules can be found on the Electoral Commission website: www.elections.org.nz/parties-candidates/registered-political-parties-0/party-donations

⁹¹³ Vernon Small, "Move to open 'secret society' ", *New Zealand Herald*, 28 March 2001. www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=179648

New Zealand's disclosure rules are not as rigorous as in many countries and appear to be a compromise solution to objections to and support of regulation. On the one hand, the rules accept that when donations are relatively small then the right to privacy should prevail, but when donations are large they must be disclosed. Significantly, no limitations are imposed on donations, although recently there has been some support from the public and politicians for a ban on donations from anonymous sources.⁹¹⁴

10.2.2 Transparency (practice)

To what extent can the public obtain relevant financial information from political parties?

Score: 3

It is possible for the public to obtain financial information from political parties through the Electoral Commission, but this information is limited and its veracity is not assured.

New Zealand's disclosure laws cover only certain elements of political finance, and political parties are remarkably secretive about their finances. The parties do provide the necessary information to the Electoral Commission, but generally provide nothing further to the public. They tend to view themselves as private organisations with no obligation to provide transparency of their finances beyond what is required by law. Hence, the party websites usually do not provide any information about party finances.

The opaque nature of the use of parliamentary funding means that transparency is ultimately very limited. The institution of Parliament is exempt from the Official Information Act 1982, which means little information can be gathered about the use of parliamentary budgets by parties. One recent change, in 2012, occurred when the Speaker decided to start issuing limited information about the travel expenditure of MPs. Quarterly reports are now published on the Parliament website that show the global figures for how much money each MP has spent on travel and accommodation.⁹¹⁵ Details on how this money has been spent are not available.

10.2.3 Accountability (law)

To what extent are there provisions governing financial oversight of political parties by a designated state body?

Score: 3

The oversight of political parties is fragmented with responsibility and the potential for picking up abuse allocated to several institutions.

The Electoral Commission is the regulator of party and election finances and requires several returns from political parties. The Electoral Act 1993 provides the commission with a regulatory framework to make some of the financial activities of political parties

⁹¹⁴ Campaign expenditure is also subject to disclosure rules: Electoral Commission, "Party expenses". www.elections.org.nz/parties-candidates/registered-political-parties-0/party-expenses

⁹¹⁵ For details of MPs' expenses, see New Zealand Parliament, "MPs' expenses". www.parliament.nz/mi-nz/mpp/mps/expenses

transparent. Although legal provisions exist, they do not cover all aspects of the financial reporting and accounting of political parties, and some provisions contain loopholes.

The Electoral Commission has very limited powers in regard to the financial oversight of political parties (for more on this, see the electoral management body pillar report). The commission exists mainly to receive the official reports that parties are obliged to make public. It has limited ability to check the veracity of the reports or investigate potential violations of the rules, and has no prosecutorial powers.

More broadly, other mechanisms sometimes play a part in overseeing the activities of political parties. Investigations can be carried out by the Auditor-General (following a complaint by a member of the public), by the Justice and Electoral Law Committee of Parliament (if an MP on the committee raises an issue), and by the triennial parliamentary review of Parliament, which normally looks at funding issues. Of these bodies, it is the Office of the Auditor-General that appears to have the most potential for effective oversight of political party finance. As explored below, in 2006, the Auditor-General published a report about his investigations into the misuse of parliamentary funds by political parties in the weeks leading up to the 2005 general election. The landmark report showed that this independent office was highly capable of dealing with abuses in political finance. However, the office has become involved in such oversight roles on only an *ad hoc* basis, drawing attention to the fact there is no systematic oversight system.

10.2.4 Accountability (practice)

To what extent is there effective financial oversight of political parties in practice?

Score: 3

In practice, financial oversight of political parties mostly occurs on an ad hoc basis.

The lack of enforcement of the regulations on political party finance is more problematic than any failings in the legislation itself. The Electoral Commission and New Zealand Police are often criticised for not enforcing electoral finance laws. There have been many examples of clear violations of the rules not being referred to Police by the commission. A recent example was the discovery in May 2013 that the Labour party had failed to declare a donation of about NZ\$420,000. The rules state that parties must make an immediate disclosure to the Electoral Commission when a donor gives a party more than NZ\$30,000 in a 12-month period. Labour explained to the commission that it had been “confused” about the donation and had simply made a mistake in not declaring it. On this basis, the commission decided not to take the matter further.⁹¹⁶ This example, along with many others, suggests that when the political parties break the rules, the sanctions are lax.

⁹¹⁶ Kate Shuttleworth, “Political party donation returns published”, *New Zealand Herald*, 10 May 2013. www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10882830

The next problem is that when the Electoral Commission does refer a political party to New Zealand Police for prosecution, the resulting investigation does not appear to be adequate and prosecutions are rare. One case study is salient (see also the law enforcement pillar report). After the 2005 general election, the Electoral Commission investigated Labour and five other political parties for alleged breaches of election spending rules. The commission referred Labour to Police after concluding that the party had overspent the legal limit by over NZ\$400,000. This occurred because Labour's election campaign included the production of a "pledge card" advertisement using Parliamentary Service funds. The party had wanted to exclude the NZ\$446,000 it spent on the pledge cards from its campaign expenses on the basis that parliamentary funds had paid for it, but the Electoral Commission ruled the pledge cards should be included nonetheless. Police stated, however, that while it considered "there was sufficient evidence to establish a prima facie case" of an offence, because it was not clear that the offence was intentional they decided not to lay a prosecution, preferring instead to warn Labour that similar future offences would risk prosecution. Police also said that other parties had used similar tactics, so it would have been unfair to single out Labour.⁹¹⁷

The Auditor-General, however, decided to intervene in this situation and investigate the use of public funds in the campaign. The report, released nearly a year after the election, found that parliamentary parties had improperly spent NZ\$1.17 million of taxpayer funds.⁹¹⁸ This led to retrospective legislation being passed under urgency to make the spending legal. At the time, Transparency International New Zealand objected to the legislation, stating that "Any retrospective changing of the law to legitimise something that was previously illegal we would criticise in the strongest possible terms".⁹¹⁹ The Auditor-General's investigation and findings produced an earthquake in New Zealand's political finance arrangements. And from that point on there has been increased interest and debate about campaign finance and the misuse of state funds by politicians.

10.2.5 Integrity (law)

To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?

Score: 4

Political parties all have rules about democratic internal governance, although they could be strengthened.

All political parties have regulations on the election of their leadership and the selection of candidates. For most parliamentary parties, the selection of leadership is reserved

⁹¹⁷ New Zealand Police, "No prosecutions for electoral complaints", 17 March 2006. www.police.govt.nz/news/release/2345

⁹¹⁸ Controller and Auditor-General, *Advertising Expenditure Incurred by the Parliamentary Service in the Three Months before the 2005 General Election* (Wellington: Office of the Auditor-General, 2006). www.oag.govt.nz/2006/election-spending/docs/election-spending.pdf

⁹¹⁹ Kay Martin, 'Reputation "at risk" in funds row', Dominion Post, 13 September 2006, p.2.

for the parliamentary caucus. The key exceptions are the Greens and Labour – both of which have formal mechanisms involving members in the selection of leaders.

The state now imposes an element of internal democracy for all registered parties. The Electoral Act 1993 sets out a requirement “for registered parties to follow democratic procedures in candidate selection”.⁹²⁰ Before MMP, the processes for selecting parliamentary candidates were left entirely in the hands of the parties. Now, according to the Electoral Commission, every registered political party is obliged to make its selection of candidates in a way that involves at least the membership or party delegates.

The candidate selection and membership rules of each registered party must be deposited with the Electoral Commission, and thus made available for public inspection. However, the commission has no power to enforce the rules about democratic selection or to intervene in any other way. Although the Electoral Act 1993 stipulates that registration requires internal party rules that adhere to the candidate-selection regulations prescribed, the commission cannot investigate a party’s selection procedures as part of the registration process. However, legally, it is possible for any member of the public to seek a declaration from the High Court about the lawfulness of a party’s rules or procedures.

The lack of internal democratic practice extends to the selection of parliamentary candidates. While traditional methods prevail for the selection of electorate candidates, in most political parties the leaderships have chosen to retain the right to choose list MPs. In the formation of the party lists, most parties have established “moderating committees” of party elites that make the final decisions about list rankings.

10.2.6 Integrity (practice)

To what extent is there effective internal democratic governance of political parties in practice?

Score: 2

In practice, virtually all decision making in political parties occurs at the elite level – whether it is leadership selection, candidate selection and listing, or policy making, the upper-echelons of the parliamentary party invariably have the most power.

Traditionally, New Zealand political parties have been organised along democratic lines, with a bottom-up structure facilitating the involvement and decision making of all members. But these features of the party system have been almost totally eroded by changes in recent decades. Political parties now have many fewer members, and members have little meaningful role in decision making.

Despite supposedly democratic structures, it is the parliamentary elite of the parties who make the most important decisions. For example, John Henderson and Paul Bellamy point out that “while party members in theory have the opportunity to be actively involved in formulating party policy and candidate selection, in practice most

⁹²⁰ Electoral Act 1993, section 71.

key decisions rest with the party hierarchies. Party conferences are useful for floating policy ideas and parties maintain policy committees, but the decisions on policy tend to rest with the party leaders and their parliamentary caucus”.⁹²¹ This academic view was reinforced by the account of politics contained in Nicky Hager’s landmark book, *The Hollow Men*. Based on leaks of internal email messages and documents from within the National party, this book gave an insight into how decision making in modern political parties occurs at the elite level with the strong influence of highly pragmatic party professionals.⁹²²

Many commentators call on the political parties to make themselves more attractive to potential members. For example, political scientist Raymond Miller suggests the parties need to try “democratising decision-making processes with a view to giving membership and activism some value, and providing greater opportunity through the candidate-selection process for the revitalisation of the party leadership”.⁹²³

Role

10.3.1 Interest aggregation and representation

To what extent do political parties aggregate and represent relevant social interests in the political sphere?

Score: 3

While there is concern about the disengagement of the public from New Zealand politics, some interests are well represented.

Voter disengagement is especially seen in the declining voter turnout in New Zealand elections. Voter turnout has generally been in decline over a long period, and at the most recent election sank to the lowest turnout in over a century with only 69.57 per cent of those eligible to enrol turning out on polling day 2011 – a decline of six percentage points from the previous election.⁹²⁴

There is also a trend for fewer participants standing for office. For example, the Electoral Commission reported a decrease in parties and candidates between the last two elections, with the number of participating parties declining from 19 to 13, list candidates declining from 593 to 471, and electorate candidates declining from 522 to 453.⁹²⁵

⁹²¹ John Henderson and Paul Bellamy, *Democracy in New Zealand: International IDEA country study*, (Christchurch: Macmillan Brown Centre for Pacific Studies and International Institute for Democracy and Electoral Assistance, 2002), p. 70. www.idea.int/publications/democracy_nz/upload/New_Zealand.pdf

⁹²² Hager, 2006.

⁹²³ Miller, 2010.

⁹²⁴ Electoral Commission, *Report of the Electoral Commission on the 2011 General Election and Referendum*, 2012, p. 24.

⁹²⁵ Electoral Commission, 2012: 30.

10.3.2 Anti-corruption commitment

To what extent do political parties give due attention to public accountability and the fight against corruption?

Score: 4

Parties in New Zealand play a strong role in the “fight against corruption”. There is now a strong competitive element in the party system on issues of integrity and corruption in which parties constantly seek to expose and highlight the failings of their opponents.

There is a sense in which politicians and parties now use allegations of corruption as a campaigning political weapon. New Zealand politics has not traditionally been characterised by political finance, corruption, and scandals, but allegations about political finance, corruption, and scandal are now a key electoral weapon. Political debate about corruption, political funding, misuse of taxpayer funds, and personal political behaviour is one of the most prominent forms of electioneering in what is now a permanent campaign. Politicians trade heavily on claims, accusations, and complaints relating to these issues. There is little chance of corruption having a blind eye turned towards it.

On the other hand, however, political parties and politicians are often those that are seen to be part of the problem with corruption. Many, if not most, significant parliamentary political scandals now involve questions about politician and party impropriety, often involving parliamentary resources.

10.4.1 Treaty of Waitangi

The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What do political parties do to partner with Māori, to respect and affirm Māori rights to make decisions and to enhance Māori participation in its field of activity? In particular, where political parties have legal rights and obligations in this respect given to it by the Crown, how well does it honour them, including any Treaty obligations passed on by the Crown?

As private institutions, political parties have no legal or special obligations in terms of the Treaty of Waitangi, yet most individual political parties in New Zealand take the Treaty seriously and pay special attention to its ramifications for public policy.

They generally publish policies, make commitments, carry out discussions on, and debate Treaty issues. This does not mean all parties agree on the status and policy ramifications of the Treaty. In fact, there continue to be diverse perspectives in this area, but virtually all political parties give substantial weight to the discussion of the obligations and the merits of these issues. Two parliamentary-based political parties in particular – Mana and the Māori Party – see themselves as embodiments of Treaty principles and Māori rights, both being based on and growing out of Māori struggles for political sovereignty.

Māori institutions are generally strong and support political activism. The Treaty of Waitangi has provided a platform that has helped to frame and organise Māori

attempts to engage with the political system in ways that for the most part have been peaceful and lawful.

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